



Insightful Tips for 2024 Budgeting and Annual Meetings for Associations

November 15, 2023

As winter approaches and a new year is just around the corner, the return of seasonal residents signals a surge in the association's daily business activities. This guide offers invaluable tips and reminders tailored for managers and directors, both new and seasoned, empowering you to navigate this year with confidence. As you prepare budgeting for 2024 and annual meeting season keep these key tips in mind:

Annual Budgets Should (and often Must) be Adopted Before the End of the Fiscal Year

We always remind our clients that their "fiscal year" may not always be the calendar year. In many cases, an association's bylaws will start and end the Association's fiscal year in October and November.

Condominium and cooperative associations must provide at least fourteen (14) days mailed notice of any meeting at which an annual budget will be adopted, and the notice must include a copy of the proposed budget. In addition, the annual budget must be adopted at least fourteen (14) days before the start of the association's fiscal year. For most condominium and cooperative associations, the fiscal year will begin January 1st. Counting backwards, that means that December 3rd is going to be the last day when most condominium and cooperative associations can provide timely notice of an annual budget meeting. Failing to timely adopt an annual budget can result in sanctions from the DBPR.

Homeowners' associations are not subject to as much regulation by the Florida Statutes and the Florida Administrative Code. The bylaws of a homeowners' association are likely going to include the applicable requirements for providing notice of a budget meeting. However, homeowners' association bylaws often incorporate provisions from the Condominium Act, including the same requirements for providing fourteen (14) days' notice of budget.

Always keep in mind that an association's bylaws may require greater notice or specify that an annual budget must be adopted by an earlier date. Always be sure to work with managers and legal counsel and reference your association's bylaws.

Financial Reporting Requirements

Community associations are required to produce a year-end financial report shortly after the end of the fiscal year. The default level of financial reporting depends upon the association's revenue for that fiscal year and may include a report of cash receipts and expenditures (the lowest level), compiled financial statements, reviewed financial statements, or audited financial statements (the highest, and, often, the most expensive level). Notwithstanding, members can vote to reduce the level of year-end financial reporting.

For condominium and cooperative associations, the vote must be taken by members at a membership meeting (annual meeting or any special meeting). Further, the vote takes place *before* the end of the fiscal year, as members can only vote to reduce the present year or the following year's level of financial reporting. As an example, if fiscal year 2023 ends on December 31, 2023, then the vote to reduce the level of financial reporting for 2023 must be taken before the end of 2023. This can be an issue for associations that hold their annual meetings at the start of a year.

Unless otherwise provided in an association's bylaws, the end of year financial report must be completed within ninety (90) days after the end of the fiscal year. Keep in mind that accountants are likely to be extremely busy close to the end of tax season when this default deadline often arises. This can be a particular issue for communities that require an end of year audit. For this reason, we suggest working with association counsel to amend your association's bylaws to specify a deadline that is later in the year.

Voting on Rollover of Excess Funds

The default rule of income tax is that all revenue is taxable unless a deduction or an exception applies. For community associations, revenue most often comes in the form of assessments. The assessments that are levied are based upon estimates of anticipated expenses, and it is common to collect more in assessments than an association ends up needing to pay its bills and fund its reserves. Community associations are essentially a collection of members who are paying assessments for the primary purpose of perpetually maintaining collectively owned property. With this understanding, IRS Revenue Ruling 70-604 creates an option for community associations to make a tax election to defer excess income to the following year when it will be used to pay for that year's expenses.

A detailed, higher-level discussion or explanation of IRS Revenue Ruling 70-604 or the pros and cons of filing specific tax forms is well beyond the scope of this article. Suffice it to say that boards should consult with their association's accountant to determine which tax form to submit to the IRS. In the event that the association files a Form 1120-H (for certain, qualifying associations), the association must make the election to roll-over excess funds. Since it does not hurt to make the election in any event, at worst being ineffective, it is advisable to simply make the election every year. However, contrary to customary practice, Revenue Ruling 70-604 suggests that the election is to be made by an association's members.

Therefore, it is recommended to have an association's members vote every year, *prior* to filing a tax return for the fiscal year, to roll-over any excess funds from the fiscal year into the next year. This vote is most often taken at the annual meeting. However, associations with annual meetings after tax season should take note and be careful to word their proxy and ballot questions for the correct fiscal year.

Director Certification

Within ninety (90) days after being elected or appointed to the Board, each newly elected or appointed director is required to either complete an educational curriculum provided by an DBPR-approved instructor OR make a certification in writing to the association's secretary. The certification must promise the following: (i) that the director has read the association's governing documents and policies; (ii) that the director will, to the best of their ability, work to uphold the association's governing documents and policies; and (iii) that the director will faithfully discharge their fiduciary responsibility to the association's members. Failing to timely meet the requirement above results in the director being suspended from the Board until they complete the requirement.

It can be easy to overlook the requirement, especially former directors who are getting back onto their association's board after a couple of years. For those who wish to complete the certification, it is often best to do so at their board's organizational meeting, which is usually held right after the annual meeting and election. For all directors, but especially new directors, who have never served on a community association board, be sure to look into certification courses, which can help bring everyone up to speed on basic laws and procedures.

Preservation of Governing Documents

Florida's Marketable Record Title Act ("MRTA") is a Florida Statute that extinguishes certain encumbrances, such as covenants, after thirty (30) years if the encumbrances are not sooner preserved. The intended purpose of MRTA is to remove unnecessary and outdated restrictions from a property's title over time. Doing so promotes the free use of property while also lessening the burden on the title insurance industry to search for encumbrances hundreds of years back.

The unintended effect of MRTA is that it can inadvertently extinguish the covenants affecting a planned subdivision. Due to the way that MRTA operates, homeowners' associations are particularly susceptible, although you should always check with legal counsel to see if your community association is also affected by MRTA.

Fortunately, the processes for preventing extinguishment are rather simple and straightforward. For this reason, the Florida Legislature requires that the boards of homeowners' associations periodically consider the need to preserve their community's governing documents.

Section 720.303(2)(e), F.S., requires that:

“(e) At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.”

This applies to homeowners' associations that even if they recently preserved their governing documents. Also, note that as of October 1, 2023, Section 720.303(2)(c)1, F.S., requires that notices of homeowners' association board meetings must “specifically identify agenda items.” Therefore, be sure to include preservation of governing documents in the agenda of your first Board meeting of the year (after the

organizational meeting) and be sure to include references in the minutes of the meeting to both the discussion of preservation and the outcome of the discussion.

About Pavese Law Firm

Pavese Law Firm is a full-service law firm with offices in Fort Myers, Cape Coral, and West Palm Beach. The firm provides a broad range of legal services for individuals, families, small businesses, and large corporations. Practice areas include agricultural, banking and finance, business and corporate, civil litigation, condominium and homeowners' association law, construction, environmental and water, estate planning, probate and trusts, marital and family, land use and government, and real estate law. Established in 1949 as a one-person general practice firm, Pavese Law Firm has grown into one of the largest legal practices in Southwest Florida. With a long history of service to Southwest Florida, Pavese Law Firm has played a significant role in the growth of local businesses, communities, and major development projects. For more information, visit paveselaw.com.

We are a full-service law firm and capable of handling all your legal needs.

Firm Practice Areas include:

- Agricultural
- Banking and Finance
- Business and Corporate
- Civil Litigation
- Condominium and Homeowners' Association Law
- Construction
- Environmental and Water
- Estate Planning, Probate and Trusts
- Land Use and Local Government
- Marital and Family
- Real Estate

Visit us on the web at www.PaveseLaw.com.

**PAVESE
LAW FIRM**
est. 1949

MAIN OFFICE

FORT MYERS
239.334.2195

BRANCH OFFICES

CAPE CORAL
239.334.2195

WEST PALM BEACH
561.471.1366

PaveseLaw.com