



## Directors Can Vote to Fill Vacancy For Unexpired Term

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Today's column continues our review of SB1196, which became effective July 1, 2010. Today's topic, changes to the housing statutes involving board member qualifications, the filling of vacancies on boards, and annual meeting procedures.

Of interest to cooperative and homeowners' associations, SB1196 addressed a glitch created by the 2008 amendments to Florida's Not-For-Profit Corporation Act (Chapter 617 of the Florida Statutes). The 2008 glitch resulted in a law which required vacancies on cooperative and HOA boards to be filled only until the next annual meeting, rather than for the unexpired term of the board seat in question. Now, Section 719.106(1)(d)6 of the Florida Cooperative Act mirrors the condominium statute by providing that unless otherwise provided in the bylaws, a vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of a majority of the remaining directors, for the unexpired term. As is the case with condominiums, the cooperative board also has the option of filling vacancies by election, rather than appointment. Different rules apply in recall situations. Likewise, Section 720.306(9) of the Florida Homeowners' Association Act has been amended to provide for the filling of vacancies on

HOA boards for the unexpired term, unless otherwise provided in the bylaws, and basically follows the same rules for condominiums and cooperatives.

For condominiums, several election-related changes are noteworthy. First, SB1196 fixed another glitch from 2008, regarding situations where an insufficient number of candidates put their names in for open board seats. The 2008 law stated if an insufficient number of people ran for the board, the incumbent directors, even if they did not stand for re-election, were automatically reappointed to the board. SB1196 reverts to previous law and simply provides that the incumbent directors are eligible for reappointment, but not automatically reappointed.

The new law also tweaks another change from 2008, regarding the general prohibition against co-owners of a condominium unit serving simultaneously on the board of directors. Under the new law, co-owners of a unit are still generally prohibited from simultaneously serving on the board. However, there is now an exception for cases where co-owners own more than one unit. Another exception created by the new law involves situations where there are not enough eligible candidates to fill vacancies on the board at the time

of vacancy. In such cases, co-owners of a unit may likewise serve simultaneously on the board.

Section 718.112(2)(d)3 of the Florida Condominium Act has been amended by SB1196 to eliminate the requirement that the first notice of the association's annual meeting contain a "certification form" wherein candidates for the board must attest that they have read the governing documents of the association, and state that they understand them. Now, instead, SB1196 provides that within 90 days after being elected or appointed to the board, each newly elected or appointed director must certify in writing that he or she has read the condominium documents, that he or she will work to uphold such documents, and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Alternatively, a director may provide evidence of completion of a state-approved educational course. A director who fails to timely file written certification or an educational certificate is suspended from service on the board until compliance is achieved. However, somewhat curiously, the statute goes on to say that the failure to have such certification or educational certificate on file "does not affect the validity of any action."

The 2008 amendments to the condominium statute imposed a new rule of law stating that any person who was delinquent in the payment of any fee or assessment to the association would not be eligible for board membership. The new statute provides that non-payment of a fine is now

additional grounds for disqualification from board service. Further, the new law provides that an existing director or officer who is more than 90 days delinquent in the payment of any monetary obligation due the association (which would include regular assessments, special assessments and fines) is deemed to have abandoned their office, creating a vacancy in the office to be filled according to law. Under previous law, sitting officers and directors could only be removed for non-payment of regular assessments.

Section 720.306(8)(b) of the Florida Homeowners' Association Act has been added as a new election law for HOAs. This new subsection of the statute states that if the governing documents of a homeowners' association permit voting for the election of directors by secret ballot, such ballots must be placed in an inner envelope with no identifying markings and mailed to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. The law goes on to set forth the procedures for processing such ballots, which are very similar to those found in the condominium statute.

In next week's column we will continue our review of SB1196 with a focus on some changes regarding financial operations, including threshold requirements for year-end audits, homeowners' association reserves, and special assessment procedures.

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