Are post-Irma repairs/changes considered a material alteration?

Q: I am a director in our condominium association in Naples. Our pool house was demolished by Hurricane Irma. We are assessing a special assessment to rebuild and to take care of other Irma related damages. In rebuilding the pool house, several of our board members want to upgrade from an open pavilion type building prior to Irma to an enclosed clubhouse type building with either walls or sliding glass doors or a combination of the two. Either way the enclosed building would require air conditioning which, of course, we did not have in the old pavilion.

The directors, who want the clubhouse type, believe this is not a material alteration requiring a membership vote and that it is a board decision to make. I disagree with this thinking and believe this is a perfect example of material alteration on many levels, requiring a vote of the association membership. *R.G.*

A: Based on case law, a change to the common elements is considered a material alteration or addition, if the project will "palpably and perceptively vary or change the form, shape, elements or specifications of a building from its original plan or design or existing condition, in such a manner as to appreciably affect or influence its function, use or appearance." A change from an open pavilion clubhouse to an enclosed and air-conditioned clubhouse would be considered a material alteration, based on the above-referenced definition.

The condominium statute requires 75 percent unit owner approval for material alterations unless the declaration states otherwise. So, the declaration would need to be reviewed, along with the "repair after casualty" section of the declaration, which sometimes also requires rebuilding after a casualty to be done in accordance with the original specifications, unless otherwise approved by the unit owners.

Q: I live in a 134-lot homeowners' community with total annual revenues of just over $500,000. My understanding is that a new law changes the year-end financial reporting requirements for homeowners associations. Will our homeowners association have to prepare an audit this year? We have not had an audit in over four years. *P.S.*

A: Section 720.303(7), Florida Statutes, requires a homeowners association with total annual revenues in excess of $500,000 in a given year to prepare an audited financial statement. This statute also confirms that a "lower" level financial report (i.e. review, compilation, report of cash receipts and expenditures) can be prepared if approved by a majority of the voting interests present at a properly called membership meeting. Further, the Homeowners Association Act does not contain any restriction on the number of years in a row this owner financial reporting waiver vote can occur.

Applying this statute to your question, your homeowners' association is required to prepare an audit unless the requisite percentage of owners approves the preparation of a "lower" level financial report.

As to your question about recent legislative changes, prior to July 1, 2017 a homeowners' association with less than 50 parcels was permitted to prepare a report of cash receipts and expenditures regardless of the amount of the association's annual revenues. This exemption was removed as of July 1, 2017. But since your association is over 50 parcels, this change doesn't impact your association.

Prior to July 1, 2017, condominium associations and cooperative associations were prohibited from having their owners approve a waiver of the statutory financial reporting requirements for more than

three consecutive years. This prohibition (which previously only applied to condominium associations and cooperative associations) was removed on July 1, 2017.

Q: I read your Feb. 18, 2018 column which addresses the prohibition on the use of debit cards. Does this prohibition apply to cooperative associations? When did this law become effective? *C.W.*

A: The prohibition on the use of debit cards does not apply to cooperative associations. This law, which applies to condominium associations, became effective on July 1, 2017.

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