



## Housing Statutes Have Their Own Sunshine Rules

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**By Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** I live in a resident-owned community. What part of the Florida Sunshine Law pertains to us? **D.D. (via e-mail)**

**A:** Technically speaking, Chapter 119 of the Florida Statutes (the law which generally makes “public records” available to citizens) and Chapter 286 of the Florida Statutes (which generally deals with open access to governmental meetings) do not apply to condominium associations, cooperative associations, or homeowners’ associations. The reason is because these entities are not “agencies” as defined in the statutes.

However, each of the relevant housing statutes (Chapter 718 for condominium associations, Chapter 719 for cooperative associations, and Chapter 720 for homeowners’ associations) has its own “sunshine” standards. In general, each law requires that meetings of the board of directors be preceded by a written notice, posted on the property forty-eight hours in advance of the meeting. The condominium and cooperative laws are identical. There are a number of subtle differences in the homeowners’ association context.

For example, members have the right to speak at all condominium and cooperative association board meetings with reference to designated agenda items. However, no such right exists in the

homeowners’ association context, unless required by the governing documents, or in limited circumstances where twenty percent of the voting interests petition for the call of an HOA board meeting.

The condominium and cooperative laws require posting of an agenda and limit business conducted at the meeting to what is set forth on the agenda (with limited exceptions in certain “emergency” situations). The law for homeowners’ associations does not.

In general, all three statutes require fourteen days’ notice for certain types of board meetings, and such notice must also be mailed to each owner (in addition to posting). These heightened notice requirements typically apply to meetings where special assessments will be adopted or where rules regarding use of the privately-owned property (parcels or units) will be adopted.

All three laws permit the board to meeting in private regarding pending or proposed litigation, so long as an attorney is present. A homeowners’ association board can meet in private, without an attorney, regarding “personnel” matters, while there is no similar right for condominium or cooperative association boards.

**Q:** I am new to the board of our condominium association. At one of our first meetings, the board voted to replace all of the railings in our condominium building. There will be significant expense involved. I was surprised that the board did not suggest getting a vote from our owners for this expenditure. Is a vote of the members required? **J.D. (via e-mail)**

**A:** It depends.

If the railings are part of the common elements (which is the case in most condominiums), their maintenance, repair, and replacement is the responsibility of the association. The only exception would be if the railings are defined as a “limited common element”, and the declaration of condominium specifically required the individual owners to maintain, repair, or replace the railings.

If the railings are part of the common elements, the board of directors would typically have the authority to decide when they should be replaced, and no unit owner vote is required. The board of directors does have a responsibility to act in a fiduciary capacity. When significant expenditures for physical maintenance are involved, it is prudent to obtain an engineer’s opinion that the work is appropriate.

The manner of funding the railing project will also likely be a board decision. However, if the board is going to use reserve funds that exist in other accounts, and assuming that the association does not use “pooled” reserves, the association would need to obtain unit owner approval to use reserves for a non-scheduled purpose.

Some associations finance large construction projects through a bank loan. It is the generally held view that this is also a board decision, provided that the condominium documents do not contain limitations on the association’s borrowing authority. I have seen documents which require a

membership vote for borrowing, and in such cases, a vote should be taken.

If the work is to be funded by a special assessment, the board is typically granted the authority in the declaration or bylaws to levy a special assessment. However, I have seen documents which require special assessments to be approved by the association membership. I have heard it argued that a requirement for unit owner approval of special assessments is not valid (because the Florida Condominium Act requires the association to properly maintain the common property). However, that argument has never been addressed in the appeals courts, and good arguments exist on the other side as well.

In some cases, if there is going to be a material change in the appearance of the building, the new railings could constitute a “material alteration” to the common elements. If that is the case, then a vote of the unit owners may also be required. In general, the Florida Condominium Act states that there can be no material alterations or substantial additions to the common elements except as provided in the declaration of condominium. If the declaration of condominium is silent, seventy-five percent of all voting interests (typically one voting interest per unit) must approve the material change. The law also contains exceptions to the “material alteration rule” when changes are necessary for the preservation of the condominium property or compliance with law.

Finally, assuming that the railing job will exceed five percent of the association’s budget, Section 718.3026 of the Florida Condominium Act would require the board to obtain competitive bids for the work before letting the contract. At least two bids must be obtained (there is no requirement in the condominium law for three bids, although at least three bids would seem to be a good idea). The board need not accept the lowest bid.

*the State Advisory Council on Condominiums and has written this column since 1995.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com). This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*