



Condominium Law Q&A

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CORRECTION: A recent column mistakenly stated that a director appointed to fill a vacancy on the Board of a Condominium serves until the next annual meeting. My mistake. I forgot the Act was amended to provide that the director serves out the full unexpired term of the seat being filled. Thanks to all the readers who brought this matter to my attention.

Reader Feedback: In a recent column (Palm Beach Post, March 26, 2008), you stated, "Be advised that, in a homeowners association, the quorum, by law, is 33-1/3 percent of the voting interest, regardless of what the bylaws state," which my wife emphatically read to me, since tomorrow we will be holding our annual meeting, and I had just told her we needed 30%. This piqued my curiosity. So I went to the statutes and found that the quorum is 30%. C.H., Jupiter

Answer - Thanks for bringing this discrepancy to my attention. In fact you are correct, unless the bylaws provide for a "lower number," the quorum for a homeowners association meeting is 30% not 33 1/3%, as stated. I appreciate readers, such as yourself, for keeping me on my toes.

Question - A very contentious homeowners association board election was held last week. The board's agenda had the meeting scheduled to begin at 7 P.M. The attorney did not open the meeting formally until 7:30 P.M. In the meantime, all ballots

had been given out, the ballot boxes were opened, and the collection of ballots began before the meeting was called to order and nominations could be taken from the floor. The agenda stated that nominations would be taken from the floor before the collection of ballots. This was not followed. Notice had been given to the Board that there would be a nomination from the floor, and the collection of ballots before the announcement of his nomination obviously handicapped that candidate's ability to win. Is this legal? If not, what recourse should be taken? At the clubhouse, where the election took place, a notice was posted stating, "NO ELECTIONEERING 500 ft from clubhouse." Is this legal? These actions, if not legal, I believe, undermine the integrity of the process. I would like the answer to these questions so, at least in the future, our elections will not have an aura of taint. E.M., West Palm Beach

Answer - Unlike the election of directors in a condominium, wherein the entire process, from nominations to the form of ballots, is regulated by law, homeowners association elections are governed by the association's articles and bylaws. That said, in the event of a dispute, the Division of Florida Land Sales, Condominiums and Mobile Homes, has jurisdiction to arbitrate the dispute. What is inherently unfair about typical homeowners association elections is the use of proxies or ballots, which are voted prior to nominations from the floor. It was this glitch which led to changes in the

Condominium Act, one which is need for homeowners association elections, as well.

Question – We are owners of a townhouse in Flagler Beach and members of a small homeowners association. There are 12 units in 3 buildings, and all units are individually owned. We are trying to determine whether we should be submitting some form of tax report. The association is non-profit, with annual dues from all units totaling \$2,280. That money is used to pay common area electric bills, pesticide services, minor repairs, etc. There is usually a balance at year end of \$1000 or \$2000 in the bank, earmarked for emergency repairs and road maintenance. There has never been a distribution of such funds. Additionally, the association collects \$290 from each unit, which is exactly the cost of lawn, shrub and palm tree maintenance. There is no surplus from that. The sidewalks surrounding the property are used by the public and, occasionally, a sidewalk through the property is utilized, although it

is private. The roadway, which services our 12 carports, is often used as a walk through by the public to get from one street to another. Occasionally, people drive through it, as a shortcut, although it is private. Since there is no profit as such, we assume we are not taxable. We would welcome your comments. K.W., Flagler Beach.

Answer – There is a widely held belief that community associations, being “not-for-profit” corporations, are exempt from filing tax returns and paying taxes. That is not the case. While most of the revenues of an association (payment by number of assessments) are exempt from taxation, some revenues, such as interest earned on deposits and vending machine revenues, are subject to taxation. There is a special section of the Internal Revenue Code, Section 528, which deals with the subject. You need to review this with your CPA.

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