



## Board Members May Remove Officers, Not Directors

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By **Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** Our homeowner's association board has had many problems. They have addressed these problems by simply removing and replacing board members. Our bylaws state in two different sections that the board may remove both officers and directors, with or without cause. However, it was my impression that members of the board cannot remove other board members. What is the law on this? **J.W. (via e-mail)**

**A:** In general, the members of the association (parcel owners) elect the board of directors. The board then appoints its officers (president, vice president, secretary, and treasurer).

Pursuant to Florida's Not-For-Profit Corporation Act, officers serve at the pleasure of the board and may be removed with or without cause by board vote. For example, a board which is not happy with its president, could vote in a new president at any time, with or without cause. However, even if an officer is removed by the board, that officer would still remain a board member (assuming they were a board member in the first instance).

Although there has been some confusion regarding the interplay between Chapter 617 of the Florida Statutes (the Florida Not-For-Profit Corporation Act) and Chapter 720 (the Florida Homeowners' Association Act), any inconsistency was laid to rest by SB 1196, which became effective July 1,

2010. SB 1196 specifically provides that recall of HOA directors is not governed by Chapter 617, and is therefore solely governed by Chapter 720.

Pursuant to Section 720.303(10) of the HOA statute, directors may only be removed from office, with or without cause by a majority vote of the total voting interests of the membership (there is usually one voting interest per lot or parcel). Certain procedures have to be followed in the process as set forth in the statute. To the extent your bylaws permit directors to remove other directors, they probably violated the applicable statutes under previous law. As a result of SB 1196, the provision is now clearly invalid.

**Q:** There is a rumor in our homeowners' association that the developer is going to make our residents assume control of the board, even though a small percentage of lots have been sold. Is a developer allowed to do this? **B.L. (via e-mail)**

**A:** That is a somewhat complicated question, and may depend upon when your community was created and the language in your governing documents. The most likely answer is that the developer would have the right to cede control of the board of directors to the homeowners other than the developer.

Chapter 720, the Florida Homeowners' Association Act, applies certain standards to HOAs created after 1995 regarding when a developer must turn over control. However, there is nothing in the statute that says that the developer cannot turn over control earlier, and many developers in fact do so. Most governing documents also specifically permit the developer to decide to turn over an association "early" if it so chooses.

Although there may be exceptions to the rule, I am aware of very few situations where the non-developer homeowners would find it in their interest to resist transfer of control. In my experience, purchasers in common interest developments wish to have control of their affairs through a democratic election process, and are often frustrated with how things are run when the developer is in charge. Taking control of the association does not, as a general matter, let the developer "off the hook" for legal obligations it may have.

**Q:** We are updating and restating our condominium documents. However, amendment of each of the documents requires approval of two-thirds of all owners to pass them. We have a great deal of voter apathy in our community and are not confident that we can get the required vote. What do you recommend? **E.P. (via e-mail)**

**A:** Your problem is a common one. In my opinion, the best solution is to amend each of your governing documents so that they can be amended by two-thirds of those who vote at a duly noticed meeting of the association at which a quorum is present, rather than two-thirds of all unit owners. This way, those who choose not to vote are not voting "no".

Some people are of the opinion that governing documents should be difficult to amend. After all,

three-fourths of all states must approve amendments to the United States Constitution. I would counter by arguing that only those who show up at the polls elect our President. Further, every unit owner is entitled to notice of the meeting where amendments will be considered (along with the text of the proposed amendment) and has the right to vote (even if they are against) by limited proxy.

In any case, you have a "chicken and egg" problem, since you would not be able to amend your document amendment standards to a lower threshold unless you obtain the higher threshold currently required. I have no advice other than to "beat the bushes" for proxies. Many associations appoint a committee and follow up with owners who have not returned proxies, encouraging them to vote, even if they are against the measure on the table.

**Q:** A special meeting of our condominium association is being held for the purpose of voting on whether to fully fund, partially fund, or not fund our reserves. The building is still under developer control, not having been turned over to the owners yet. Does the developer have the right to vote each of its units on the reserve question? **A.C. (via e-mail)**

**A:** Pursuant to Section 718.112(2)(f)2 of the Florida Condominium Act, the developer may vote to waive the reserve or reduce the funding of reserves for the first two fiscal years of the association's operation, beginning with the fiscal year in which the declaration of condominium is recorded. After that time, the developer may not vote and reserves may only be waived or reduced by a vote of a majority of non-developer voting interests, voting in person or by limited proxy at a duly called meeting of the association.

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for*

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