



Condominium Law Q&A

APRIL 3, 2006

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Question – We have a new board president who makes all the decisions. His opinion is such that he feels there is too much money in our roof reserves, and we will never have to replace the roofs. Recently, he has paid invoices for roof repair (\$950 & \$4,300) and charged them against the roof reserve account. In the past, previous boards have always treated roof repairs as an operating expense and not used any of the reserve funds for repairs. He has stated that an attorney was consulted and said it is allowable to use reserve funds for repairs with board approval. I am under the opinion that reserves must be used only for authorized expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests. What can be done to convince him to use the operating budget for repairs and leave the reserve funds for a complete replacement when needed in the future? Our property manager does not want to render an opinion on this subject because he feels that this is a legal question. R.J.P., Stuart

Answer – First, I will address your comment about the manager not wanting to render an opinion on the subject because he felt it is a legal question. The manager acted correctly in that regard. The Florida Supreme Court [The Florida Bar Re Advisory Opinion – Activities of Community Association Managers, 681 So.2d 1119 (Fla. 1996)], examined the nature and scope of services traditionally performed by community association managers and determined that some were clearly the unlicensed practice of law [which, in the State of Florida, is a felony] and are thus not

allowed to be performed by managers. The prohibited activities are: (1) completion of the frequently asked questions and answers sheet; (2) drafting both a claim of lien and satisfaction of claim of lien; (3) drafting of a notice of commencement; (4) determining the timing, method and form of giving notice of meetings; (5) responding to a community association's questions concerning the application of law to specific matters being considered; (6) advising a community association that a course of action may not be authorized by law or rule; and, (7) drafting the documents required to exercise a community association's right of first refusal to sell or lease a unit. In addition, the court noted that there is a "gray" area, for which the nature and extent of the work being done will dictate if any attorney needs to be consulted. Those practices include: (1) phrasing yes or no voting questions concerning waiving reserves or waiving the compiled, reviewed or audited financial statement requirements; (2) phrasing a yes or no voting question concerning carryover of excess membership fees; (3) phrasing a yes or no voting question concerning the adoption of amendments. Next, addressing your question concerning whether routine maintenance of the roof should be funded from the roof reserves or operating account, it is six of one or half a dozen of the other. Even assuming that the board decides to fund roof repairs from the roof reserve account, each year, unless waived or reduced by the membership, the board, at the time it promulgates the annual budget, must include adequate funds in the budget to ensure that, when the roof needs to be replaced, there are monies in place to do so.

READER FEEDBACK: I, too, had a problem with cooking odors coming into my unit from an adjacent unit. I was able to solve the problem by “weatherproofing” the door. I was able to do this at a relatively small cost. W.T., Palm Coast

Question – Regarding the new rental law, if an owner does not vote for or against an amendment to prevent rentals in a condominium, would that be considered an affirmative vote, resulting in his inability to rent the unit out after the amendment is recorded? L.R., Coral Springs

Answer – The question relates to a 2004 amendment to the Condominium Act which became effective on October 1, 2004. It provides that “any amendment restricting unit owners’ rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment.” First, and most importantly, the amendment does not affect any rental restrictions in effect prior to its effective date. Second, whenever an affirmative vote is required, that means an owner must actually cast a “yes” vote, otherwise, it is a “no” vote, and that applies equally to an abstention or not voting. ■

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