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Condo 4.0 is here. Let's start breaking down what it means to you. Part 1 – Your Budget

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Condo 4.0 is here. In the next few months I am going to break down the new laws into "bite-sized" chunks and help you learn step-by-step what the charges are and what you have to do. Since budgeting season will soon be upon you, let's start with the new budget requirements for condominiums. If your manager does your budget, make certain that they are aware of these requirements.

Under the newly enacted laws, if a board proposes an annual budget which exceeds 115% of the prior year's budget, the board must simultaneously propose a substitute budget that does not include any "discretionary expenditures that are not required to be in the budget". Previously, if a proposed budget exceeded 115% of the prior year's budget, unit owners had to petition the board to present the unit owners' substitute budget for approval, which rarely happened.

Under the new law, boards must proactively provide a substitute budget, at the same time as the budget that is typically proposed and adopted by the board.

There are two key factors boards must consider here:

First, does the board's proposed budget exceed 115% of the prior year's budget?

Certain expenses, such as insurance premiums, mandatory reserves, and anticipated repair costs for specific building components which are not expected to be incurred on an annual basis, are now excluded from this calculation. These expenses will need to be carefully reviewed to determine if they can be excluded from the computation.

Second, which expenditures qualify as "discretionary"?

Florida's Condominium Act does not provide guidance on "required" versus "discretionary" expenditures. It does mandate that certain expense categories be included in the budget, and many condominium governing documents outline required services and authorized expenditures.

If a board determines that its proposed budget exceeds 115% of the prior year's budget, both the board's proposed budget and the "substitute budget" without the "discretionary expenditures" must be sent to unit owners at least 14 days in advance. A unit owner meeting must be held to vote on the substitute budget before the board convenes to adopt its proposed budget.

In other words, if the Owners vote to approve the "substitute budget", that is the adopted budget. If the members reject the substitute budget, then the board meets to approve its proposed budget. The substitute budget requires approval by a majority of voting interests or any greater percentage specified in the bylaws.

Given that this legislation has changed how condominium associations budget, the Association should begin preparing for its implications now. Associations might also consider amending their bylaws to impose a threshold higher than a majority for owner votes to overrule what the board and the Condominium manager believes to be the proper budget, especially in smaller condominiums where a majority of the unit owners is a very small number of votes. I also believe that boards should involve their financial consultants (e.g. CPA) early in the budget process to determine whether or not the "New 115% Rule" even applies, given the exemptions in the statute.

Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a specialist in Condominium and Planned Development Law. This article is intended for educational purposes only and should not be construed as legal advice. If you are considering amending your documents or preparing your budget, please consult with your attorney or financial professional. Mr. Friedman may be reached at MFriedman@Becker-Lawyers.com.