

New Law Requires Recording of Homeowners' Association Rule Amendments

June 17, 2018

By: Joseph E. Adams

Q: I am a director in a homeowners' association. I understand that there have been recent changes to the laws regarding document amendments. Do these changes in the law require that all changes to the rules and regulations made by the board of directors be recorded? (W.L. via e-mail)

A: Yes. The recent changes to the Florida Homeowners' Association Act require that amendments to rules and regulations made on or after July 1, 2018 be recorded in the public records.

The new amendment to Section 720.306(1)(e) of the statute states that an amendment to any of the "governing documents" is effective when recorded in the public records of the county in which the community is located. The statute was amended a couple of years ago to define "governing documents" to include rules and regulations.

I am not sure of the need for this change as perceived by our Legislature. It seems quite burdensome to me. By comparison, the Florida Condominium Act does not require and has never required rule amendments to be recorded to be legally valid.

Q: Can you explain the differences in financial reporting requirements for condominiums? I am a director on a condominium board and we were wondering whether we could prepare a report of cash receipts and expenditures instead of an audited financial statement. (J.T. via e-mail)

A: Section 718.111(13) of the Florida Condominium Act requires that year-end financial statements be prepared in accordance with generally accepted accounting principles. The required form of financial statement will depend on the amount of the association's total annual revenues.

Associations with total annual revenues of less than \$150,000 must prepare a report of cash receipts and expenditures. Compiled financial statements are required for associations with total annual revenues of at least \$150,000 but less than \$300,000. Reviewed financial statements are required for associations with total annual revenues of at least \$300,000 but less than \$500,000. Audited financial statements are required for associations with total annual revenues of \$500,000 or higher.

For the association to prepare a lesser report than required by statute, the law requires a majority of the voting interests present at a properly called meeting of the association to specifically approve what type of report can be given instead. The approval and meeting must occur before the end of the association's fiscal year and the financial reporting method is only effective for the fiscal year in which the vote was taken.

There are similar requirements in the homeowners' association context.

Q: I read your recent article regarding insurance and repair after casualty damage, such as a hurricane. Do you have support for the statement that air conditioning units are the association's responsibility? Is there a difference for other air conditioning equipment such as air handlers? (K.H. via e-mail)

A: Section 718.111(11)(f)1. of the Florida Condominium Act requires the association to insure "all portions of the condominium property as originally installed or replacements of like kind and quality, in accordance with the original plans and specifications." Subparagraph 3 of that part of the statute then goes on to exclude certain items from the associations insurance coverage responsibility, including electrical fixtures, appliances, water heaters, and built-in cabinetry, among other items. These items are often called the "exclusions" to the association's insuring responsibility.

Air conditioning equipment was added to the list of exclusions in the statute in 2003. However, such equipment (which would include compressors/condensers and interior air handling units) was then removed from the exclusion list when the statute was rewritten in 2008, so it is now part of the association's responsibility for insurance and repair after casualty.

It is important to note that this is different than maintenance responsibility. Most declarations of condominium place maintenance responsibility on the owners. While the association cannot "opt out" of the statutorily-required insurance obligation, it can (by majority vote of the members) opt out of post-casualty repair cost allocations, which is typically most relevant when deductibles come into play.

Joe Adams is an attorney with [Becker & Poliakoff, P.A.](#), Fort Myers. Send questions to Joe Adams by e-mail to jadams@beckerlawyers.com. Past editions may be viewed at floridacondohoalawblog.com.