“Changing Tile a Material Alteration?” Naples Daily News

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By: David G. Muller

Q: My condominium is thinking about changing the floors in the entrance area and lobbies from ceramic tile to granite tile. Would changing the flooring tiles be considered a material alteration requiring approval of the members? W.D.

A: Under Florida law, a change to the common elements is considered a material alteration or addition, if the change will “palpably and perceptively vary or change the form, shape, elements or specifications of a building from its original plan or design or existing condition, in such a manner as to appreciably affect or influence its function, use or appearance.” The change you describe would be considered a material alteration. There is an exception for “necessary maintenance”, but that exception is sparingly applied.

Regarding your question as to whether member approval is required, Section 718.112(2) of the Florida Condominium Act requires 75% unit owner approval for material alterations unless the declaration states otherwise. Most declarations do contain a material alteration provision. Many of these provisions authorize the board to spend up to a certain amount on an alteration before a unit owner voting approval requirement is triggered, with different condominium documents containing different voting percentages. You will need to closely review your condominium association’s declaration to determine what it says about the approval requirement for material alterations.

Q: Did the law recently change regarding the steps a condominium must follow before it can sue a unit owner? F.T.

A: Yes. Section 718.1255 was added to the Florida Condominium Act in 1991 to require certain legal “disputes” to be adjudicated in the arbitration program of the Division of Florida Condominiums, Timeshares, and Mobile Homes before the matter could be heard in state courts.

By contrast, the Florida Homeowners’ Association Act was amended in 2008 to require that various disputes be subject to mediation before they could be heard in court. The difference between mediation and arbitration is that there is a winner and loser in arbitration, whereas mediation requires both parties to agree to a resolution.

This year the Florida Condominium Act was amended to allow condominium disputes to also be mediated as an acceptable form of alternative dispute

resolution. Under these latest amendments, the parties are required to go to arbitration or mediation for certain disputes before instituting litigation in court. The party bringing the suit (i.e., the petitioner) can choose either presuit mediation pursuant to section 720.311, Florida Statutes, or arbitration through the Division. For election and recall disputes, mediation is not an option, and such disputes must be arbitrated by the Division or filed in a court of competent jurisdiction.

Q: What happens in a condo election when there is a tie vote? K.P.

A: The Florida Administrative Code specifically addresses what is to happen in the event of a tie vote in a condominium association election. A runoff election must be noticed and held in compliance with the requirements contained in the Florida Administrative Code unless another procedure is mandated in the Bylaws. Within 7 days of the date of election at which the tie vote occurred, the Board shall mail to the voters a notice of runoff election, which shall include a ballot, and shall include copies of any candidate information sheets submitted by the candidates to the Association before the election. Only the candidates who tied are listed on the ballot. The runoff election must be held not less than 21 days nor more than 30 days after the date of the election at which the vote occurred.

It is common for the candidates who tie for the final spot to simply flip a coin or draw straws to decide the matter. This practice is not specifically mentioned or validated in the law. If all candidates are willing to live with the results of drawing straws, it may be a way to avoid the expense of a runoff election. There is a risk with this approach, of course, as one of the candidates may later decide to challenge the fact that a runoff election was not conducted as required by law, though it would seem they would have a hard time showing they did not give up their right to the run-off.

To read the original Naples Daily News article, please **click here.**

David Muller is board-certified in Condominium and Planned Development Law and regularly provides practical advice that ensures the fiscal success and legal compliance of both commercial and residential community associations. He has significant experience in drafting governing documents and amendments, negotiating contracts, dispute resolution, and more. For David’s complete bio, please click here.