



Condominium Law Q&A

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Question – Our community newsletter is self-supporting through ads. When the newsletter published an editorial critical of our HOA board, the board withdrew its authorization of the newsletter and instructed the volunteer staff to discontinue producing the newsletter. The newsletter continued to be published and distributed to residents who requested it. The board then sent a letter stating the newsletter was in violation of our solicitation rule, which states, “There shall be no solicitations by any person anywhere in the community for any cause, charity, or any other reason whatsoever, unless specifically authorized by the board of directors.” Is the board’s interpretation of solicitation commonly accepted? A.C.B., Stuart

Answer – Anyone is free to publish a newsletter of their choice and to distribute the newsletter in any manner permitted by the association. If the association has a rule against all newspapers and flyers from being placed in the lobby or under the door of the units, then the newsletter can be sent bulk mail to all units. The association cannot stop the publication nor censor its comments. The editorial staff of the newsletter needs to be certain that none of the articles published defame anyone; otherwise, the writers have free range to say what they want, protected by the Constitution of the United States, the Bill of Rights and the State of Florida Constitution. Assuming that the name of the newsletter is not the property of the association, it can be continuously used.

Question – Our condominium had an assessment last year of \$400 per unit for an increased insurance premium. The unit owners voted on the assessment, so that we would have the money in hand when the premium rose. In fact, it did not rise as much as we thought, and we did not need the assessment. The present board has decided that it can put the money into a special fund that was surplus funds from the insurance premium assessment and, now, are considering using it for planting of trees, etc. Doesn’t the money have to go back to the unit owners as a check, or be used as a means for lowering maintenance assessments? If the board has the discretion to use the money refunded by the insurance company because the premium did not rise as much as they estimated, don’t they at least have to go to a unit owner vote on the use of this money, or can they do as they please? E.S., W.P.B.

Answer – On the question of how monies collected by special assessment for a specified purpose can be spent, the Condominium Act speaks out of both sides of its mouth. First, it states the monies collected must be used for the purpose for which it was collected. Then, in the next breath, it allows any surplus to be returned to the unit owners or placed into general revenue. The Homeowners Association Act is silent on the question of special assessments, their use and handling of any unused funds. Personally, I feel that, for the sake of credibility, the board should return to the unit

owners any monies collected from a special assessment, which are not needed, or credit the unit against future assessments.

Question – Our homeowners association has 120 members. Six individuals applied to run in recent board elections. Of the six, two were declared elected using proxies which were not shown to the members. One of the candidates withdrew. The other two who received votes were ignored, the President having declared that the board was a board of 5, 3 of which were not up for election, and the 2 declared elected. When I advised the president that the homeowners association provides for a board of 9, he said there is no such requirement. Shortly after

the election, the board merged itself into the architectural review committee, the result of which is that the board also functions as the ARC. Is all of this legal? B.B., Orange City.

Answer – The Not-For-Profit Corporate Act provides that the board must consist of three or more individuals. The Homeowners Association Act does not specify the number of directors which must compose the board. Accordingly, one must look to the articles and by-laws of the association. Responding to the question of whether the board can merge the ARC with the board, once, again, the Homeowners Association Act does not address this issue. The documents control.

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