

“Community Association Q&A: Can We Hold a Special Election?,” Naples Daily News

May 18, 2021

By: David G. Muller



Q: A director on my condominium association board resigned. The remaining directors can't agree on who should fill the vacancy. Can we hold a special election and let the owners decide? T.B.

A: Yes. Most condominium documents allow the remaining directors to fill a vacancy on the board. Typically, the newly appointed director will serve out the remaining term of the preceding director who vacated the position, unless the bylaws provide otherwise.

The Florida Condominium Act states that the board may also hold a special election to fill a director vacancy. The normal election rules must be followed. This is a good alternative when there is dispute in the filling of board vacancies.

Q: My condominium association was just informed by our insurance agent that there will be a big increase in our property insurance premium this year. The board has informed the owners that there is not enough available money to pay for the increase, so they are going to take out a short term loan from the roof reserve to pay for this expense, with a promise to pay back the loan in full by the end of the fiscal year. We utilize straight-line reserves and not pooled reserves. Can the board take this action on their own? M.V.

A: No. The Florida Condominium Act provides that funds contained in the reserves required by statute, which include the roof reserve, can only be utilized for their “earmarked” purpose. The statute further provides that these reserve funds can be utilized for an alternative purpose if approved in advance by a majority of the owners voting, in person or by proxy, at a membership meeting where a quorum is attained.

Many associations take an annual vote to allow reserves to be used for cash flow purposes, especially to deal with large insurance premiums that often come due early in the fiscal year. Many of these votes require the borrowed money to be paid back into the reserve fund by a date certain.

Specific disclosure language must be included on the proxy or ballot, which should be prepared in consultation with the association's legal counsel.

Q: The bathrooms in the clubhouse of my condominium association are very outdated. The board plans to renovate and upgrade them, including changing the bathroom vanity tops from laminate to granite. Is this considered a material alteration of the common elements? Does the board need to obtain unit owner approval first? M.U.

A: Based on appellate court decisions going back a half century, a change to the common elements is considered a material alteration or addition, if the project will "palpably and perceptively vary or change the form, shape, elements or specifications of a building from its original plan or design or existing condition, in such a manner as to appreciably affect or influence its function, use or appearance." The change you describe is likely a material alteration. There is an exception for "necessary maintenance", but that exception is sparingly applied.

Section 718.112(2) of the Florida Condominium Act requires 75% unit owner approval for material alterations unless the declaration states otherwise. Most declarations do contain a material alteration provision. Many of these provisions authorize the board to spend up to a certain amount on an alteration before a unit owner voting approval requirement is triggered, with different condominium documents containing different voting percentages.

David Muller is a Board-Certified Attorney in Condominium and Planned Development Law with Becker & Poliakoff, P.A. in Naples. Send questions to dmuller@beckerlawyers.com.