



Condominium Law Q&A

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Question – My question relates to the annual election for homeowners association boards of directors which was recently held. Three days before the expiration date had elapsed for candidates to file their "Notice of Intent to Run" form, a board member obtained an incomplete proxy from the property manager, reproduced it and went door to door through the community obtaining signatures for their re-election. This proxy did not contain the names of all the opposing candidates. Is this election tampering legal? Is there action that can be taken against the property manager and board members? E.M., Jupiter

Answer – It is unclear from your question whether yours is a condominium or a homeowners association, and it does make a difference, because the Homeowners Association Act does not mandate following the election procedure required of condominiums and cooperatives. Under the Condominium and Cooperative Acts, there are two separate notices required. The first advises of the date and time of the annual meeting and election of directors and invites candidates to notify the association, in writing, of their candidacy not less than 40 days before a scheduled election; the association must give a written receipt to the candidate acknowledging timely receipt of the notice of intent to run. In addition, in what can only be described as lunacy, every candidate for the board must certify that he or she has read and understands, to the best of his or her ability, the governing documents of the association, the provisions of the Condominium Act, and the applicable administrative

rules; a task which I doubt 99% of the attorneys in this State could certify. Proxies cannot be used in the election of condominium directors. Furthermore, no unit owner shall permit any other person to vote his or her ballot. Homeowners association board elections, on the other hand, are governed by the articles and bylaws of the association, and proxies are allowed. Of course, there is no rational reason for condominium elections to differ from homeowners association elections, but that is the way it is.

Question – I live in a gated community, renting a townhouse that is now in foreclosure. Since the owner is not paying his monthly maintenance dues, the board of directors has cut off my amenity privileges, e.g., the game room, exercise room, swimming pool, etc. Our gates operate by remote control. Visitors must call our residence on the gate phone to be admitted. The board has cancelled the system, which lets visitors enter. Do they have the right to do this? Do we have any recourse? T.J., Palm Beach Gardens

Answer – While the language contained within the Homeowners Association Act is somewhat ambiguous, most authorities agree that the actions taken by the homeowners association in suspending the rights of a delinquent member, their guests or tenants, is permitted. The Homeowners Association Act does specifically provide that "suspension of common area use rights shall not impair the rights of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel,

including, but not limited to, the right to park." There are no case decisions interpreting the aforesaid provision; thus, so long as you are permitted to enter the community, even if that means using the visitor entrance and the guard house, suspension of the use of the remote control is within

the Association's rights. If your lease grants you full use of the amenities, sounds like you have a good cause of action against the delinquent lot owner who has caused you the problem.

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