

“Condos and HOAs Follow Different Budgeting Rules,” News-Press

November 22, 2021

By: Joseph E. Adams

Q: Our association will be holding its annual budget soon. After receiving the notice for this meeting, I called our association manager to ask how and where I could obtain a copy of the proposed budget. I was told that a copy of the approved budget would only be provided to the members after the budget meeting. In other words, the proposed budget would not be provided to the members in advance of the budget meeting at which the proposed budget would be considered and adopted. Is this right? I cannot help but feel very apprehensive about the contents of the proposed budget, considering the fact that it has been made unavailable for review in advance of the meeting? (P.M., via e-mail)

A: The answer to your question depends on several factors, including whether your association is a condominium or homeowners' association.

Chapter 718 of the Florida Statutes, the Florida Condominium Act, requires that at least 14 days prior to the meeting where the board will consider the budget, the association must mail, hand deliver, or electronically transmit (to those unit owners who have consented in writing to receive electronic notice) notice of the meeting along with a copy of the proposed budget. The notice of the meeting must also be posted on the condominium or association property at least 14 days in advance of the meeting.

For associations managing a condominium with 150 or more units, these materials must also be posted on the association's website or make such documents available through an application (app) that can be downloaded on a mobile device

By comparison, Chapter 720 of the Florida Statutes, the Florida Homeowners' Association Act, only requires 48 hours posted notice of the budget meeting and requires the notice to state that assessments will be considered. There is no requirement that the notice be sent to the owners, and there is no general website posting requirement for HOAs in Florida.

The Homeowners' Association Act also requires the associations to provide each member with a copy of the annual budget, or a written notice that a copy of the annual budget is available upon request at no charge, within 10 business days of the board adopting the annual budget. There is no requirement for homeowners' association to send the members the proposed budget in advance of the budget meeting.

Therefore, for condominiums, the proposed budget needs to be sent out 14 days in advance, but the adopted budget does not need to be sent to owners. For homeowners' associations, it is the opposite, the budget is sent or made available to the owners after adoption but is not required to be circulated before the meeting. Notice procedures are also more relaxed in the HOA context. This is probably one area where the two statutes should contain the same procedures, as this does create some confusion, especially at this time of year when budgets are the main order of business.

There are other important differences between condominium and homeowners' association budgeting procedures, specifically regarding reserves. In general, all condominiums must present reserves with the budget based on a statutory list of required items, and these reserves must be "fully funded" unless the owners have voted to waive or reduce the full funding of reserves. Conversely, in homeowners' associations, there is no general statutory requirement for reserves and the provisions of the governing documents are usually determinative.

From your description, it sounds like you are a member of a homeowners' association. The procedures you describe do not violate the Homeowners' Association Act. Of course, any additional procedures or requirements of your community's governing documents need to be followed. The proposed budget is also an "official record" and you are also legally entitled to require the association to produce it for your inspection, and if you choose, copying. The association generally has 10 working days to respond to official records inspection requests.

Joseph Adams is a Board Certified Specialist in Condominium and Planned Development Law, and an Office Managing Shareholder with Becker & Poliakoff. Please send your community association legal questions to jadams@beckerlawyers.com. Past editions of the Q&A may be viewed at floridacondoalawblog.com.