“Can Board Decide on New Roofs?” – News-Press

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By: Joseph E. Adams

Q: My condominium association board voted to replace the roofs on the condominium buildings, which are 20 years old. I am not aware of any major issue with the roofs. Our condominium documents say that any capital improvement must be approved by a majority of the unit owners. Can the board do this? (M.N., via e-mail)

A: The association, through the board of directors, is responsible to maintain, repair, and replace the common elements of the condominium. Therefore, assuming that roofs of the condominium buildings are common elements, which is most often the case, the board is responsible to ensure that the roofs are properly maintained, repaired and when needed, replaced.

Florida law recognizes the “business judgment rule,” which grants discretion to a corporate board, including the board of a condominium association, to make decisions in the furtherance of its fiduciary duty. The board is entitled to rely on the advice of appropriate professionals in discharging this duty. In the case of the need to replace your roofs, that would be an engineer. The choice made by the board does not have to be the only choice for it to be valid if it is reasonable.

Most declarations of condominium do not limit a board’s authority to make “capital improvements” (which is an accounting term), but rather “material alterations” or “substantial additions.” Under well-established case law, a material alteration or substantial addition is one which “palpably or perceptively varies or changes the form, shape, elements or specifications of common elements from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.”

For example, changing the color schemes of building roofs would be a “material alteration.” While the language of your declaration will dictate the correct answer, most condominium documents would empower the board, without a unit owner vote, to replace roofs.

Q: I am the principal of a Limited Liability Corporation (“LLC”) and the LLC owns a lot in a homeowners’ association. Can I run for the board of directors? Another Owner told me I was not eligible because a corporate entity is not a “member” of the association, and its employees are not eligible to serve on the Board. (J.R., via e-mail)

A: As an initial matter, Florida law uses the term “managers” and “members” to refer to agents for an LLC, not “principals.” Generally, a manager is vested with the authority to act for the LLC.

Section 720.306(9) of the Florida Homeowners’ Association Act states that all members of the association are eligible to serve on the board. There are exceptions when there are certain financial delinquencies and for persons convicted of certain felonies. As a lot owner, the LLC is a member of the Association and entitled to have a representative run for the board.

Artificial entities provide unique challenges in association governance. In addition to LLC’s, property is often owned by corporations or partnerships. Trust ownership is also very common. I recommend that the bylaws of every association contain a clear statement as to who is authorized to exercise the rights of ownership when a unit or parcel is owned by an entity. This includes not only the right to run for the board, but also the right to vote and attend association meetings.

Many documents require entity owned properties to designate a “Primary Occupant,” who is then the person vested with the rights of membership. In the absence of guidance in your bylaws, there is often grounds for confusion. This is especially true since many entities are created in different states (and subject to the laws of that state) and the documents relating to the management of the entity are rarely recorded in the public records.

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