

## Term Limits Appear too Restrictive

FORT MYERS THE NEWS-PRESS, MARCH 18, 2004



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Today's column continues a review of one of the most significant, if not bizarre, proposals to amend Florida's condominium statute that has been filed during the past forty years.

In the first two installments, we looked at House Bill 1223/Senate Bill 2498 from the perspective of proposed limitations on the ability of an association to control rentals through amendment (see Rental Bill Creates Some Problems, March 4, 2004) and the bill's proposed confiscation of some unit owners' voting rights (see Bill Would Limit Some Voting Rights, March 11, 2004).

Today's column takes a look at the proposed law's intended imposition of draconian term limits for association board members, limits on family members simultaneously serving on a board, and perhaps strangest of all, residency requirements. By way of late-breaking news, the Bill was recently passed out of the House of Representatives' Committee on Business Regulation. The term limit proposal was scrapped in the House, but remains in the Senate version of the Bill.

The proposed new law, if passed in the Senate version, would limit any person's right to sit on a condominium board to two consecutive years, and then a break would have to be taken.

The idea of term limits is hardly a new one in condominiums. The state agency charged with enforcement of the law has long said that an association wishing to impose term limits can do so through its own bylaws. Although the right to establish term limits has been the law for many years, I am aware of only one or two cases in the real world where owners have found it desirable to impose term limits.

Notwithstanding what happens in the real world, this "government-knows-best" proposal would saddle the state's twenty thousand condominium associations with a law that would preclude owners choosing who is best qualified to protect their investment. Most of the representative governments with which we are familiar do not impose term limits. Where term limits do exist, even our nation's President can serve eight years, as can members of the Florida Legislature.

Although there are undoubtedly a few power mongers who look at condo board serve as a chance to fulfill all of life's spoiled expectations, the reality is that most people who volunteer to serve do so out of a sense of civic duty, often reluctantly, and to help protect their investment. Many associations, particularly smaller ones, have a decidedly difficult time in finding enough people willing to do the job. The term limit idea seems tailor-made to exacerbate that problem. Although the law does create an exception to term limits in some cases, the procedure required is cumbersome and unworkable.

Curiously, according to the proponents of this legislation, one of the biggest problems in condominium living is undue influence and control by management companies over the operation of associations. While I may have missed the point somewhere, it seems to me that having associations run by boards which constantly turn over, with no on-the-job training, is hardly the way to reduce reliance upon management companies in association operations.

The proposed law would also prohibit any two members of an immediate family from simultaneously serving on a condominium board. While I would support an amendment limiting the right of

one unit to field more than one candidate for the board (for example, prohibiting a husband and wife representing the same unit from simultaneously serving), this proposal applies to children, spouses, aunts, uncles, nieces, nephews, and various degrees of cousins, and is not limited to single unit ownership. Thus, if a mother and daughter each owned separate units in a condominium, they could not serve on the board at the same time, even though they pay separate maintenance fees. In addition to constituting taxation without representation, this proposal may well be unconstitutional by denying some unit owners equal protection of the law, and discriminating against them simply based upon their familial relationships.

Finally, HB 1223/SB 2498 provides that no person can serve on a condominium association board unless they have been in residence for three months in the year prior to the annual meeting at which he or she is elected. This proposal disenfranchises new association members, investor owners, and perhaps some seasonal residents. There is also a serious question as to how this would be policed. What if an owner was in the hospital recuperating from an illness in the year prior to the election, can he or she qualify to run?

There is an old saw that fanciers of the law and sausage should watch neither being made. So, either express your opinion to your elected representatives, or keep your eyes closed. ⚖️

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## “Exotic-looking” is Not Reason to Give Pets the Boot

THE NEWS-PRESS MARCH 18, 2004

**QUESTION:** I recently moved into a community that has a homeowners association. In the governing documents it states you can have dogs, cats, or other household pets. It does not state anything about breed, size, or weight. I own two cats that are “exotic looking.” One has spots and the other has pointy ears. The homeowners association now says that I have to get rid of the cats because they look different. These cats are declawed and never go outside my house. The homeowners association wants to take me to court. Do you have any recommendations? J.W. (via e-mail)

**ANSWER:** It sounds as if the Board may be under the impression that these cats are not just “exotic looking,” but may be exotic breeds. If your documents state that you may have a “household pet” I believe that the Board would be within its rights to exclude exotic breeds such as tigers, lions, lynxes, osceolots, or panthers (for example). However, if the only dispute is that your cats “look like” exotics, it sounds like the documents create an affirmative right for you to have what a normal person would consider to be a “house cat.”

**QUESTION:** We hung a bird feeder outside of our condo unit, as have many other condo unit owners in our community. At a recent meeting, a neighbor complained that animals, attracted by the birdseed, destroyed her flowers. As a result,

the Board passed a rule stating that no bird feeders could be filled due to the fact that they attract unwanted animals. We didn’t think that this was right, so we kept our bird feeder. Now they have told us that they are going to fine us every day that we leave it up. We still want to refuse to take it down since there is nothing in the By-Laws that says we can’t have a bird feeder. P.B. (via e-mail)

**ANSWER:** Absent a limitation in the condominium documents, the board has broad discretion to pass rules for the health, safety, and welfare of the residents. It sounds like this is a proper rule for the board to pass and it was passed for a proper reason. While you may disagree with the rationale, it does not appear that the rule was wholly arbitrary or unreasonable. With regard to the fine, the Florida Condominium Act permits condominium associations to fine unit owners for violations of governing documents, including rules and regulations. The authority to fine must be contained in the association’s documents, and you would first be entitled to ask for a hearing. If fines are authorized in your community, and you fail to comply with the rule, you may well end up paying a fine, and also be subject to the association’s attorney expenses.

**QUESTION:** I live in an association where many of the units are rental units. Is it considered harassment to send letters to the renters when they

are breaking the rules? For example, none of the renters pick up their dog waste and the condo association manager says that they have to notify the owners (and not the renters) because it would be considered harassment. Why would this be considered harassment? K.M. (via e-mail)

**ANSWER:** It is not considered harassment to send letters to the renters if they are breaking the rules. In fact, this is an advisable course of action. Before the association can take any further action, it must place the violator on notice, via letter (sent preferably by certified mail). When a unit is rented, I typically recommend that both the unit owner and tenant receive the violation notice letter.

**QUESTION:** Our homeowners association documents state “to qualify to be a Board member, your name must appear on the deed to your property, you must be a resident of the State of Florida, and you must reside in the subdivision.” We have a Board member who was elected to a 2-year term, but when I looked at his information on his deed, I noticed that his house is listed in the name of a Trust. Can he remain a Board member for the remainder of his term? V.A. (via e-mail).

**ANSWER:** There are a couple of problems here. First of all, the answer to your question is that if a home is owned by a trust, either the grantor or the beneficiary of that trust would be a “member” of the homeowners association. That being said, it appears that your homeowner’s association documents have an illegal provision in them. The Florida Homeowners Association statute states that all members of the association are eligible to serve on the board of directors. Accordingly, residency in the State of Florida and

residency in the subdivision are not required, and any such prohibition on non-Floridians or non-residents is against the law.

**QUESTION:** Our homeowners association board of directors holds a monthly “executive meeting of the Board” at which no homeowners are allowed. Is this legal? When we questioned them about this, our Board’s corporate counsel wrote “if the Board meets without providing notice to the membership, no action may be taken unless the meeting was called in case of an emergency and sufficient time did not exist to notify the membership. The Board, however, may meet as a committee of the whole at which items of business may be discussed, but no formal vote taken. Also, the Board may meet with the HOA attorney at any time to discuss pending or contemplated litigation without notice to membership.” Is this legal? What is a “committee of the whole?” V.A. (via e-mail)

**ANSWER:** The law applicable to HOA’s requires that notice of all board meetings be posted at least 48 hours in advance of a meeting, and that the meetings be open to observation by the homeowners. It is true that emergency meetings may be held without such notice, but these must be a bona fide emergency. The letter from the corporate counsel is correct in that the Board may meet with its attorney to discuss pending or contemplated litigation, and such meetings may be closed to the membership. Finally, with regard to the “executive session” or the “committee of the whole” these meetings are, in my opinion, in violation of the law. You can access my recent two-part series on sunshine laws through the Internet, as indicated below. (See Sunshine Law Raises Questions, February 19, 2004 and Sunshine Restrictions Explained, February 26, 2004.) ☺

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