



## Condominium Law Q&A

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**Question** – I desperately need your help. I am the current president of a twelve unit condominium in Lake Worth. I sent out notices to all unit owners via certified mail of our annual meeting to elect new officers and discuss old business. Three minutes prior to the scheduled meeting, I received a phone call from an attorney who represents an owner that owns two units here. The attorney stated, “I am recalling the board and firing our association,” who handles our business. He arrived with seven proxy’s and gave a list of the new board members. There were three unit owners present when he arrived. There were no minutes taken, a meeting was not called to order. My question. Was this a legal meeting??? According to our documents, no. Our association said there are no changes in our current Board. S.L., Lake Worth

**Answer** – Your question, once again, provides me the opportunity to remind my readers that it is impossible, given the limitation of both time and space, to answer every reader’s questions and to do so on an “urgency” basis. That said, a few issues raised warrant an answer. First, without an amendment to your association’s bylaws permitting an alternative method for electing directors, the statutorily prescribed method of using of a ballot and an envelope had to be followed [effective October 1, 2008 only associations of 10 or fewer units can opt out of the statutory election process]. Furthermore, the statutory election process prohibits the use of proxies in the election of directors. For the election of directors to be effective, at least 20% of the eligible voters must cast ballots. In a 12 unit

condominium, that would be 3. Thus, assuming you follow the statutorily prescribed method, you disallow the proxy votes and count the ballots cast by unit owners. One more thing, the unit owners elect the board, the board elects the officers.

**Question** – Our condominium bylaws require a 30 day notice to owners prior to a budget meeting of the board. However, Section 718.112, Florida Statutes, states that at least 14 days prior to such a meeting, a notice must be given. Our board has taken the position that they are not required to adhere to the 30 day notice, as stated in our documents, and that the state law is the one that takes precedence. Which is the correct procedure to follow? N.P., Fort Pierce

**Answer** – In this case, your documents control. Normally, one must follow the hierarchy of laws. At the top is the Constitution of the United States, Federal laws and Treaties; then the State Constitution, and State Statutes; followed by Municipal laws and Ordinances not pre-empted by State laws; the Declaration of Condominium (Covenants, Conditions and Restrictions for Homeowners Associations), Articles of Incorporation of the association, Bylaws of the association and Rules and Regulations promulgated by the board. The higher priority laws control except in situations where a lower order is more restrictive and that restriction does not circumvent the higher authority. Thus, in this case where the Condominium Act requires 14 days notice, while your documents require 30 days, your documents control. Let’s look at an example of the opposite

result. The Act provides that any member of the board can be recalled upon approval of a majority of the unit owners. The Covenants, Conditions and Restrictions provide that the recall of a director requires the affirmative approval of 2/3rds of the members. The majority requirements of the Act control.

**Question** – Along with the change over to “digital” TV signals in February ’09, I’ve heard a National Public Radio report that the monopoly now held by cable television providers will end. Will those of us living in condo/co-op communities be able to choose our own cable/satellite provider and opt-out of the contracts negotiated for us by our respective boards?

I personally watch little or no television, but I’m being forced to pay a monthly cable television charge to my co-op here in Fort Lauderdale, along with monthly cable fees to my condo in Chicago. Considering the improved digital signal to be “free” over the airways soon, I’d prefer to spend my money elsewhere. T.D., Fort Lauderdale

**Answer** – While the board of a condominium has the right to enter into a contract for provision of bulk cable, the unit owners have the right at the very next association meeting following the board’s action to cancel the contract. Otherwise, you are stuck with paying the cost of bulk cable as a common expense.

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