“Manager Not Legally Required,” News-Press

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By: Joseph E. Adams

Q: The board of my association is considering terminating our management company’s contract and managing the association themselves. Is this permissible or is an association required to have a professional manager? (R.B., via e-mail)

A: Neither Chapter 718, Florida Statutes (the Florida Condominium Act), nor Chapter 720, Florida Statutes (the Florida Homeowners’ Association Act), require that any association, regardless of size, have a professional manager. In many (if not most) cases, however, it is a good idea.

Your association could choose to forego a management company and have the board and its officers implement the day-to-day operations of the association. While there is no legal requirement that an association have a professional manager or management company, if the association hires a person or company to act as the association’s manager, the person or entity must be properly licensed.

Community association management is regulated by Part VIII of Chapter 468 of the Florida Statutes. Section 468.431 of the statute defines “community association management” as the management for remuneration of an association or associations that serve more than 10 units or have an annual budget in excess of $100,000.

The statute contains a list of actions which constitute community association management. These include controlling and disbursing association funds, preparing budgets or other financial statements for the community association, assisting in providing notice of or conducting association meetings and collecting amounts due the association.

Q: Do architectural guidelines for a homeowners’ association need to be recorded with the county or just published to the owners? (L.G., via e-

mail)

A: There is no legal requirement that architectural guidelines which are separate from a declaration of covenants be recorded in the public record to be legally enforceable. There are pros and cons to recording.

The Florida Homeowners' Association Act was amended, effective July 1, 2018, to that provide that amendments to "governing documents" are only effective when recorded in the public records of the county in which the community is located. The term "governing documents" includes "rules and regulations." Since architectural guidelines would generally be considered rules and regulations, any amendment thereto must be recorded. In such circumstances, it would usually not make sense to record only the amendment, but rather the whole document.

It is important to note that the law also requires that within 30 days of an amendment of a homeowners' association governing document, the association must provide each owner with a copy thereof. There is an exception for providing second copies if the owners have already received a copy (for example if included with voting materials for an owner meeting where the change was approved), but notice still needs to be given.

The law therefore requires owners be given "actual notice" of changes to their documents. Recording is what is referred to as "constructive notice" and puts the world on notice of the existence of a document. This can be beneficial in some circumstances, particularly for prospective owners or a contractor who claims they were never told of a rule.

Although subject to debate amongst attorneys, since the law was changed in 2018, I have generally encouraged my HOA clients to record their rules and regulations, including architectural guidelines, even if not legally required.

Q: I serve as the treasurer for my condominium association board and recently a unit owner asked to inspect the financial records of the association including the individual account for each unit. Is this allowed? (J.C., via e-mail)

A: Yes. Generally all records of the association are open to inspection and copying by unit owners. While there is a limited list of records that are exempt from inspection and copying, the financial records of the association including the individual accounts for each unit are not exempted.