



Condominium Law Q&A

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Question – In our condo, the developer has one position on the board of directors. Can he have someone sit in for him on the board when he cannot make a meeting? He gave the board a letter saying that his partner has all voting rights in his place. Is this legal? M.M., Titusville

Answer – My assumption is that the “Developer” is a limited liability company, a partnership, or some other form of legal entity, and that the developer has a right to designate a member of the board? That said, once the person who will serve is designated, the position is not transferable, and his partner cannot serve in his stead without his first resigning and then the partner being appointed to the board. Members of the board cannot vote by proxy or secret ballot; given that they serve as fiduciaries of the unit owners.

Question – Following the resignation of a member of the board of our homeowners association, the individual named by the board to fill the vacancy is not listed as an owner of the home where he resides. The bylaws of our association provide that one needs to be a record title owner to qualify to serve on the board. There is no dispute as to whether the individual is an owner; the board concedes that he is not. However, it points out another provision of the covenants, conditions and restrictions which defines a member as “an entity obligated by the governing documents to pay assessments or amenity fees.” The fact that this couple is paying the association

assessments does not imply ownership and therefore should not grant them eligibility to serve on the board or the right to vote on association matters. What is your opinion? J.J., Ormond Beach

Answer – If, as you advise, the homeowners association documents require a member of the board to be a record title owner of the unit [means their name, etc. is on the recorded deed] then an individual whose name is not on the deed is not eligible to serve and should not do so.

Question – I live in a co-op. The mortgage on the cooperative was paid off at the end of 2007. Instead of eliminating that portion of the assessment which was going to pay off the mortgage, the board voted to put the money in a fund for future building repairs. Do the unit owners have the right to vote on a major issue like this? M.R., Fort Lauderdale

Answer – Community association boards have the authority, by law or otherwise, to establish reserves for deferred maintenance and capital improvements. In fact, a recent court decision from another state, held that the board of a homeowners association acted in bad faith when it failed to establish reserves. If we learned anything from the rash of hurricanes of 2004 and 2005, it was that insurance proceeds are inadequate to cover all losses, and the only way to avoid large special assessments is to ensure that there are adequate reserves. The board is doing the prudent thing.

Question – I read with interest your reply to “qualify to run for the board.” Under the Condominium Act, the only pre-requisite for one to qualify to run for the board is that he/she be a “unit owner.” In our condominium documents, an owner is defined as a person holding legal title to a unit. It also states that a director shall be an owner or a

partial owner of a unit. Does a person who holds a “life estate” in a unit qualify to be on the board of directors? A.M., Cocoa Beach

Answer – Yes. The holder of a life estate is deemed to be the record title owner for all purposes, including qualifying for the board, attending unit owner meetings and voting at association meetings.

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