LEGAL

Legal Questions and Answers

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN CONDOMINIUM AND PLANNED DEVELOPMENT LAW

Can we borrow from our reserve accounts?

The statute provides that "reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all the total voting interests of the association." If your building is a two-story building and the membership vote to approve using reserve funds for alternative purposes, then you may do so. If you are a three story or higher building, the statute provides, For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the replacement or deferred maintenance costs of the components required to be in the Structural Integrity Reserve.

Can we have closed Board meetings?

The Condominium Act allows Board members to communicate via email but not to take any votes via email. Further, closed Board meetings may only occur when discussing personnel issues (a rare occurrence as most Century Village condominiums do not have employees) or with an attorney when discussing pending or proposed litigation. All other types of meetings are required to be open to the unit owners.

Do we have to post notice of closed board meetings?

Yes, you must post a notice and agenda of the closed meeting so that the other unit owners understand why the Board is meeting behind closed doors.

What vote is required to borrow money?

That depends on your individual governing documents. Chapter 617, Florida Statutes, permits not-for-profit corporations to borrow money unless otherwise provided in their Articles of Incorporation or Bylaws. If the governing documents for your community require membership approval or the approval of a supermajority of the Board to approve borrowing money from a bank, then that is what must occur. If your documents do not have a specific provision, generally the vote will be by a majority of a quorum of the Board.

What vote is required to change the appearance of the Common Elements (portions of the condominium property outside of the units)?

Section 718.113, Florida Statutes, defers to the Declaration of Condominium. It basically tells the Association to check its documents first, and if they are silent on the matter, then the statutory default is a 75% approval of all the unit owners to approve a material alteration. A material alteration is not the same as maintenance and repair but the two are often confused. If you are replacing your roof and the new roof will be of the same materials and the same color, that will usually be a maintenance and repair decision of the Board. However, if the Association wants to change a shingle roof to a barrel tile roof, or to change the color of the shingles, that will require membership approval, unless the declaration specifically allows the Board to make that decision.

Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a specialist in Condominium and Planned Development Law. This article is for educational purposes only and should not be construed as legal advice. You should consult with your own attorney. Mr. Friedman may be reached at MFriedman@Beckerlawyers.com.