



Condominium Law Q&A

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Question: I am the Association President, have been for several years. This year, I was re-elected along with the same group that served as last year's Board of Directors (BOD). Before taking office the place was a mess and no rules were followed. I started to enforce all of the rules and docs and, needless to say, have made more than a few people very angry. We now have a recall of myself and my VP because the people who didn't get on the board cried foul and tried to tell everyone that the election was fixed. When they couldn't prove that, they started this recall. Many of the people who signed the recall notice are out of state. I have asked for the document that was enclosed in the envelope with the ballot and was told by these people that started this, there was nothing else in the envelope, which we know is a lie. Also, we have several people who were told they were signing for something else, such as reducing the BOD from 5 people to 3. One woman who is 83 and her husband is terminal didn't know what she signed but returned it because it said it was from the BOD. This was not sent from the BOD, but from unhappy people who didn't get elected in the first place and have stopped at nothing to mislead and misinform the owners. Two of the current BOD are involved in this also and both have already attempted to convene a BOD meeting illegally behind my back. What I am getting at is they have lied and twisted the truth to get what they want. Our attorney has told me we have 5 days to respond, and if we can't prove that these are those owners' signatures, we don't have a case. And, that misinformation to the owners is not a reason to discard this action. Is there anyway to file a motion

to delay this until all of the owners are made aware of what is going on and get the truth out before it's too late? J.S., Port Orange

Answer: The way it works is as follows. If unit owners file a petition to recall members of the board, once they have the necessary signatures they must turn the petition for recall over to the board, which must, within 5 days of receipt of the petition, call a meeting of the board. At that meeting the board can either certify the petition as being correct, in which case those directors who are recalled must step down, and the vacancies are filled by the remaining directors; assuming that the recall was less than a majority of the board. Or, if the board does not certify the written agreement to recall a member (s) because it feels there are flaws in the petition or the process in which the unit owners' signatures were obtained, the board shall, within 5 days after the meeting, file with the Division a petition for arbitration of the recall. From what you have alleged, the board should consider the arbitration option.

Columnist Note: Notwithstanding the efforts of the 2010 Legislature to clean up some of the ambiguities in the shared ownership Acts, unfortunately, no doubt unintentionally, other glitches were created. For example, previously, homeowner associations could suspend member rights to use the common amenities if the member was found guilty of violating the covenants or rules and regulations. Now, that use suspension can only be imposed in situations where the unit owner is delinquent in

payment of their assessments. Many associations wanted the ability to disconnect cable service from delinquent unit owners. As amended, the Condominium Act allows the association to suspend the right of a unit owner or a unit owner's occupant, licensee, or invitee to use common elements, common facilities, or any other association property if the unit owner is more than 90 days delinquent in paying monetary obligations due to the association. The right to suspend a unit owner's access to the common facilities does not extend to limited common elements, common elements that must be used to access the unit, utility services provided to the unit, parking spaces or elevators. A number of associations have asked if the term "utility services" includes cable t.v. That is, can an association cut off the cable service to a delinquent unit owner? While

most pundits feel that cable is not a utility service, it becomes more complicated when a single provider bundles services such as cable, phones and high speed internet service. And, to be honest with you, most cable providers say it is impossible, and too costly to cherry pick units to turn on or cut off service. So, until the Division issues an opinion, I would recommend against associations cutting off cable t.v. For some unknown reason, while an HOA can similarly suspend access to common amenities in situations where a unit owner is more than 90 days delinquent in paying monetary obligations, it must first give notice of the suspension, and an opportunity for the delinquent unit owner to appear before a grievance committee; as stated, the Condominium Act does not impose the same requirement.

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