



Owners Have Right to Review Delinquencies

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Q: Like many associations, we were forced to set up a “bad debt reserve” in our 2009 budget for owners who have become delinquent in payment of their quarterly assessments. As a director, I have been requested by some owners to release the names of those delinquent members and the extent of their delinquency. Do the owners have the right to this information, or is it protected by privacy laws? **B.G. (via e-mail)**

A: The laws applicable to both condominium associations and homeowners’ associations require that certain information be kept as part of the “official records” of the association. Included within required official records are accounting records.

Accounting records must include a separate ledger for each unit owner (in condominiums) or parcel owner (in homeowners’ associations) which shows the status of that account’s payment.

Any unit owner or parcel owner is entitled, upon written request, to inspect the official records of the association. Accordingly, any member of your association who wishes to review the details of any particular property’s payment history and delinquency status may make a written request to review the association’s records, and see that information.

However, I do not recommend that the board of directors affirmatively take action to publish the

names of delinquent owners, nor otherwise publish information as to the status of any particular account. For one thing, the Florida Consumer Collections Practices Act prohibits the publication of “dunning lists”. Likewise, any other type of verbal or written communication that has the potential for causing public embarrassment could result in a legal claim against the association.

Q: Our condominium association’s board consists of five members. Our bylaws provide for two-year staggered terms. Our annual meeting is set for January of 2009, where we will be electing three members. What is the status of the two board members who still have one year left on their term? Must their seats be held open for election this year, or are they exempt from the new law until their term expires? Can the vote to continue using the two-year staggered terms be taken at the annual meeting. **T.C. (via e-mail)**

A: Those are both good questions. Unfortunately, the new “election law” which became effective October 1, 2008, leaves more open questions than it answers. You have identified two of those questions.

As to those directors whose term does not expire until January 2010, the state agency which regulates condominiums issued a letter interpreting the statute to mean that such individuals would be “grandfathered” until their terms expire. That is the interpretation that I believe is being universally

applied by attorneys who advise associations, I suppose under the theory that the Florida Legislature cannot remove someone from a corporate board who has been duly elected.

As to the timing of the vote to continue with staggered terms, it is my belief that the vote must take place before the annual meeting. That is because the law requires that the first item of business that must take place at your association's annual meeting is the election of directors. Accordingly, it is not technically appropriate to vote to continue with staggered terms and then have the election, the election must occur first.

I typically recommend that a special meeting be called and be held before the annual meeting, even if it is a special meeting held only a few minutes before the annual meeting.

Q: I just received notice of the new budget for my condominium association for next year and the board proposes to increase the annual assessments by over twenty percent from last year. They say that the increase is due to anticipated bad debts from several non-paying owners and from the decision to hire a management company, which I think is unnecessary. I objected to the budget and told the board my position on the management company at the meeting, but they passed the budget anyway. Isn't there a limit on how much a board can increase the budget? **M.A. (via e-mail)**

A: It is a common misconception that a condominium association board is limited in the amount it can increase a budget from year to year. There is no statutory limit, except of course that any budgeted amounts must be based upon valid association expenses. Some bylaws limit budget increases, but such provisions are considered archaic and rarely found in modern documents.

The source of confusion concerning limits on budget increases is section 718.112(2)(e) of the Condominium Act, which provides that whenever the operating budget exceeds one hundred fifteen percent of assessments for the prior fiscal year, ten percent of the members may petition to call a members' meeting to adopt a substitute budget, and the board must call such a meeting within 60 days. The petition must be delivered to the board within 21 days after the adoption of the initial budget by the board. If a majority of all voting interests, or such higher amount as may be required by the bylaws, vote to adopt the substitute budget, then it is adopted. Otherwise, the original budget shall take effect as scheduled.

Importantly, the one hundred fifteen percent figure is calculated based on recurring operating expenses only. So, if a significant increase in a budget is due to increased reserve amounts, non-recurring expenses, or expenses to be paid for the betterment of the property, the substitute budget adoption option may not even apply.

The adoption of a substitute operating budget is difficult for owners to accomplish. In twenty-two years of practice, I have only seen it pulled off a handful of times. The fact is, the operating budget is based on actual projected expenses. Any substitute budget must still meet all of the legal obligations of the association. In the case of your association, you should know that most association boards have specific authority granted by the governing documents to hire a management company, so I expect that is a valid expense for your association. Since it is likely that the board has the authority to hire a management company and it is also likely that a management contract has already been signed, the association must pay according to the terms of that contract.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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