

“Condominium Unit Combination Raises Concerns,” News-Press

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By: Joseph E. Adams



Q: The board of directors for my condominium association recently approved allowing an owner to remove the wall separating two adjacent units and to reconfigure the two units into one. Doesn't this change the number of units in the condominium, thus, affecting everyone's rights including what percentage of assessments we pay? (G.F., via e-mail)

A: In all likelihood, no. You are correct to point out that a change in the number of units or a change in the percent of common expenses paid by each unit owner, is not a change that can be routinely approved by either the board of directors or a normal vote of the members. Unless your declaration, as originally recorded, provided otherwise which would be unusual, such a change requires one hundred percent approval of all unit owners and their mortgagees, and other holders of liens.

However, the circumstance you described is not uncommon and does not typically change the number of units. There would still be two units for voting purposes, as well as assessment payment obligation.

A well drafted declaration of condominium should address this issue. I have seen declarations which specifically prohibit unit combination. More typically, the board of directors would have the authority to approve such a request, subject to the board's review of any construction plans to ensure that the alterations do not negatively impact the building, and subject to the requirement that any subsequent conveyance of just one unit would require the unit separations to be restored to their original configuration.

Q: My condominium association requires all units to file a “voting certificate,” identifying the individual of each unit that has the right to vote. Is this required by Florida statute today, or was this requirement removed from the statute? (M.M., via e-mail)

A: To my knowledge, the Florida Condominium Act has never required the use of voting certificates, and in my opinion, they are an anachronism and should be avoided. They are most often used to challenge votes when the association wants to pass something. Further, many associations with voting certificate requirements ignore them altogether. In my opinion, documents should be drafted to make each unit's vote count, and not be thrown out on technicalities or serve as the basis for a legal dispute.

Some condominium documents contain a provision requiring a voting certificate if a unit or parcel is owned by more than one person (some exceptions are made for spouses), a corporation, or another entity. You should review your condominium documents to determine when a voting certificate is required. If so, I would recommend amending the provision in favor of a provision that states who can vote for units owned in various ownership forms (including trusts, corporations, and LLC's).

There is at least one arbitration case by the Division of Florida Condominiums, Timeshares and Mobile Homes which addressed the question on whether a voting certificate was required when a unit was owned by a limited liability company. In that case, no voting certificate was required because the bylaws only required a voting certificate if the unit was owned by a corporation, and the limited liability company was not a corporation. Other arbitration cases have held that where an association has routinely ignored its voting certificate requirements, it cannot use the provision to discount votes on a particular matter that is contrary to the association's goals.

Q: Our HOA management company will not send e-mail notices unless every owner agrees. They say this is the law. Is that correct? (E.W., via e-mail)

A: No. Section 720.303 of the Florida Homeowners' Association Act states that the association may provide e-mail notice of board meetings, committee meetings, and annual and special meetings of the members to any member who has consented to receive notice in that fashion.

There is no legal requirement that every owner consent nor is there a requirement that the association use e-mail notice for those who have consented. The management company may not want to use e-mail notices when they need to send packages to a printer/mail service anyway. This would be a matter of discussion between the board and the management company.

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