



Condominium Law Q&A

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Question - My condo board wants to amend the declaration to read that, now, instead of having Village A and Village B in our one Association vote separately on future amendments, we will vote as if we were one Village on all future amendments with an 80% vote of all residents in attendance in person or by proxy. Chapter 718 provides a procedure for adopting amendments, if our Declaration has no process for amendments; however since our Declaration does, I assume that our Declaration takes precedence. Am I correct? Our Declaration says that "No amendment shall be passed which shall materially affect the rights or interests of any mortgagees without the prior written consent of such Mortgagees." Do we have to contact each mortgagee to make this change? Votes on some issues may not materially affect the rights or interests of mortgagees, but others might. Can we ignore asking for the vote of the mortgagees in this instance or do we need to contact them as part of the voting process, and consider their vote? Thanks much. E.S., Port St. Lucie

Answer - From what you say, I assume that yours is a "multi-condominium" association. That is, two separately declared condominiums operated by a single association. As such, the answer to your question is, "no"; amendments to each of the separately declared condominiums cannot be done by voting collectively as though the two villages were a single condominium. Insofar as whether the units' mortgagees' approval is required, in accordance with the condominium documents, the

answer is "yes". The only exceptions are for mortgages recorded on or after October 1, 2007, whereby mortgagee consent is only required when the proposed amendments materially change the configuration or size of a unit, materially alter or modify the appurtenances to the unit, change the proportion or percentages by which the unit owners share the common expenses or own the common elements, or attempt to create time shares in an otherwise residential condominium. If the governing documents require mortgagee consent, the failure to obtain mortgagee consent renders the amendment(s) void.

Question – I live in a gated community made up of 17 individual homeowners associations, including townhouses, condominiums, and single family homes. The developer is in default on his homeowner association fees and bank loans. The bank has taken over all his assets which include the three new condo buildings, with twenty eight units each, presently under construction, all of the undeveloped land and our community center, which was not turned over to the homeowners association because of an unfinished punch list, contractor's liens and no clear title. My question is: would the bank under Florida law be required to assume all of the developer's responsibilities to the homeowners association now that they are in control of the development? Does the master association have any recourse in this matter? Your input would be greatly appreciated. W.H.M., Melbourne Beach

Answer – The current downturn in the real estate market mirrors the problems experienced in the late 1970s, including that of lenders and/or subsequent developers acquiring all the assets of the defunct developer and completing construction of the planned development. As expected, the question asked, namely, the liability and responsibility of lenders in possession and subsequent developers, was also debated and litigated. The courts concluded that a lender was only liable for that portion of the development which it completed and to those to whom it sold units. On the other hand, a purchaser of the assets of a developer in a voluntary

conveyance assumes greater liability; unfortunately, here, too, the acquiring entity is often a limited liability company without any assets, making enforcement of past obligations and liabilities difficult, if not impossible. The good news is that, in these situations, the foreclosing lender or subsequent purchaser, more than likely, will complete the improvements and voluntarily pay assessments. After all, it is in its best interest to ensure that the amenities and the appearance and condition of the improvements promote the image necessary to sell the unsold inventory of units.

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