



Condominium Law Q&A

August 4, 2008

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

According to the Community Associations Institute, there are now 60 million Americans living in communities governed by mandatory membership associations, condominiums, cooperatives and homeowner associations. That translates to 1 in every 6 Americans. In Florida, that number is guesstimated at 35%. It is therefore not surprising that the regulation of common interest ownership communities is at the forefront of many of Florida's Legislators' agendas; this is particularly so when unit owners complain about overreaching boards or find themselves facing large special assessments for capital improvements or underinsured casualty losses. 2008 was no exception. Spurred on by Representative Julio Robaina, who held hearings across the State on potential areas of abuse, the Legislature tightened the reins on boards and expanded unit owner rights. Whether the legislation which was passed is overreacting or necessary will be left to the readers to decide. In a slight deviation from my traditional columns which address specific questions sent in by readers, over the course of the next month, I will review legislative enactments of 2008 which impact condominiums, cooperatives and homeowner associations.

While, initially, efforts were directed at restricting the amount of time a director could serve on the board (term limits), in the end, the adopted legislation focused on "staggered" terms. Effective October 1, 2008, Section 718.112(2)(d)1 of the

Florida Condominium Act has been amended as follows:

The terms of the board shall expire at the annual meeting and such board members may stand for re-election unless otherwise permitted by the by-laws. In the event that the by-laws permit staggered terms of no more than 2 years upon the approval of a majority of the total voting interest, the association board 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 this subparagraph, such board member whose term has expired shall be automatically reappointed to the board of administration and need not stand for re-election.

The apparent intent of this law is to limit board terms to one year, notwithstanding any contrary provisions in the association's by-laws. This runs contrary to the advice of industry pundits who, for the sake of continuity, recommend that board terms be staggered over a 2-3 year period. While the new law does allow associations to "opt-out" of the term restrictions and permit a director to serve a two year term, to do so requires the approval of a majority of the total voting interests of the association. Accordingly, for those associations which have three year staggered terms, the terms of the directors is

automatically cut to one year, that is, unless prior to the annual meeting a majority of the unit owners vote to extend terms to two years. The law fails to address the question as to whether a director elected for three years under the provisions of their by-laws can serve the complete term or is automatically required to seek re-election at the next annual meeting. Associations where all board members serve a single one year term need not concern themselves with this provision.

Another restriction placed on board service is prohibiting co-owners from serving on the board at the same time. Interestingly, the law does not prohibit co-owners from qualifying to run for the board, nor does it state what happens if both are elected; that is, who must decline and who replaces the elected director. The law also does not address a situation where spouses own multiple units with title in each in a single name, or where two unrelated individuals, either same sex or opposite sex, hold

title to the unit and live together as a single housekeeping unit.

Perhaps the strangest of all restrictions placed on candidates for the board is the requirement that each board member attest that he/she has read and understands, to the best of his/her ability, the governing documents of the association and the provisions of the Condominium Act and the Administrative Rules. Why? Must an individual who desires to run for the legislature have to attest that they have read and understand all the laws of the State of Florida? Is it necessary that a volunteer director, concerned with the operation of a condominium, know how to convert a rental to condominium, develop a phase or mixed use condominium, or calculate converter reserves? Of course not. What is relevant is the condominium documents and perhaps ten sections of the Condominium Act, not all 55 pages. Next week, more on the recent amendments.

Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.

Mr. Poliakoff is co-author of Florida Condominium Law and Practice, The Florida Bar Continuing Legal Education, 1982, and author of a national treatise, The Law of Condominium Operations, West Group, 1988. Mr. Poliakoff can be contacted by emailing gpoliakoff@becker-poliakoff.com.