

Can my condo still use debit cards?

Q: I heard there is a new law that prohibits the use of debit cards by the board and manager. Is this correct? *E.M.*

A: Yes. The Condominium Act was amended as of July 1, 2017 to specifically address and prohibit the use of debit cards. The new law states that an association and its officers, directors, employees and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

The new law further provides that the use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association, may be prosecuted as credit card fraud pursuant to Section 817.61, Florida Statutes.

It should be noted that this new law does not include a prohibition on the use of credits cards. Also, this prohibition only applies to condominium associations, not cooperative associations or homeowners' associations.

Q: I live in a waterfront condominium. Hurricane Irma resulted in significant erosion to our shoreline. The board has consulted with an engineer who recommended alterations be made to certain common element land near the mean high-water line of the Gulf of Mexico. The proposed alterations to the common elements include the construction of a rock revetment in this area. The board advises that they are going to pursue this alteration without first seeking unit owner approval, even though our declaration of condominium requires the approval of 60 percent of the unit owners for material alterations. Is the board acting legally? *D.B.*

A: The condominium act requires 75 percent unit owner approval for material alterations unless the governing documents state otherwise. Since your association's declaration of condominium contains a lower percentage (60 percent), that is the voting threshold required to approve material alterations.

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."

Despite this seemingly clear definition of a material alteration, the distinction between maintenance, which usually requires only board approval, and alterations, which typically requires membership approval, requires an intensive analysis on a case-by-case basis.

Notwithstanding the above, some material alterations or substantial additions to the common elements are deemed maintenance and these exceptions are solely within the board's power to perform. Maintenance to the common elements, regardless of the cost, is solely within the board's power and discretion to perform.

Generally, if something is necessary to protect the common elements to comply with the law, or to take advantage of new technologies and/or materials that reduce future maintenance, then it is deemed maintenance, even though it might otherwise be a material alteration or substantial addition to the common elements.

Several noteworthy cases have developed certain exceptions to what is commonly referred to as the "material alteration rule." In *Tiffany Plaza Condo. Ass'n Inc. v. Spencer*, 416 So. 2d 823 (Fla. 2d DCA 1982), unit owners brought suit against an association challenging an assessment for construction of a rock revetment on beachfront common property. Although the condominium documents in that case required 75 percent approval for "material alterations or substantial additions" to the common elements, the court held that owner approval was not required if the rock revetment was, in fact, necessary for protection of the beachfront property.

Again, this is a fact-intensive issue and I would need to learn more before I could definitively opine on this issue. That being said, given the holding in the Tiffany Plaza case, there certainly does appear to be potential support for the board's decision to unilaterally move forward with the rock revetment installation given the engineer's advice and recommendations.

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