



Term Length Doesn't Mean Same Thing as Term Limit

Directors are elected for one-year period

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Q: Our condominium documents state that our association is to be managed by a three-member board. There is no limitation on the number of times a person can be elected to the board in our documents. At each annual meeting, the unit owners vote for a new board. The board is then responsible for electing a president, vice president, secretary, and treasurer. The current three board members have served for two terms. Those directors have elected different people among themselves to serve as different officers during the past two years. One unit owner has said that it is illegal for any of the current board members to be candidates at the next election. Some unit owners believe that the two-year limitation in the statute is only for officers. What is the law? **J.M. (via e-mail)**

A: I believe that your unit owner is mistaken. He or she is apparently confusing a recent change to the law on term lengths with the concept of term limits.

A 2008 change to the Florida Condominium Act provides that, in general, directors are to be elected for one year terms. There is a limited exception where two-year staggered terms are permitted, if approved by a vote of a majority of the entire membership.

However, the provision that elections for each board seat take place every year (or every other year where the members have voted two-year staggered terms) is not the same thing as "term limits." A term limit means that once someone serves for a specified number of years, they must "sit out" for a stated period of time.

There has been much debate as to whether term limits are advisable, or even legal. Many years ago, the state agency which regulates condominiums (known as the Division of Florida Condominiums, Timeshares, and Mobile Homes) issued a ruling in an arbitration case suggesting that term limits, if contained in the bylaws, would be valid.

However, a couple of years ago, the Division reversed its position in a formal agency pronouncement known as a "Declaratory Statement", and ruled that term limits are not valid in condominiums, even if the bylaws provide otherwise. The Division's rationale is that the statute provides that "any unit owner" may place their name into nomination for the board at each year's election. This issue has never been addressed by the courts.

Q: We live in a community that operates as a homeowner's association. Our manager claims

that no one other than the board of directors are allowed to know his salary or that of our other employees. Is this correct? **B.B. (via e-mail)**

A: The law is more fuzzy on this question. Section 720.303(5) of the Florida Homeowners Association Act specifically exempts “personnel records” from the definition of “official records.” As such, “personnel records” are not available for inspection by members in the homeowners’ association context.

Whether salary information is or is not a “personnel record” has never been addressed by an appellate court, nor does the statute define what a “personnel record” is. I have heard both sides of the case argued, and have been told that even different trial judges who have been confronted with the issue have ruled differently. This is certainly an area where some legislative clarification would be helpful.

Q: Our condominium association rules state that wall-to-wall carpeting is required in bedrooms, living rooms, and dining rooms, for all units above the first floor. Does the Florida Condominium Act allow tile installation in these areas and would this override our association rules? **D.G. (via e-mail)**

A: No.

The Florida Condominium Act generally defers to the provisions of the declaration of condominium and rules and regulations regarding use restrictions in specific condominiums.

“Hard flooring” restrictions are common in condominiums, and also a frequent point of contention. There is little doubt that no flooring dampens noise like carpeting does. However, particularly in the Florida environment and climate, many people like to have “hard flooring”, including tile, wood products, and the like.

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.

Your association’s situation will be governed solely by your condominium documents. If the declaration of condominium contains a rule requiring carpeting in these areas, and assuming the board has consistently enforced the rule, it is a valid and enforceable restriction.

Q: I thought I read in a previous column that the law was changed to require the condominium association to maintain our air conditioner compressor. My condominium association disagrees. Can you clarify? **V.B. (via e-mail)**

A: The responsibility for maintenance, repair, and replacement of air conditioning units is not addressed in the Florida Condominium Act. Rather, the allocation of such responsibility is solely a function of the declaration of condominium.

However, the law was changed in 2008 to require the condominium association to insure air conditioner compressors. The law was also amended to generally require that the association pay for casualty repairs, including expenses not covered due to the deductible, for items it insures. There is also a procedure to “opt out” of this rule.

Most declarations of condominium delegate maintenance, repair, and replacement responsibility for air conditioner compressors to the unit owner. If that is what your declaration provides, it is your responsibility. However, if the compressor were damaged by a “casualty”, such as a lightning strike, the association would be responsible for the replacement of the unit, and payment of any uninsured expenses, including those resulting from a deductible.

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.