

Tips for an Easier Board Job

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Over the next three months, the vast majority of community associations in Southwest Florida will hold their annual meeting. In most cases, the primary purpose of the annual meeting is to elect a board of directors who will manage the community's affairs.

For those who have never served, the task of community association board service can seem daunting. No matter what your background, few have had business or life experiences comparable to community association governance.

In addition to the maze of legal and documentary rules that must be followed, typical issues that face a board on a daily basis range from sensitive personnel problems to making difficult choices in major construction projects. Perhaps most significant is the socio-political aspect of being a board member. Unlike running a business where profit is the only motive, many of the toughest problems faced by associations are steeped with politics and personalities.

For those brave enough to step into the fray, here are a few tips that may make your job a little easier:

- **Education:** There is a wealth of information available to board members who want to become educated and stay informed about association issues. Most attorneys who concentrate in community association law will provide their association boards with periodic newsletters and educational seminars. Also, the State of Florida sponsors educational programs through Community Associations Institute. Contact the local CAI Chapter at 239-466-5757 for information about upcoming programs. The best primer for laymen serving on condo boards is a book called *The Condominium Concept*, written by Peter Dunbar. It is available in major bookstores for about twenty dollars.

- **Understanding:** It is impossible to lead an organization into the future without knowing where it has been in the past. Ask the association manager or board secretary for the opportunity to review past minutes of board and membership meetings for at least the past three years, if not longer. Minutes, at least if they are well kept, are the best source of institutional history for a community association.

- **Information:** Unfortunately, at least in some associations, there are one or two board members who are the real decision-makers, while the rest of the board "goes along to get along." Prior to board meetings, prepare. A well-managed association should produce a monthly board packet, including financial information, and as may be applicable, committee reports, bids, management reports, and other information that will enable decision-making for scheduled agenda items.

- **Protection:** In my opinion, no one should serve on an association board that is not adequately insured. The association should, with the assistance of legal counsel, review the indemnification (hold harmless) provisions in the association's governing documents to ensure they afford the maximum protection permitted by law. Further, directors and officers liability insurance is a must. These days, at least one million dollars coverage should be the minimum, and particularly with larger associations, several million dollars worth of coverage may be in order. It is especially important to ensure that your D&O policy is not one where the exclusions swallow coverage. As an added measure of protection, it is a good idea to ask your personal insurance advisor whether your umbrella policy covers service on non-profit boards.

- **Participation:** While directors should not interfere in day-to-day management of the association, being a board member is more than an honorary post. The law imposes a fiduciary responsibility on each director, which is a legal position of trust and loyalty

to all unit owners. Certainly no decision made by an association board member will please everyone. Remember, directors cannot abstain from voting unless there is a conflict of interest with respect to the subject matter of the vote. ⚖️

Reserve Funds are Primarily for Capital Expenditures

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QUESTION: Our condominium association board, over the objection of our treasurer (but with the concurrence of our management company) has used reserve funds in a manner that I think is wrong. The reserve account is for replacing the awnings over our parking spaces. The board has used the money to clean the awnings. Is this illegal or inappropriate? J.K. (via e-mail)

ANSWER: Unless the owners have voted otherwise, reserve funds can only be used for capital expenditures or deferred maintenance pertaining to the item for which the reserve account has been established. Florida's administrative regulations applicable to condominiums defines deferred maintenance to include any maintenance that will extend the life of the asset by one year or more.

For example, if resealing a parking lot will extend the service life of the lot by a year or more, it is my opinion that reserve accounts can be used for that purpose. Cleaning presents a closer question. I suppose your board could argue that cleaning the awnings preserves the fabric and extends its useful life, although I would see routine cleaning of an item to be more in the nature of regular maintenance than deferred maintenance or capital expenditure.

QUESTION: I live in a community that is governed by a homeowner's association. For personal reasons, title to our home is held in my wife's name, and my name does not appear on the deed. Our governing documents state that you must be a titleholder to qualify for membership in the association and run for the board.

Is this legal? J.W.

ANSWER: Yes.

By definition, the only member of the homeowner's association is a person who holds title to property in the community.

As to board service, the law does not require one to be a parcel owner, although the governing documents may establish ownership as a pre-condition to eligibility to run for the board.

Many association bylaws permit non-titled spouses of property owners to run for the board, since it is not uncommon for real estate to be titled in only one spouse for a variety of family, estate, and tax planning reasons. However, if the documents limit board members to titleholders, you cannot run for the board.

QUESTION: My association will be having its annual meeting in January, and we will be voting on an amendment to our declaration of condominium. The proposed amendment says that a condominium unit owner cannot have overnight guests unless the unit owner is also there. If this amendment passes, is it legal? J.K. (via e-mail)

ANSWER: Amendments to condominium documents (as opposed to board-made rules) are clothed with a presumption of validity. In my opinion, assuming that proper voting procedures are followed and the appropriate number of affirmative votes are received, the amendment would be upheld.

QUESTION: We are considering building a swimming pool in our resident-owned mobile home park. What percentage of the owners is required to approve this issue? Also, should we contact a lawyer before entering into a contract to build the pool? D.A. (via e-mail)

ANSWER: It depends upon the legal structure of your community. Most "resident-owned" mobile home parks are set up as cooperatives, governing by Chapter 719 of the Florida Statutes. If that is the case, Section 719.1055(3)(a) of the law applicable to co-ops, says that material alterations of cooperative property require two-thirds of the total voting interests (there is typically one voting interest per membership).

The governing documents can provide stricter or more liberal voting requirements.

The other most common form of ownership in resident-owned parks is a homeowners' association governed by Chapter 720. If you are an HOA under Chapter 720, there is no statutory guidance, and the governing documents will solely control.

Before entering into a project of this magnitude, the board should obtain a written legal opinion as to the required voting procedures. Also, the board should definitely invest in both engineering and legal assistance in developing the specifications for the new pool, and drawing up the contract for its construction. Good luck.

QUESTION: Our condominium association bylaws state that the executive officers of the association shall be a president and vice-president, both of whom must

be board members, and a treasurer, secretary, and assistant officers, who need not be board members. Is it legal to permit people who do not serve on the board to be officers of our association? K.F. (via e-mail)

ANSWER: There is no requirement in Florida law that officers of a corporation also be directors. In fact, in many for-profit corporations, most people who serve as directors do not simultaneously serve as officers.

In condominiums, the law is no different, and the bylaws control. There is no problem with your bylaws permitting non-directors to serve as officers, and such a provision is quite common. The benefit of such a clause is that there may be people who do not want to serve on the board, but may have special qualifications for a particular office, such as being your treasurer. Officers who are not directors are typically covered under your association's insurance policies and bonds. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to 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.