



Professional Management Not Currently Required

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: According to the current laws governing associations, are we required/mandated to employ a professional management company or can the elected Board hire a certified accounting firm, a licensed handy man service, and other professional service companies as may be necessary, in lieu of hiring a management company? **R.S. (via e-mail)**

A: Currently, there is no law in the condominium or homeowners' association context which requires the hiring of a management company or a manager. The governing documents for the association may require professional management, but such a provision is rather unusual. However, in the condominium context, the law may change. There is pending proposed legislation that, if passed, would require a condominium association with more than \$250,000 in annual revenue to hire a manager or management company. There is no similar pending legislation regarding homeowners' associations.

The dynamics of any given association, in addition to the size and the type of issues facing the association, will be factors in determining whether the association wishes to hire professional management. Management companies are helpful in that they can take care of the day-to-day management of the property and the operation of the association. In addition, management

companies often bring expertise to the table. For example, the manager's cumulative experience in hiring certain vendors may be useful information for the board's consideration. In other words, a management company often has had experience in dealing with several different vendors of a particular type and can often advise the association which vendor the manager feels may be best suited for their particular needs.

Q: I have a question regarding the length of time for which a condominium proxy can be held. Our association recently sent out proxy votes on keeping two-year terms for board members. The proxy contained the date for which the meeting was scheduled, but the meeting was not held due to lack of a quorum. Two months later, we were told that the measure passed. I was always under the impression that proxies were only good for the meeting for which they were issued and could not be held for another date. **J.D. (via e-mail)**

A: If a quorum was not obtained when the meeting was initially called, the only lawful action that could be taken would have been to adjourn the meeting to a specific date, time, and place. This is typically done by motion adopted at the meeting by those in attendance.

The Florida Condominium Act specifically contemplates the use of proxies for adjourned

meetings. Section 718.112(2)(b)3 of the Act provides that any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof. The law goes on to state that in no event shall any proxy be valid for a period longer than ninety days after the date of the first meeting for which it was given.

It sounds as though your association was able to garner enough votes within sixty days of the original call of the meeting, which is within the ninety days permitted by law, and assuming proper adjournment procedures were followed.

Q: We have an association member who recently got married. Her new husband has not been added to the deed, and wants to run for the board. Is this legal? **L.S. (via e-mail)**

A: Any person age eighteen years of age or older is legally capable of serving on the board of any not-for-profit corporation in the State of Florida. The articles of incorporation or bylaws of the association may prescribe additional qualifications for board membership.

If the articles of incorporation or bylaws for the association restrict board membership to unit owners or parcel owners, the husband would not be eligible to serve. Otherwise, he is eligible to run for the board.

Q: As I understand it, House Bill 601, enacted in 2008, defined the allocated insurance responsibilities between the association's master policy and the condominium unit owners. I believe the association is responsible for insuring everything that was part of the original construction, except those items specifically

excluded such as floor, wall and ceiling coverings, appliances, water filters, built-in cabinets among others. However, the new law states that the association's master policy obligations now includes air conditioning compressors.

Does this mean that when a unit owner's air conditioning compressor is replaced, it should be filed as a claim with the association's insurance company? Does the unit owner pay for the repair/replacement, since it is needed immediately, and then file the claim or is permission needed from the association prior to repair in order to file the claim? **J.M. (via e-mail)**

A: You are correct about the scope of the 2008 changes to the law and the re-inclusion of air conditioning and heating equipment (not only compressors) within the insuring responsibility of the association's master policy. Please note that the new law does not specifically spell these items out, but rather by failure to exclude them, places them under the master policy. You should also note that there is a bill pending in Tallahassee which may change this, yet again.

However, casualty insurance only covers damage caused by "casualty", which is a sudden, fortuitous event. Fires, hail, and windstorms are typical examples of casualty. Vandalism may also be covered under an insurance policy.

However, insurance does not provide coverage for replacement due to normal wear and tear. The responsibility for replacement of air conditioner compressors will be governed by the terms of the declaration of condominium, not Florida law. Most declarations require the unit owner to be responsible for these items.

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.