Is the board required to obtain bids for new contracts?

Q: Our homeowners association (HOA) is adopting its budget in a few weeks and there is chatter that the board will be changing accounting firms, but there is no indication that the board has obtained bids and the accounting budget has increased from last year. Shouldn't this be done at an open meeting?

T.J., Naples

A: Florida Statutes Section 720.3055 requires the association to get competitive bids for any contract for the provision of services requiring payment that exceeds 10 percent of the total annual budget of the association, including reserves. So the first question would require an analysis of the budget and determination of whether the accounting service would exceed 10 percent of the budget. If not, there is no requirement to obtain bids.

Second, there is a list of exceptions for the bidding requirement, even if the cost exceeds the 10 percent threshold. Pursuant to the statute, the association is not required to obtain bids for "accountant" services. Thus, based on your specific question for accounting services, there is no statutory requirement to obtain bids prior to engaging the accountant. That being said, some would argue that best practices would dictate obtaining bids and some governing documents may require bids for this service. Finally, irrespective of the bidding requirements, the decision to engage a new accountant should be made at an open board meeting so it is possible that the decision is forthcoming.

Q: My condominium association recently sent out a slew of violation letters for potted plants placed outside of the unit by the front doors. These letters claim the potted plants are not permitted but they are literally outside my front door and not visible from other units. My personal plants have been there for years with no objection. Can the board do this?

A.B., Bonita Springs

A: There are a couple of issues here. First, note that there is a five-year statute of limitation for the enforcement of breaches of the written covenants. So, if your potted plants have been there for more than five years, the association may be precluded from forcing you to remove the potted plants. If you replace the pots with different pots, the board may be able to move forward.

Next, you would need to analyze the declaration of condominium to determine whether the area in question is within the boundary of your unit, a common element, or limited common element. Depending on the nature of the property itself where the plants sit, different rules would apply with respect to the board's authority under the statute and governing documents. In many cases, the land in front of a condominium unit is considered part of the common elements, which would indicate the board has the authority over these grounds regardless of whether it is seen by other owners.

Q: I received a letter from my HOA stating that my roof was dirty and that my house needed to be painted. The roof is much cleaner than my neighbors' roofs and the paint looks fine. Does their opinion on cleanliness control?

C.A., Naples

A: There are a lot of legal prerequisites to consider, but it is possible that the board's judgment would control. First, you would need to confirm that you, and not the association, are in fact responsible to paint the home and clean the roofs. Assuming this is the case, the next question requires a legal interpretation of the maintenance enforcement and easement provisions of the governing documents. I have seen documents which very clearly provide that the board's discretion controls on the question of timing and cleanliness, and I have seen documents that simply state that the roof shall be clean. If the documents provide the former, the board may be in a position to define "clean" in its subjective interpretation.

Your question also raises the issue of selective enforcement. It is worth noting that if you are being singled out and your neighbors (with dirty roofs and expired paint) did not receive a letter, you would have a strong defense.

Finally, the next question is usually related to the board's authority to compel the cleaning. If there is an easement for access, the board may be able to access the lot without trespassing and perform the cleaning and painting and assess the amounts to your ledger. If the documents do not provide this right, the board may issue fines or suspensions or pre-suit mediation and judicial relief. Because the answer is highly dependent on your specific governing documents, I highly recommend you have a licensed Florida attorney review the governing documents.

Q: We are attempting to amend our governing documents, and there is considerable debate over whether the approval threshold is a majority of all owners, or only a majority of those voting at the meeting. Does the statute provide any authority?

M.E., Naples

A: Unfortunately, this is a very common situation that could have been avoided during the drafting process. If the documents were silent and did not provide any approval threshold, the statute provides a default approval threshold of two-thirds of the voting interests for most amendments, which means two-thirds of all voters, not just those who participate in the vote. That being said, your documents do provide a threshold that needs to be interpreted by legal counsel. I often look for trigger words or phrases like “at a meeting” or “total” or “present in person or by proxy” to provide guidance. I also look at the various amendment thresholds referenced throughout the documents to look for consistency in drafting which can sometimes indicate the drafter’s intent. If it is really that ambiguous, you could consider pursuing an amendment under the conservative interpretation to only amend the approval threshold language to avoid any challenge when you seek to pursue the larger amendment.

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