



Condominium Law Q&A

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Question – Our HOA board of directors recently added a new member that is the spouse of an existing member. Our documents reference that we can only have one vote per lot. Does this apply when there are two members of the same household on the board of directors? Does one member have to abstain from voting?

Answer – While the Condominium Act prohibits multiple owners of a single unit from simultaneously serving on the board, there is no similar prohibition in the Homeowners Association Act. Accordingly, multiple unit owners, including spouses, if elected, can serve simultaneously on the board, each casting separate votes.

Question – Hi, I faithfully follow your column and value its benefits to people that are abused by run-away members of boards of directors of individual associations. I would appreciate your opinion on the situation we face in our community. Our community is composed of 5 different developments. The two condo developments comprise of 148 units and 3 developments with 74 houses. Each of them is governed by their own association. The only thing common for all of these developments is one road that leads to our community and constitutes common property. For this reason developer had to come up with sixth association that takes care of this road. It is run like a corporation. The problem all of us have is overzealous and arrogant board of directors that acts like dictators. They refuse to allow any input on their wasteful handling of our finances claiming they

are a home owners association and they do not have to be held responsible to anyone. The problem was magnified by a planned improvement of this road. In spite of many protests they decided to spend 250,000 dollars on unnecessary cosmetic improvement of this road, instead of 80,000 that would be sufficient to resurface the road. This project is a capital improvement and not an emergency repair. Many of us protested that for this kind of improvement is needed 75% approval by all the voting interest in our community. They convened a special assessment meeting at the time when 3/4 of community members were absent and saddled us with \$800 assessment without giving us a chance to express our disapproval. They even signed the contract with company that will perform this work without having collected this assessment. This is a community of people on fixed incomes and there is a possibility that many owners will not be able to pay this assessment. I think to proceed to sign a contract without having money to pay for it was the height of fiscal irresponsibility. At the last meeting, I have requested that the board put the amendment requiring the board to get 75% approval of membership to pass any non-emergency capital improvement assessment on the agenda of the upcoming annual meeting of membership. The board refuses to do so, with the blessing of the management company. Do we have any right under the law to protect ourselves from this abuse? Thank you for your advice. V. Vero Beach, Fl.

Answer – I greatly appreciate the many readers who regularly read my column, and those who choose to

send in questions. I do hope that my readers appreciate that with close to 3,000 letters received each year and limited space provided for responding, it is not humanly possible to answer every inquiry and, in particular, to do so within defined time parameters. It was for this very reason that I chose to write with my son Ryan, *New Neighborhoods: The Consumer's Guide to Condominium Co-Op and HOA Living* (www.newneighborhoodspublishing.com), a consumer's guide, written in conversational English, which hopefully addresses many of my reader's concerns. Addressing the specific question asked, the board of a community association is given broad

discretion in its decision making authority; that which is referred to as the "business judgment rule." Generally, a director must exercise good faith in making the same decisions that an ordinary, prudent person would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interest of the association. The board's authority to approve capital projects which are not deemed necessary maintenance or an emergency, can be limited by the members through an amendment of the declaration of condominium or covenants, conditions and restrictions, should the unit owners desire to do so.

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