



## New Law Affects Board Make Up

*Enacted this year, it is in effect Oct. 1*

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Today's column begins our annual review of new laws passed by the Florida Legislature affecting community associations. 2008 was an especially busy year, and numerous new laws have been passed. Some are significant, some not. We begin our review with a look at House Bill 995, which primarily impacts condominium associations.

Effective October 1, 2008, Section 718.112(2)(d)1 of the Florida Condominium Act has been amended to provide as follows:

The terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise permitted by the bylaws. In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to the provisions of this subparagraph, such board member whose term has expired shall be automatically reappointed to the board of

administration and need not stand for reelection.

The apparent intent of this law is to limit board terms to one year, apparently notwithstanding any contrary provisions in the association's bylaws. Many condominium associations (perhaps most) operate under a multi-year board seating system, with two years and three years being the most common terms for their board members.

Most associations with multi-year board terms operate under a "staggered" election system, where a set number of board members do not need to stand for election at each year's annual meeting (they would still have one or two years left on their terms). Many associations feel this approach is necessary to ensure that there is some continuity of experience on the board. For example, a common "staggering" system found in a typical bylaw provision might provide for a seven-member board, with four directors being elected for 2 year terms in one year, three directors elected the following year for a 2 year term, four the next year, and so on.

Under the new law, effective October 1, 2008, these bylaw provisions are apparently no longer valid.

There is an ability to "opt in" to two year staggered terms, by a vote of a majority of the entire voting

interests of the association. There is usually one voting interest per unit in a condominium, and the new law requires approval by a majority of all units (not simply a majority of those who vote) to opt in to two year staggered terms.

Accordingly, for associations that have two year staggered terms in their current bylaws, they will need to call a special meeting, presumably in advance of their next upcoming annual meeting, to “opt in” to the statute. More simply stated, a vote has to be taken to continue to have the right to operate under the existing bylaws. Otherwise, one year terms for board members will be the rule.

For associations with three year terms, it appears that some change will have to be made, I believe most associations will probably want to amend their bylaws to take advantage of the statutorily-permitted option for two year staggered terms. Associations with three year terms for their directors should also address this issue before their next annual meeting.

The new law certainly leaves several important questions unanswered. For example, are directors who have only partially served a multi-year term removed at the next annual meeting? Under the Florida Condominium Act, removal of a director from office is a power given to the unit owners in the condominium, not the Florida Legislature. Is it the intent of the law to be “phased in”; and “grandfather” those with time left on their terms, or is it supposed to take effect in October?

The law can also be construed to permit three year (or even longer) terms for board members, so long as they are not “staggered.” I doubt that was the “intent” of the law, but it could certainly be interpreted that way, given how the language in the statute is written (the “otherwise permitted” phrase seems to suggest that other terms would be permissible, but if a staggered term, then only two year terms are permitted).

Associations which have one year director terms, and do not wish to change, need not worry about the new law as to this topic.

A second significant change brought about by HB 995 concerns the age-old debate about spouses (or other co-owners of a condominium unit) simultaneously serving on the board. Under previous law, if both spouses were listed on the title to the unit (named on the deed), they both had the right to run for, and be elected to, the board of directors.

Section 718.112(2)(d)1 of the Condominium Act will provide, as of October 1, 2008, that “coowners of a unit may not serve as members of board of directors at the same time”. The law contains an exemption for condominiums containing 10 or fewer units.

This change addresses a common situation where spouses (or other co-owners) own a single unit, but both wish to serve on the board. Under the new law, that will no longer be permissible. However, this new law also leaves many unanswered questions.

As with the multi-year term issue, is it the intention to remove current directors (such as two spouses) from office, when they have been duly elected? Or, does the new law phase in only after they serve out their term? If one spouse is to be kicked off the board by the new law, who decides which one it will be?

The new law also states that co-owners cannot simultaneously serve on the board, but the law does not prohibit co-owners from simultaneously running for the board. What if two co-owners run for the board and both are elected, how does the association decide which one is elected?

What if John Doe and Jane Doe own five units in a condominium? Does the new law mean that both of them cannot serve on the board, each representing the interest of different units? The law prohibits “co-owners of a unit” from serving on the board “at the same time.”

In next week’s column, we will continue with a review of some additional changes found in HB 995.

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