

“Projects in Mind for the New Year?” FLCAJ Magazine

February 12, 2021

By: Lilliana M. Farinas-Sabogal



For many, 2020 felt like it was a giant pause button in an otherwise whirlwind of activity. Due to health and safety concerns related to COVID-19, many planned repairs and/or replacement projects were postponed. As the new year starts off, communities may begin to look at starting these projects anew. If your community is one of these,

it's a good time to review important considerations when dealing with repair, maintenance, and renovation projects.

Do You Need Owner Approval?

One of the most common questions community association practitioners get is whether an owner vote is needed for a particular project. The truth is that there is no one-size-fits-all answer for this. The Florida Condominium Act has language that requires owner approval for material alterations or substantial additions to common elements or association property, unless the declaration of condominium specifies procedures for the approvals required for such work. Moreover, the Florida Condominium Act specifically states that such approval must be obtained “before the material alterations or substantial additions are commenced.” The Florida Homeowners Association Act on the other hand, is silent on this topic, though a given homeowners association’s governing documents may have its own requirements.

But, how does an association even know if the work it is doing constitutes a “material alteration” or a “substantial addition”? What if it is just repairing something?

Each project should be evaluated on a case-by-case basis because there are instances where a repair does not simply repair and/or replace an item with like kind or quality but rather results in a significant improvement. For example, let’s say a condominium’s pool deck is riddled with old, cracked, and damaged pool deck pavers. If the association decides to repair the cracked and damaged pavers with exactly the same kind of pavers, it would seem pretty obvious that the work is a simple repair. Usually (though not always) association boards of

directors are authorized to make repairs without owner approval.

However, what if the association manager speaks to a contractor and learns that replacing the entire deck is actually less expensive than just replacing the cracked pavers? Would it still be a repair if the less expensive option was chosen, but it resulted in all new pavers? Would that be a substantial improvement? What if the manager learns that the pavers that used to be on the pool deck are no longer available on the market? If the manager changes material or color of pavers, due to the unavailability of the original style, will that make it a material alteration? Or, is it still a repair? What if she learns there are now pool deck options that look exactly the same as the old pavers but that won't absorb the heat of the sun and will feel cooler on bare feet? If the manager chooses pavers that look the same but have new features, would that make it a material alteration?

Assume the answer to any of the above questions leads to the conclusion that the project will be a material alteration. The association's governing documents and/or the relevant statutes must then be reviewed to see if the board of directors is authorized to approve such alterations on its own or whether owner approval is required as well.

As you can see, even the simplest projects can trigger questions that will impact the answer to the question, "Do you need owner approval?"

Do You Need Three Competitive Bids?

I was speaking to a friend of mine, who recently completed substantial remodeling of his home and was lamenting how difficult it was to obtain good work for fair prices. Though he had been referred to a "trustworthy" contractor by several friends, he discovered that the contractor's estimates and prices for much of the work were wildly overpriced. He described one situation where the contractor quoted him \$7,000 for glass railing pieces to surround his pool deck, which he ultimately was able to find for \$3,500. Astounded by his experience with this "trustworthy" contractor, he counseled "always get at least three bids" for any work on the house. As many who have ever dealt with any shopping for any kind of service or materials know, his experience is typical. Quality and cost can vary greatly.

The Florida Condominium Act actually requires that associations obtain competitive bids for materials, equipment, or services if a contract for the purchase, lease, or renting of the same will cost five percent or more of the total annual budget of the association, including reserves. The statute does not require the association obtain any particular number of bids, nor does it require the association accept the lowest bid. It does, however, have to obtain competitive bids. The Florida Homeowners Association Act contains a similar requirement for certain types of contracts, though competitive bids are required in certain cases where the cost will exceed 10 percent or more of the total annual budget of the association, including reserves.

Once the bids are obtained, the board of directors should then discuss and choose the best bid for the work at a properly noticed meeting.

Contracts

Once the association has determined whether it needs approval for a project, has obtained competitive bids, and has chosen the best contractor to perform the work, the next step is the contract. Sometimes, the association considers the project “too small” to send the contract to its attorneys for review, and it will just sign the proposal that the contractor gave it. Often, association attorneys wind up reviewing a situation where a dissatisfied association realizes that the “proposal” it signed did not contain terms the association assumed it did, like start and completion dates, timeframes for payments, insurance and licensure requirements, responsibility for permitting, etc. In situations like this, an association can find it is difficult or impossible to enforce some of these “assumed” terms. A detailed construction contract is an important investment in the protection of the association.

Payment

Depending on the nature of the project and the availability of funds, the association may be able to use its reserve funds for payment of the work. Alternatively, it may have to consider borrowing money to pay for the work or levying a special assessment. Which of these options is available to the association and which option is best is yet another issue that should be taken into consideration when planning for the project.

Committee and Professional Assistance

Whether a board of directors is composed of all new members who have never served, or of members who have served on the board of directors for several years, board members should know that while they may make many of the decisions on behalf of the association as the elected representatives, there are resources they can turn to for assistance.

The statutes and most association’s governing documents include provisions, allowing the board of directors to create committees that can serve as invaluable filters and advisors. Many associations have financial committees, design committees, beautification committees, etc., and these volunteer committees can help in gathering information for the board of directors to consider, offer recommendations, and give another perspective on the project.

In addition, professionals, like engineers, architects, accountants, and attorneys, are also resources for boards of directors that can help guide and advise the association in recommended courses of action.

Communities looking to repair and rebuild in the new year have much to consider. Taking the time to go through these and other important consideration before beginning the project will likely go a long way in avoiding problems in the future.

To read the original article, please [click here](#).

