

Who is responsible for boat basin?

Q: Our 99 unit condominium includes a boat basin for the use of 14 units that are located directly on the basin. The seawall that forms the basin is a common element, and all owners are contributing to a reserve account for its replacement. The 14 individual boat docks are described in our condominium documents as limited common elements for only those units situated on the basin. The maintenance, repair and replacement of the docks are the responsibility of those owners.

At this time, the boat basin needs to be dredged to maintain a depth that is navigable. Part of the reason is that the seawall is leaking, and sand is filtering through seams in the wall. The other problem is that the city has a storm sewer that flows directly into the mouth of the basin, creating an accumulation of sediment. In addition, maintenance people have blown grass clippings and leaves in the water, creating a buildup of mulch on the basin bottom.

I understand that all 99 units



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would share equally in the repair of the seawall, and that only the 14 units would be responsible for the docks. However, my question is who is responsible for the dredging of the boat basin? — R.S., Venice

A: I have included your question because it is typical of many that I receive. Condominium and homeowners' association communities often must define and understand their own responsibilities and authority with regard to the counties and/or municipalities in which they are located. Each case depends on the facts.

For instance, can an association make and enforce rules regarding use of public roadways running through the neighborhood? Who is responsible for maintaining public easements or utilities on property that has been dedicated to the government? What is the status of sub-

merged lands adjacent to a community?

The answers to these types of questions can be complex.

In order to answer your question and other similar types of inquiries, I recommend that the association obtain a written legal opinion. Ownership of the basin and responsibility for dredging can be ascertained, and the board, in the exercise of its business judgment, will be protected if it relies on a legal opinion from a competent, licensed professional.

On a related note, in my experience, important legal opinions can be lost over time as board and perhaps management leadership changes hands. An association must maintain an institutional memory, and legal opinions are expensive.

Although subject to change, any legal opinion obtained by an association should be archived so that it may be easily retrieved, reviewed and updated as needed. As for your community's boat basin, this appears to be an important issue, one that may involve

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expenditure of association funds, and one that will likely reoccur in the future.

For all these reasons, careful investigation needs to take place before action commences.

Conference calls

Q: Can the board of a condominium association hold a conference telephone call to share information on a topic if no action is taken on the topic, and any actions taken on the topic are discussed at the next or subsequent board meeting? Does this conference call require prior notification of such call and allowance for members to attend/speak? — R.S., Osprey

A: As a general rule, any time a quorum of the board of directors meets, either in person or over the phone, to discuss association business, a board meeting is deemed to be taking place and must be noticed and open to the membership (with the exception

of certain meetings with the association attorney to discuss proposed or pending litigation). For most meetings, the board must post notice 48 hours in advance (exceptions include emergency, budget and special assessment meetings).

Section 718.112(2)(b)5., Florida Statutes, provides that condominium association boards of directors and committees may conduct business through the use of a telephone conference call. Those attending by phone must be able to be heard by those attending in person, including the unit owners present at the meeting. Directors attending by phone can be counted toward the quorum and can vote on all matters coming before the meeting. Telephone conferences are not excluded from open meeting requirements, regardless of whether formal action is actually taken.

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