

“Lowest Bidder Need Not Be Hired,” News-Press

March 22, 2021

By: Joseph E. Adams



Q: My homeowners’ association recently put out bids for repaving of our roads and hired the lowest bidder. Is this legal? (J.M., via e-mail)

A: Both the Florida Homeowners’ Association Act and the Florida Condominium Act require associations to obtain competitive bids for certain contracts. Section 720.3055 of the Homeowners’ Association Act states that any contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, that requires payment by the association of more than ten percent of the annual budget of the association, including reserves, must be submitted to competitive bidding.

The statute also specifically states that the association is not required to accept the lowest bid. Additionally, certain contracts are exempted from the bidding requirement and these include the contracts for the association’s attorney, accountant, architect, community association manager, engineer, and landscape architect.

The Condominium Act contains a similar provision. However, the threshold for having to obtain competitive bids for a condominium association is five percent of the association’s budget.

Q: What is the statute of limitations for an association to file an action to collect unpaid assessments? (K.M., via e-mail)

A: Section 718.116(5)(b) of the Florida Condominium Act states that a lien for unpaid assessments is not effective one year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The time is extended for a bankruptcy.

There is no similar provision in the Florida Homeowners’ Association Act. Most attorneys apply the five-year statute of limitations found in Section 95.11(2)(b)

of the Florida Statutes as the applicable measuring stick for homeowners' associations.

It should also be noted that both condominium associations and homeowners' associations also have the right to bring an action for a money judgment against an owner if suit is brought within the applicable limitation period, which is also five years. However, a money judgment is not directly secured by the property and a money judgment would be subject to homestead protections and other laws in place for the protection of debtors.

Q: How much notice to the unit owners is required for a condominium association to vote on the insurance deductible? (B.S., via e-mail)

A: The board of directors determines insurance deductibles within the policies based on available funds (including reserve accounts) or predetermined assessment authority at the time of insurance coverage is obtained. The statute requires this to be done at a board meeting open to the unit owners.

A board meeting to determine insurance deductibles is noticed in the same manner as a board meeting to consider a proposed annual budget, which requires 14 days mailed, hand-delivered, or electronically transmitted (to those unit owners who consented in writing to receive electronic notice) notice. The law requires deductibles to be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

Q: A homeowner changed all the landscaping around her townhouse over a year ago and nothing was done about it. I planted one bush and received a violation notice. Can they do this? (L.K., via e-mail)

A: In the 1979 Florida Supreme Court case of *White Egret Condominium Inc. v. Franklin*, the Court held that an association was "estopped" from "selectively enforcing" a restriction when at least six other residents were violating the restriction.

However, it may be that the association is still planning to take action with your neighbor (there is generally a five-year statute of limitations to do so), or has published notice of intent to prospectively enforce, either of which could negate your defense of selective enforcement.

Joseph Adams is an attorney with Becker & Poliakoff, P.A., Fort Myers. Send questions to jadams@beckerlawyers.com. Past editions may be viewed at floridacondohoalawblog.com.