



## State Has Few Restrictions On Who Can Run For Board

### Homeowner Wants to ‘Opt Out’ of Membership

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**Q:** I have a question regarding homeowners’ associations. I have read Chapter 720 and can find no reference to any limits or qualifications on the right or ability of a person to run for our HOA board. What is the law on this? **L.T. (via e-mail)**

**A:** You are correct in noting that Chapter 720 of the Florida Statutes, commonly called the Florida Homeowners’ Association Act, does not contain any provisions regarding board member qualifications. However, the law does state that any member of the association may run for the board. Therefore, unlike the current condominium situation, I believe that co-owners of the same parcel would have the legal right to run for the board of directors, so long as they are both named on the deed and are considered members of the association. For the same reason, term limits would probably be considered invalid in the HOA context, although I do not think this issue has been tested in the courts as yet.

Florida’s Not-For-Profit Corporation Act (Chapter 617 of the Florida Statutes) provides that directors of a corporation must be a natural person who are 18 years of age or older, but need not be Florida residents, nor members of the corporation, unless the articles of incorporation or bylaws so require.

The Not-For-Profit Corporation Act further states that in the event eligibility to serve as a member of the board is restricted to members of the association, a grantor of a trust is deemed a member of the association and eligible to serve as a director, as is a trust beneficiary, provided that the beneficiary occupies the parcel.

In short, if your bylaws do not contain any qualifications regarding directors, any natural person age 18 years of age or older may run for your board. Your bylaws may impose additional restrictions, but cannot prevent association members from standing for election.

**Q:** Our homeowners’ association is a “neighborhood association”, and there is also a “master association” governing our community.

The maintenance fees we collect for the operation of our neighborhood are approximately \$225,000.00. We collect another \$250,000.00 on behalf of the master association, and pay that money over to the master association. Accordingly, the total money we collect annually is approximately \$475,000.00. Are we required to have an audit or a review? **M.B. (via e-mail)**

**A:** Great question.

First, you need to look at your association's governing documents, probably the bylaws. Most homeowners' association bylaws contain some guidance regarding required year-end financial reporting. If the requirements of the bylaws are stricter than the statute, you must follow your bylaws.

Assuming the bylaws are less restrictive than the statute (or defer to the statute), you need to look at Section 720.303(7) of the Florida Homeowners' Association Act. An association with "total annual revenues" of at least \$200,000, but less than \$400,000 must prepare a reviewed financial statement annually. An association with "total annual revenues" of \$400,000 or more shall prepare an audited financial statement.

The law does not define what "revenue" means. However, if the checks for the master association fees are written to your neighborhood association (and then you pay that money over to the master association), I would think that these sums are part of your "revenues", and therefore your association is required to have an annual audit.

Please also note that a majority of the voting interests present at a properly called meeting of the association may vote to have a lower-level financial report prepared. Assuming an audit is required in your case, the members of the association could still vote, by majority vote, for a review, a compilation, or even a report of cash receipts and expenditures.

**Q:** I would like to know if it is possible to "opt out" of being a member of my homeowners' association. Also, if I choose to move some place

else, may I opt out of their association before I move in. **M.S. (via e-mail)**

**A:** Chapter 720 of the Florida Statutes defines a "homeowner's association" as a corporation which manages deed-restricted property, where membership in the association is mandatory, and where the association has the right to levy assessments secured by a right of lien. There is no provision in the law for "opting out" of such an association, membership is mandatory for all parcel owners.

There are some voluntary "homeowners' associations" where you can choose whether to be a member or not, these are more common in older neighborhoods.

**Q:** I was recently elected to serve on my condominium association board. Our board apparently has a habit of passing motions by one director saying "I make a motion to vote yea" on a certain proposal, and another member will say "I second that." The measure is then considered passed. Shouldn't each board member get to vote?  
**J.H. (via e-mail)**

**A:** Yes.

A question is typically presented to a board for vote when a member of the board makes a motion, and the motion receives a second. The matter is then supposed to be discussed, and then the vote is taken.

In fact, Chapter 718 of the Florida Statutes (the Florida Condominium Act) requires the vote of every director to be recorded in the minutes regarding each item for which a vote is taken. Directors cannot vote by secret ballot, except when electing officers.

*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.*

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