



Budget Must Show Fully Funded Reserve Accounts

Members then may vote to reduce those reserves

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Q: I understand that many condominium associations take a vote to reduce reserves for the upcoming year at an annual meeting held in January, February or March. My association has always done it this way. It has recently come to my attention that this is not the proper way to vote on reducing the reserves. Chapter 718 of the Florida Statutes is very vague on this and the administrative code has one sentence that would make it seem the vote cannot be taken until the proposed budget is mailed to the owners showing full funding. This would make it very difficult to adopt a budget in December, while the vote to waive or reduce reserve funding is not taken until January, February or March. Can you explain how and when the vote to reduce reserve funding should be conducted? **D.S. (via e-mail)**

A: The Florida Condominium Act is clear in its mandate that the board prepare an annual budget which includes fully funded reserve accounts. This initial requirement is reiterated in the Division of Florida Land Sales, Condominiums and Mobile Home manual entitled "Budgets and Reserve Schedules: A Self-Study Training Manual for Beginners", which is available on the Division's website. However, the Condominium Act also permits the board to seek the approval of a majority of the members present, in person or by proxy, at a duly called meeting at which a quorum

is obtained, to waive reserve funding each year, either partially or completely. A separate vote must be taken for each year in which reserve funds are not fully funded.

While I am aware of some associations that obtain the vote of the members at a January, February or March (first quarter) annual meeting, in my experience, it is more common for a board of directors that has elected to propose a reduction in the funding of reserve accounts to call a special meeting in conjunction with the board budget meeting, which typically takes place in November or December of each year. In this manner, the board may provide the members with a budget reflecting fully funded reserves, as required by statute, as well as a budget reflecting the proposed reduced reserve funding. By conducting a special members' meeting in November or December, the concerns set forth in your question are completely addressed. A year-end "financial meeting" is also helpful for associations that plan to vote on the waiver of financial reporting requirements, such as an audit. Assuming that the association's fiscal year is the same as the calendar year, a vote before the calendar year's end is helpful because the law requires that any financial reporting waiver vote take place before the end of the fiscal year for which the waiver is approved.

If the association board elects to propose a waiver or reduction of reserve funding, I do not believe it is “illegal” for that vote to take place in the first quarter without regard to the fact that the fiscal year begins January 1 of each year. The statute and regulations only require that an annual vote be taken, and do not prescribe when that vote must be taken. However, theoretically, the Association would need to collect fully funded reserves for the first couple of months of the year (until the vote to waive the funding of reserves is approved).

You should also note that the Division has previously issued a declaratory statement concerning partial reserve funding which interprets the statute and the administrative code to require that any proposal to partially fund reserve funds must include a detailed, proposed budget which shows precisely how the reserve funding will be reduced and which reserve accounts will be partially funded.

For these reasons, it is certainly preferable to either have your financial votes before the end of the year, or change the fiscal year so that your fiscal year begins after your first-quarter meetings. Changing of the fiscal year may require an amendment to your bylaws, depending on how they are written.

Q: Our condominium is overrun with owners who are not paying their assessments. We have been placing liens on their units for the assessments. My question is, how long do those liens last? **H.S. (via-email)**

A: It is incumbent upon the Board to take such action as is necessary to ensure there is adequate funds for the operation of the condominium. The Condominium Act provides that assessments shall be made against unit owners not less frequently than quarterly in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. In addition, no unit owner may be excused from the payment of the common expense

of a condominium unless all unit owners are likewise proportionately excused from payment.

The Condominium Act provides that assessments and installments on them not paid when due bear interest at the rate provided in the declaration from the due date until paid. The rate of interest may not exceed the rate allowed by law, and if no rate is provided in the declaration, interest will accrue at the rate of eighteen percent per year. Also, if the declaration or bylaws provide, the association may charge an administrative late fee in addition to the interest, in an amount not to exceed the greater of \$25.00 or five percent of each installment of the assessment for each delinquent installment that the payment is late. The association has a lien on each condominium parcel for any unpaid assessments, together with any applicable interest and late fees, as well as reasonable attorneys’ fees incurred by the association incident to the collection of the assessments or enforcement of the lien. If a unit owner fails to timely pay his assessments, the association should take the necessary steps to file a claim of lien against the unit. If the owner continues to be delinquent, a lawsuit to foreclose the claim of lien should be initiated.

The association’s claim of lien is only effective for one year after the claim of lien is recorded unless, within that time, an action to enforce the lien is commenced. The one year time period will automatically extend for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the owner or any other person claiming an interest in the parcel. Therefore, it is very important that the association keep track of the one year anniversary of the lien and file a foreclosure action prior the expiration of the one year period.

You should also note that an owner can file a “notice of contest of lien”, and after that notice has been recorded the clerk of the circuit court mails a copy of the recorded notice to the association by certified mail, return receipt requested. After this service, which is complete upon mailing, the association only has ninety days in which to file an

action to enforce the lien, and if not done so the lien is void. The ninety day period is also extended for any length of time that the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

Q: I live in a community operated by a homeowners' association that is still under the developer's control. Can the developer direct a homeowner not to put a satellite dish in certain locations, such as the roof? **P.T. (via e-mail)**

A: Parcel owners in a homeowners' association typically own both the structure of the home and the lot upon which it is constructed. The rule adopted by the FCC, the "Over The Air Reception Devices Rule" (commonly referred to as the "OTARD Rule"), applies to viewers who place video antennas, including satellite dishes that are less than one meter (39 inches) in diameter, on property that is within their exclusive use or control, where they have a direct or indirect ownership interest in the property.

Homeowners typically have exclusive use or control over their lots and the structures located on them (i.e., their homes) and are permitted to install satellite dishes in accordance with the OTARD Rule. A satellite dish can either be installed on the home or on the land owned by the homeowner.

The association is entitled to specify permissible locations in its rules. Such rules may not, however, impair the installation, maintenance, or use of satellite dishes. In particular, the rule cannot unreasonably delay or prevent installation, maintenance or use; unreasonably increase the cost of installation, maintenance or use; or preclude reception of an acceptable quality signal.

In your case, so long as the association has appropriate rule-making authority, and the developer-controlled board has adopted a valid rule in a procedurally correct fashion, the developer-controlled board would have the right to establish locations for the installation of satellite dishes, provided that the specified location permits the property owner to receive an acceptable signal and does not unreasonably increase costs.

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.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.