



It's Important to Handle Condo Budget Decision Well

Fort Myers The News-Press, October 25, 2009

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Q: I have owned my condominium unit for almost 5 years now. It is time for the board to prepare a new budget for next year, and based upon the budget adoption process in prior years, I am concerned that my condominium is not doing this right. The first year I was here, the board did not even adopt a budget until February, because of Hurricane Wilma I assume. Then, when they did adopt the budget, it was well in excess of 115% of the prior year's budget, which I have been told is prohibited. The past 2 years, the budget has included full funding for reserve accounts, which keeps the total assessment too high, in my opinion. Finally, I have gone to the last 2 board meetings where the budget was adopted, and it was clear to me that the budget had already been decided upon and there was no opportunity for members to discuss changing the proposed budget. Can you address these issues and clarify the budget adoption process? **M.M. (via e-mail)**

A: You are correct that budget season is upon us for associations that have a January 1 – December 31 (calendar) fiscal year, which is the vast majority of associations in my experience. Ideally, the budget for fiscal year 2010 will be adopted in November or early December in order to give members adequate notice of their new assessment obligation. Your board should check your association's governing documents carefully as there are sometimes additional budget adoption

and notice of assessment requirements that the board must be sure to meet.

Your first question concerns the effect of the board not adopting a budget before the beginning of the next fiscal year. If that happens, it is my opinion that the association is still permitted to collect assessments in the same amount as the prior year. However, there has never been a case precedent to support that position, nor is the issue addressed in the condominium statute. Obviously, it is not wise to fail to timely adopt a budget. The Florida Condominium Act requires that an annual budget be prepared, and if the failure to timely adopt a new budget results in a short fall of funds that is detrimental to the association, the directors could be exposed to some criticism and there may even be some potential liability for the association.

The next issue you raise concerns the amount of the increase in the annual budget from year to year. It seems to be a common misconception that the board of directors is limited by law as to the amount it can increase the annual budget from year to year. In fact, in the absence of a contrary provision in the governing documents of the association, the board has unlimited authority to increase the budget so long as the budgeted items constitute proper common expenses of the association. However, the statute does provide an opportunity for members to propose and adopt a

substitute budget in the event the board-made budget exceeds 115% of the prior year's assessments, not including assessments for reserves. The statutory procedure for the unit owners to challenge the budget and propose their own budget requires that 10% of the members petition to propose a substitute budget, and then a majority of all voting interests must approve the substitute budget, unless the bylaws require adoption by a greater percentage of the voting interests.

It is the obligation of the petitioning members to prepare the proposed, substitute budget. In my experience, most significant increases in budgets from year to year are justified by necessary expenses, insurance premium increases being the most common culprit. Any substitute budget must be reasonable in light of anticipated expenses and cannot leave the association with a cash flow problem. If a substitute budget is adopted which does not allow the association to meet its obligations, a special assessment will likely be necessary to make up the short fall.

Next, your comments suggest that the board may have in the past deliberated and decided upon a budget prior to the formal budget meeting. It is important to understand that while the statute requires that a budget be adopted at a board meeting which is preceded by 14 days notice sent to all members of the association, together with a copy of the proposed budget, the 14 day notice requirement only applies to the meeting at which the board actually adopts the budget. It is perfectly legal for a board or committee to have meetings to prepare the budget and discuss the proposed budget in advance of the formal budget adoption meeting. Those preparatory meetings can be held on 48 hours posted notice, just like any other board or budget committee meeting, and are open to unit owner observation and comment.

As for the formal budget adoption meeting itself, I do agree the board should attend that meeting with open ears and open minds because the members of the association do have a right to speak at the budget meeting and to appeal to the board with their points about the proposed budget. Importantly, because the budget that is sent to the members 14 days in advance of the meeting is a "proposed" budget, it is permissible for the board to alter that proposed budget and adopt an actual budget at the meeting, even if changes are made. In other words, the formal budget adoption meeting is not intended to be, and should not be, a "rubber stamp" of a decision already made.

Finally you make reference to the board's decision to include fully funded reserves in the proposed budget. As you may know, the Florida Condominium Act requires a board to prepare a budget that includes a schedule of fully funded reserves. Fully funded reserves can only be reduced or waived by a majority vote of the unit owners. The decision to propose a unit owner vote on the reduction or waiver of reserves, has historically been left exclusively to the board of directors. However, if the board decides not to put a waiver or reduction up to a vote, the members could force the issue of voting on a reduction of reserve funding by filing a petition with the board which contains a sufficient amount of signatures to call a unit owner meeting pursuant to your bylaws.

It is important to note that failure to fund reserve accounts fully each year will almost certainly result in the need for special assessments or additional funding in future years. The decision of whether or not to fully fund reserves is, in large part, a philosophical decision for each association. However, at least in my view, it is clearly not wise to make that decision based solely upon the desire for lower annual assessments.

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.

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