HOA

Q: I own a condominium unit. I submitted a request to the architectural committee and board to install hurricane shutters. The board denied my request and said I can only install impact glass for hurricane protection. I asked the board if they have previously adopted a hurricane protection standard and they said they had not. Can the board deny my request for shutters?

G.B., Naples

A: No. Chapter 718 Florida Statutes (the Condominium Act) provides that unit owners have a right to install hurricane shutters, but that the board can adopt specifications as to the type, style, color etc. of the shutters. If the board had not already adopted such specifications then your choice of shutter must be approved.

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Q: I live in a condominium and have questions about certain things. I have asked the board the questions and they ignore me. How can I make the board answer my questions?

C.M., Bonita Springs

A: In condominiums and cooperatives (but not homeowners associations (HOAs), the laws provide that if you write a letter to the board to ask questions and you send the letter by certified mail, the board must provide you a substantive written response within 30 days. This is known as a "certified mail inquiry." The board may, however, ask that the association's legal counsel answer the question and if so the board has 60 days to respond to you. If the board fails to respond to your questions with a substantive written response within the time provided, then in any subsequent litigation, the association waives its right to prevailing party legal fees.

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Q: I have an investment condominium and the new management company charges $200 for an application. I thought $100 was the max allowable? Any info is appreciated thank you.

C.S., Naples

A: The law on transfer fees for condominiums is below. First, in order to charge a transfer fee, the association must have the authority to approve/disapprove the sale or lease of the unit. Then the right to charge the transfer fee must be expressly stated in the governing documents. You would be surprised how many associations charge fees when they do not have the right to approve or disapprove the transfer. Next, it is not uncommon to find that, while the association does have the right to approve or disapprove transfers, the governing documents do not expressly provide for the charging of the fee.

So, you need to first check the governing documents on these two points. If the documents do provide for this properly, then, as provided in the Statute, the transfer fee is capped at $100 per adult applicant with a husband and wife considered a single applicant. Again, even with the cap, it is not uncommon to find associations charging in excess of the cap or charging the $100 transfer fee and then adding on

additional fees for background and credit checks. This is improper in my opinion. The total charge for the transfer process cannot exceed $100 per adult applicant. Note: The HOA Act does not contain any restrictions on transfer fees and thus the right to charge them and the amount would be a function of what is contained in the governing documents.

Florida Statute 718.112(2)(i) Transfer fees. No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles or bylaws. Any such fee may be preset, but in no event may such fee exceed $100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sub-lessee, no charge shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of one month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

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Q: Is adding a geothermal system to heat a community swimming pool in an HOA considered a material alteration and does it require a vote of residents? The HOA docs are not clear on enhancing something in the common area. They say that a two-thirds vote is needed to remove common area recreational elements and that the purchase of any personal property greater than two months common expenses must be approved by two-thirds of the membership. I am not sure whether a geothermal system is considered personal property, but the cost of the system is less than two weeks' common expenses.

I've read the declaratory statement concerning Schooner Bay Condominiums and heating the pool. If I understand it correctly, the membership had to approve because solar panels were being added to the roof of the clubhouse, thus changing the exterior appearance. With geothermal, the pipes are underground or underwater. The heat exchanger can be placed out-of-sight with the pool pump and filter. In the past, the board has made more than one exterior change to the common area without a membership vote (hurricane shutters, changing the deck around the swimming pool, etc.) For this change, they have suggested that a two-thirds or 75 percent vote will be necessary.

D.K., Naples

A: Adding a geothermal pool heater to the common area would be considered a material alteration. The fact that the geothermal unit is out of sight and underground would not change the fact that it is a material alteration. However, the HOA Statute, Chapter 720 Florida Statutes, unlike the Condominium Statute, Chapter 718 Florida Statutes, does not contain any restriction on making material alterations. Therefore, this question is controlled by your governing documents. You indicate your documents require owner approval if recreational amenities are removed from the common area. Thus, this provision would not apply because you are adding something and not removing something. The

second part of the provision requires owner approval if the cost is greater than two months worth of assessments. You indicate that the cost is not that high, therefore again, no owner approval is required. So based on the facts you present, no vote of the owners is required.

Interestingly, even if your association was a condominium, very likely no unit owner approval would be required because Section 718.113(7) of the Condominium Act provides that "Notwithstanding the provisions of this section or the governing documents of a condominium or a multi-condominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners." This law was created after the Schooner Bay Declaratory Statement.

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Attorney Richard D. DeBoest is a shareholder at the law firm of Goede, Adamczyk, DeBoest & Cross. Visit the website at www.gadclaw.com *or ask questions about your issues for future columns by sending an inquiry to:* info@gadclaw.com*. Goede, Adamczyk, DeBoest & Cross is a full-service law firm with a focus on condominium and homeowner association law, real estate law, litigation, estate planning and business law. With offices in Naples, Fort Myers, Coral Gables and Boca Raton, the firm represents community associations throughout Florida.*