

“Condominium Associations Can Purchase Property,” News-Press

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Q: The board of directors of my condominium association have been discussing purchasing an adjacent parcel of land. There is a question in the community as to whether this is allowed. Can a condominium association purchase additional property? (N.K, via e-mail)

A: There is nothing that prevents a condominium association from buying or selling either real or personal property. Property owned in the name of a condominium association is defined in the Florida Condominium Act as “association property.” However, membership approval may be required. Regarding the purchase of real property, land, Section 718.111(7) of the Florida Condominium states that an association has the power to acquire title to property and to otherwise hold, convey, lease, and mortgage association property for the use and benefit of its members. However, the association may not acquire, convey, lease, or mortgage association real property, except as provided in the declaration and if the declaration is silent, upon approval of 75% of the total voting interest in the association. The board of directors of the association has the power to acquire and dispose of the personal property of the association.

As such, you would need to look at your declaration of condominium to determine if the declaration discusses the authority of the association to deal in real property and what approval is required. If your declaration does not address the issue, pursuant to the Act, the association can buy, sell, lease, convey, and mortgage real property if approved by at least 75% of the total voting interest in the association.

A related issue is the authority of a condominium association to borrow money. The Florida Condominium does not specifically address the authority of a condominium association to borrow money. However, Chapter 617, the Florida Not-For-Profit Corporations Act, provides that not-for-profit corporations have

the authority to borrow money. As such, the condominium association would have the authority, as a not-for-profit corporation, to borrow money. However, the condominium documents may require that the members approve any loan and if the loan is going to encumber association real property, membership approval is required by the Florida Condominium Act, unless the declaration provides otherwise.

Q: My home is in a homeowners' association made up of connected townhomes. A question has come up concerning property insurance. I have reviewed Chapter 720 and I do not see where it discusses the association's requirement to insure the buildings that contain the homes. Who is responsible for insurance in a homeowners' association? (E.V., via e-mail)

A: Unlike the Florida Condominium Act, Chapter 720, the Florida Homeowners' Association Act, does not describe how the property must be insured. With respect to the common areas of the homeowners' association and any other property owned by the homeowners' association, the homeowners' association would be the party that is responsible for purchasing property and liability insurance.

With regard to the dwellings, any insurance requirements would be contained in the governing documents for the association. In the context of communities made up of free-standing, single-family homes, typically, the documents may simply state that the owners are obligated to insure their dwellings. However, when the community is comprised of attached dwellings, whether they are villas, townhouses, or otherwise, the analysis is more complicated. Any requirement regarding insurance on the structures that contain the dwellings, would only be in the governing documents.

Some documents require the owner insure their dwelling, and this would include all of the improvements, such as, the exterior of the building and the roof, as well as, all of the interior finishes. However, some governing documents provide that the association insures structure of the building, while the owners insure the interiors of their dwellings.

As noted above, the Homeowners' Association Act does not address this issue and any requirement concerning insurance would be contained, exclusively, within the governing documents of the association. If either an owner or the homeowners' association has questions regarding their insurance obligations, I would advise you to discuss this issue with your legal services provider or your insurance professional.