**CONDO BOARDS CAN MAKE MISTAKES**

**BY: WILLIAM G. MORRIS, ESQ.**

Condominium living has a lot of benefits. Many condominiums have socials and other activities. Associations manage amenities that might not be available in a single-family home. Someone else takes care of painting, mowing, pool maintenance and the unit owner only has to worry about the inside of the owner’s unit.

Rules governing condominium living make sense since people are living in close proximity. There is a need for a bit more structure. Most buyers try to make sure the rules of a condominium “fit” the buyer. But an owner can later find the association fails to follow its own rules. That is particularly true when it comes to money.

The budget process is a real problem for some associations. Florida statutes require any meeting at which a proposed annual budget will be considered by the board or unit owners be open to all unit owners. The board must deliver to each owner notice of the budget beating at least 14 days prior to the meeting. If the proposed budget is adopted at a board meeting, many boards simply provide a 3-day posted notice of the meeting required for routine board meetings.

Using the wrong notice is not the only mistake made in the budget process by associations. Florida statutes require the budget be adopted at least 14 days prior to start of the association’s fiscal year. Many associations put off adopting the budget until the annual meeting, which takes place after start of the fiscal year. The budget must include reserve accounts for capital expenditures and deferred maintenance, even if the board proposes less than fully funding the reserve accounts. The amount reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost of deferred maintenance expense of each reserve item.

Although many condominium declarations give the board of directors authority to adopt a budget, the board does not have authority to waive or reduce reserves. The budget adopted by the board must include fully funded reserves. That is intended to provide unit owners the information they need when voting on waiving or reducing reserves. In many cases, the board of directors shortcuts to the budget it wants and simply adopts or in some cases proposes that budget to unit owners.

Florida statutes mandate that any funds in a reserve account be utilized only for the item for which the account is established. Unit owners can vote to apply funds from one reserve account to another purpose, but many boards simply dip into the reserve accounts when needed to pay a large expense (such as the insurance bill) without the appropriate owner vote.

Some associations make even more mistakes concerning finances. The association budget is supposed to be a zero-based budget with collected funds equal to expenses. Nevertheless, some boards create a slush fund of sorts by over budgeting every year. That results in a surplus which is carried forward from year to year and, in some cases, even placed into a contingency account that does not appear as a budgeted item.

Insurance is a big expense for condominium associations. By statute, each association must obtain casualty insurance coverage for full insurable value, replacement cost, or similar coverage based on replacement cost of the property to be insured. Replacement cost must be determined by an independent insurance appraisal or update of a prior appraisal and must be determined at least once every 36 months. Many associations have never obtained an insurance appraisal and even more fail to update replacement cost every 36 months. As a result, many associations are underinsured.

Almost every association charges a fee for approving a lease or sale. Florida statutes state associations can only charge a fee for approving a lease or sale if the governing documents of the association provide for payment of that fee. Many declarations do not have a provision authorizing collection of a fee for approving a lease or sale. Yet, those associations routinely charge a fee for approving transfers.

Due to abuses by some associations, the legislature set the maximum fee for approving a sale at $100 a few years ago. The maximum was recently increased to $150. Many associations have documents that limit their approval fee to $100. Many of these associations are now charging $150.

Most associations hire a professional management company to handle the day-to-day operation of the condominium. The management company is usually authorized to deal with association finances and given access to association accounts. There is very little oversight exercised by the boards in many of those associations. Some associations have discovered that failure to maintain a close watch on the finances after giving a management company access is costly.

Finances is not the only area in which associations make mistakes, but it is one of the big ones. Most of the mistakes made by associations are simply because board members do not know the law or even their own declaration of condominium.

The legislature tried to address that problem by mandating new board members take an approved condominium education course within one year before or 90 days after election or appointment. But, the statute allows newly elected directors to avoid the course by filing a certification stating the director has read the association’s governing documents and policies, that the director will work to poll the documents and policies to the best of the director’s abilities and will faithfully discharge the director’s fiduciary responsibility.

Reading a document does not mean the director understands it and the educational course mandated as an alternative can be taken in 90 minutes online. That goes a long way toward explaining why association boards make mistakes and why boards should retain experienced counsel to assist them.

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