

apm NEWS

NEWS, ISSUES & INFORMATION FOR COMMUNITY ASSOCIATIONS - WINTER 1999

FINANCIAL REPORTING REQUIREMENTS FOR COMMUNITY ASSOCIATIONS

by John R. Math, LCAM

All associations in Florida are required by statute to provide year end financial reports to their owners. Condominiums and Cooperatives are required to mail or personally deliver to all unit owners within 60 days, or as otherwise provided in the bylaws of the corporation, a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications.

Condominiums and cooperatives which operate with more than 50 units, and having annual revenues of more than \$100,000, shall prepare and deliver a financial statement within 90 days following the end of the fiscal or calendar year.

The financial statements shall be compiled, reviewed, or audited depending on the total amount of annual revenues.

Associations having annual revenues in excess of \$100,000, but less than \$200,000, shall at a minimum, prepare a compiled

financial statement.

Associations having annual revenues in excess of \$200,000, but less than \$400,000, shall at a minimum, prepare a reviewed financial statement.

Associations having annual revenues of \$400,000 or more shall prepare audited financial statements.

Associations can waive these reporting requirements when a majority of the voting interests of the association, at a duly called meeting of the association, have determined to waive the above requirements for that fiscal year.

Please Note: The meeting shall be held prior to the end of the fiscal year and the waiver shall be effective for only one fiscal year.

Homeowners associations are required to mail or personally deliver to all unit owners within 60 days, or as otherwise provided in the bylaws of the corporation, a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications, and shall show the

amounts of expenses by accounts and expense classifications. Unless provided for in the documents, there are no statutes requiring a homeowner association to provide financial statements.

The Administrative Code requires some of the following components for Financial Reports and Financial Statements;

Financial Reports

Must be prepared on a cash basis, show all receipts & expenditures, include Reserves for Capital Expenditures, Deferred Maintenance and any other category for which the association maintains a reserve account. Reserve Disclosures include: beginning balance in each reserve account at the beginning of the fiscal period, the amount of assessments and other additions to each reserve account including authorized transfers from each other reserve accounts, the amount disbursed or expended from each reserve account, the ending balance in each reserve account as of the end of the fiscal period, the manner by which reserves were estimated, and the last date that reserve items were estimated. There are also other

disclosures concerning revenue and expenses for Limited Common Elements. Please refer to Chapter 61B-22, Florida Administrative Code for further details.

Financial Statements

Must be prepared on an accrual basis using fund accounting. Required components include accountant's or auditor's report, balance sheet, statement of revenues and expenses, statement of changes in fund balances, statement of cash flows and notes. In addition, there are reserve disclosures, the method by which income and expenses were allocated to the unit owners, special assessment disclosures and limited common element disclosures. Please refer to Chapter 61B-22, Florida Administrative Code for further details.

Always refer to the association's documents, as they may have different reporting requirements. **Remember:** The laws are only minimum reporting requirements. Your documents may require more!

REMINDERS !

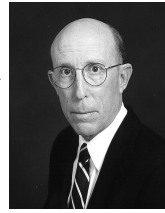
Be sure to update your files to include a new Question & Answer Sheet as of January 1, 1999.

Fees to the Division are coming due and are late if not paid by March 1, 1999. The amount is \$4.00 per unit, for all condominiums and cooperatives.

Corporate Annual Reports will soon be mailed and must be filled out and received by the Secretary of State by May 1, 1999. The Fee is \$61.25 for Not-For-Profit Corporations.

ASK THE MANAGER

By **John R. Math, LCAM**



Q. Recently one of our Board Members quit. The Board of Directors immediately appointed a replacement without consulting the membership. Can the Board appoint another Board Member without obtaining a vote from the unit owners?

A. *Yes, unless the documents provide for another method for replacing Board of Directors. Vacancies may be filled by a majority of the remaining directors, even if the remaining directors do not constitute a quorum.*

Q. We have an owner who we suspect has a problem with their toilet or shower drain leaking into the lobby of our building. The owner refuses to allow access to their unit, saying that their apartment is private property. Does the association have a right to enter the apartment to fix this problem?

A. *Yes, the Association has a right and a duty to protect the common elements. According to Florida Statutes the association has the right of access to each unit during reasonable hours for the maintenance, repair or replacement of any common elements or any portion of a unit that is to be maintained by the association or as necessary to prevent damage to the common elements or to units.*

Q. For as long as I can remember, we have always had trouble getting a quorum for our annual meeting of our homeowners association. Our new President tells us that state statute allows us to have 30% of the total voting interests for a quorum. Is that

correct?

A. *Yes, this correct. In response to an ever increasing problem with homeowner associations not being able to conduct their annual meetings, Florida Statute Chapter 617 was amended to allow a quorum of 30%. A lower quorum is allowed, if the documents so provides.*

Q. Our association has a line item on the budget called Social Committee. The purpose of this expense is to have coffees and dinner parties throughout the year. Is this right?

A. *These are not common expenses and are not necessary to carry out the duties and responsibilities of the association. Unless the governing documents provides for this expense and lists those activities as a common expense, these funds should not be taken out of the association's operating funds. I would suggest that the Board of Directors amend the budget to exclude this line item and have voluntary donations for this Committee in the future. In this way, the owners who are interested in that activity are the only ones whom will be paying for it.*

John R. Math is the President and sole owner of Associated Property Management of the Palm Beaches, Inc. He has been in association management field since 1974. If you have any questions you may send your questions to APM, attention "Ask the Manager" at 400 South Dixie Highway, Suite #10, Lake Worth, Florida 33460 or you may call him at 561-588-7210. Our APM Email address is at

ANNUAL MEETING TIPS

BY, JAY STEVEN LEVINE, ESQUIRE

Planning for the annual meeting sometimes begins three to four months prior to the date of the meeting. Some homeowners' association governing documents require the creation of a nominating committee which must be established a number of months prior to the meeting date. It is the function of the committee to recommend nominations to the board of directors. (Nominating committees are not permitted in condominiums because of Rule 61B-23.0021(3), F.A.C.)

There is very little statutory regulation with respect to a homeowners' association annual meeting. F.S. 617.306(2) simply requires that there be an annual meeting and that the election, if required to be held, must be held at or in conjunction with the annual meeting. The election process must follow the procedures established by the governing documents of the association. F.S. 617.306(7). The only statutory guarantee at the election is the right of a member to nominate himself or herself as a candidate for the board at the annual meeting itself. Because the homeowners' association statute defers to the governing documents for procedures and the conduct of the annual meeting, the association should review particularly the articles of incorporation and by-laws and follow them strictly. Many homeowners' associations, perhaps swayed by the elaborate requirements of the condominium statute and condominium administrative rules, use the mail-in ballot procedure for the election of directors. Such procedure is authorized only if permitted by the governing documents. Otherwise, directors are elected by the use of proxies and owners attending the meeting in person.

F.S. 718.112(2)(d) coupled with Rule 61B-23.0021, F.A.C. govern the election of directors in condominiums. The first step is the mailing of the first notice of the date of the election. Unit owners have until forty days before the scheduled election within which to deliver to the association notice of the candidate's intention to run for the board of directors. Any notice received by the association after then must be disregarded. If a candidate wishes the association to mail a resume to the owners, the candidate's resume must be received by the association no later than thirty-five days prior to the scheduled election.

The second step in a condominium association election is the provision of the second notice of the meeting. Unless the condominium documents require a longer time period, this notice must be mailed to all owners within the time period required generally for the noticing of the annual meeting. It is with this mailing that the election materials, proxy form and any other materials for the annual meeting are mailed

to the owners. If the association intends to vote on a subject which by the condominium documents a longer notice period than that required generally to notice to the annual meeting is required, then the longer notice must be given.

Regardless of the type of association, this author recommends that the association open up proxies as they are received to ensure that they are correctly executed. This will enable the association to return improperly executed proxies so that they may be delivered in time for the meeting. Some by-laws require that the proxy be delivered by a specified time period prior to the date of the meeting. It is important that the association not use any proxies it receives after such time period.

To the extent that the condominium or governing documents require that multiple or corporate owners of a unit choose the voting member by way of a voting certificate, then only the voting representative may execute the proxy. In a condominium annual meeting, the limited proxy, which is required for most votes, must contain a direction from the owner as to how the proxy holder must vote. It is not unusual for owner to forget to indicate a preference in the limited proxy. In that case, it would not be permissible for the proxy holder to mark a preference, as the preference must come from the owner. Although the homeowners' association statute does not require the use of limited proxies, such associations often use them. If the owner fails to mark a preference, the vote should not be counted unless the proxy form itself indicates that the failure of the owner to mark a preference enables the proxy holder to use his or her discretion on the matter; otherwise, the failure of the owner to list a preference would preclude the proxy holder from voting on the matter.

Now we are at the annual meeting. The persons who are registering the attendees should arrive and set up earlier than the anticipated arrival of the first attendee. Orderly check in procedures enable a meeting to start on time. Nothing angers owners more than to have to wait for meetings to start on time. If there are any matters to be voted upon by the members at the meeting, ballots should be distributed as the members register. Except for condominium election balloting which can occur any time up to the commencement of the opening of the outer envelopes during the meeting, no ballot should be cast until the meeting commences.

The most abused procedure at annual meetings is the manner in which the limited proxy is handled at the meeting. A limited proxy is often confused as a ballot and is placed into the ballot box as the vote of the unit

MAILING LABEL

LANDSCAPING & WEATHER NOTES

C/O ASSOCIATED PROPERTY MANAGEMENT
400 SOUTH DIXIE HIGHWAY, SUITE 10
LAKE WORTH, FLORIDA 33460

APM NEWS

Page 4.

APM NEWS

WINTER 1999

Continued from Page 3.

owner. This in effect transforms the limited proxy into an absentee ballot, which is not recognized by the condominium statute and would not be permitted in a homeowners' association unless authorized by the governing documents. If the proxy is used, the named proxy holder must be present at the meeting to vote the proxy. If the proxy holder is not present at the meeting, the proxy cannot be used in the vote. The association should be watchful as owners leave during the course of the meeting, because there could come a point at which a quorum no longer exists. Unless the condominium or governing document provide that the meeting may proceed forward even though a quorum withdraws from the meeting, once a quorum no longer exists, any vote taken from that point forward would be subject to successful challenge. This behooves the association to take up voting matters as early as possible or to discourage owners from leaving the meeting prior to its conclusion.

JAY STEVEN LEVINE, Esquire, who concentrates in the area of representing community associations and who is the senior shareholder in the firm of LEVINE, FRANK, EDGAR & TELEPMAN, P.A. with offices in Boca Raton, Palm Beach Gardens and Vero Beach, Florida.

LANDSCAPING & WEATHER NOTES

Keep an eye on how wet or dry your plants get throughout the next few months. Depending on the how cool the weather remains, watering needs may be reduced or increased, as cold weather slows the metabolism of plants. Do not fertilize or prune any shrubs or trees at this time!

Wait until April to do any pruning or transplanting. Young and newly planted trees are susceptible to stress during cold weather. Same applies to the root pruning of trees and shrubs, as it takes at least six weeks for new roots to develop outside the root ball to ease the stress of transplanting or root pruning.



Otherwise, it is a good time to enjoy our beautiful, mild winter weather and the time of the year when we do not have to work as hard to keep our gardens and landscapes looking good.