

Procedure To Convert To Pooled Reserves

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By: David G. Muller



Q: Can a condominium association board vote to convert from straight-line reserves to pooled reserves without a membership vote? *R.F. via e-mail*

A: “Cash flow” funding of condominium reserves, often referred to as the “pooling” method of reserve funding, is a concept that was introduced many years ago through an amendment to the state’s administrative rules regulating condominium finances. Under the traditional, “straight-

line” method, required reserve contributions are calculated by using a formula that divides the cost of replacing a particular item by the number of useful years that item has left, minus the reserve funds on hand for that item, with the result being the amount to fully fund that item for the next fiscal year. Each reserve component must be separately funded and must appear as a separate line item in the reserve schedule which is part of the budget. Absent a majority vote of the unit owners at a duly called meeting, monies for each separate reserve item can only be used for that particular reserve item.

Under the pooling or cash-flow method, each reserve item is still separately funded but the money is put into one account. The reserve schedule computation is a bit more complicated and typically needs to be prepared by an accountant or reserve consultant. The basic theory is that the association attempts to predict the year a particular asset will require deferred maintenance or replacement, and a mathematical formula is then applied to calculate required contributions for each year. In theory, the money should be available when needed, with a lower contribution than required using the straight-line method.

A condominium association needs approval of the unit owners (i.e. a majority of the owners who vote at a meeting where a quorum is attained) to put existing straight-line reserves into the “pool.” Once the vote to switch to pooled reserves is successful, no further votes would be required in future years and the association could continue to operate under the pooling method.

Q: My homeowners association is in a dispute with the landscaping company that was recently terminated for doing a bad job and for damaging common property. The board advises that they are not going to sue the landscaping company because it will cost too much money and there is no way to recover the attorney fees incurred during the litigation. Is the board right? Is there no way to recover attorney fees in this type of dispute? *B.L. via e-mail*

A: Since your association entered into a written service contract with this landscaping company, the terms of the contract will govern this dispute. If the contract does not contain a provision allowing prevailing party attorney fees and costs in the event of a legal dispute, the association will likely have no ability to pursue these types of damages. I use the term “likely” here because Florida Statutes do provide for the recovery of prevailing party attorney fees and costs in certain situations. That being said, from the information you have provided, I doubt the association will have any statutory claim for prevailing party attorney fees and costs.

It is recommended that any contract the association enters into be first reviewed by the association attorney. Many proposed contracts that I review on behalf of my association clients seem appealing because they are brief (one or two pages) but lack sufficient details and almost always favor the contractor. A properly drafted contract will address important terms, including not only how you can terminate but issues like required insurance, indemnity for injuries, and the right to recover attorney fees if you have to go to court.

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*Editor's Note: **David G. Muller** is a Board Certified Attorney in Condominium and Planned Development Law with Becker & Poliakoff, P.A., which represents community associations throughout Florida, with offices in Naples, Fort Myers and 10 other Florida cities. The Firm focuses a substantial amount of its practice on condominium and homeowners association law. Attorney Muller responds to your community association questions. Send questions to Attorney Muller by e-mail to dmuller@beckerlawyers.com.*