



## Condominium Law Q&A

JULY 10, 2006

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**Question** – I am on the board of directors of my 42 unit condominium, and my first question involves the law regarding board meetings. Can there be an executive meeting, directors only, without association members present and under what circumstances? If yes, do we have to publish the contents of any discussions? The third question pertains to the annual meeting. We have a seven member board of directors, and this year, exactly seven owners, only, are running for the board. Therefore, we are not holding an election. At the January annual meeting, will the new board members conduct the meeting or will the 2005 board conduct the meeting and then announce the new Board? S.H.C., New Smyrna Beach

**Answer** – Any time there is a gathering of a quorum of the board it is deemed to be a board meeting which must be noticed, an agenda posted and open to the unit owners. There is no authority in the law for “executive services” of the board which are closed to the members; that is, other than a meeting of the board with legal counsel to discuss pending or threatened litigation. In so far as the annual election of directors, if the number of candidates equals to the number of directors to be elected those who qualify are automatically elected. At the start of the meeting the old board convenes the meeting, gives their final reports, and then announces the new board who take over the meeting and if noticed, conduct the organizational meeting of the board, which is when the officers are elected.

**Question** – At the time I purchased my condominium unit the condominium development was still under construction. The declaration of condominium provided that each of the initial townhouse unit owners were solely responsible for the maintenance/repair and electrical charges associated with the air conditioning units serving their units. In the newer buildings, 160 unit contained within 4 buildings, the expense of the maintenance and electricity for the air conditioning units is charged as a common expense, chargeable against all unit owners in the condominium, including the original 17 townhouse owners. This situation is not equitable and must be remedied in some fashion as I am not only paying for my own air conditioning repairs and electricity, but also for the other unit owners. What can be done about this situation? B.D., Cape Canaveral

**Answer** – The common expenses include the expenses of the operation, maintenance, repairs, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as a common expense by the Condominium Act or the declaration of condominium. Translated, what this means is that the developer, at the time it creates the condominium can include charges for services received by some but not all unit owners as a common expense paid for by everyone. Examples of this includes boat slips and other amenities enjoyed by some but not all unit owners. It is totally legal so long as it was

disclosed in the condominium documents. In your case you allege that the declaration states that the cost of maintenance and repair and the electricity for the air conditioning compressor is an expense of those units served. If that is what the declaration says then it is enforceable but might necessitate you hiring an attorney to do so. Florida's Division of Florida Land Sales, Condominiums and Mobile Homes does lack the legal authority to interpret individual condominium declarations.

Question – I reside in a small community that has 53 homes with a homeowners association made up of resident home owners. One of the lots consists of a community pool and a small structure containing rest rooms and storage. It is owned by the homeowners

association and is totally maintained by volunteer home owners. As with most property in this area, real estate taxes have increased dramatically. Could the homeowners association be set up as a non-profit organization and, as such, be exempt from paying property tax? L.J., Flagler Beach

Answer – No. There continues to be a misunderstanding between the concept of a “not-for-profit” corporation and a “tax exempt” organization. The former is subject to tax on non-exempt income, and is obligated to pay ad valorem taxes. The latter must meet the standards and requirements of a 501(c) entity, which a few, if any, homeowners associations, voluntary or involuntary, could do, and as such will not be exempt from payment of taxes. ■

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