



No Attorney Required at Yearly Meeting

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Q: Is it a legal requirement that an attorney be present at annual meetings for condominium associations? Also, there was a valid election of directors at my association's annual meeting last month, but there was no quorum of owners either in person or by proxy so the membership meeting was not held. Is the board able to hold meetings, appoint committees and conduct business before a legitimate annual membership meeting is held?

A: There is no provision in the Florida Condominium Act that requires an attorney to be present at annual meetings. While some associations have an attorney at every annual meeting, some associations only choose to have counsel present at the meeting when there are specific issues to be dealt with, such as when there are substantial amendments to the condominium documents being discussed or voted upon, when there is some particularly troubling issue in the community where the board would like to have counsel speak as the association's representative, when the board thinks that questions may arise at the annual meeting which the board will not be able to answer and legal counsel could provide assistance, when there is a contested election and the board wishes to have counsel present to monitor the election procedures, or for a countless number of other reasons.

Regarding your association's conduct of its election of directors even though there was no quorum of owners to actually conduct the membership meeting, the Florida Condominium Act requires that only twenty percent of the eligible voters cast a ballot in order to have a valid election of directors, regardless of whether there is a quorum established for the meeting. Even though a quorum was not established at your annual meeting, if twenty percent of the eligible voters cast a ballot the election was valid. The new board does not have to wait until the annual membership meeting is convened (i.e., until such time as a proper quorum for that meeting can be established) in order to conduct the association's business. The board only needs to properly notice board meetings in order to conduct business.

Q: I live in a condominium complex consisting of twelve separate condominiums (each condominium is one building with twelve units). Each condominium has its own board of directors and there is also a community board. My question is how difficult would it be to convert to only a single board of directors overseeing the entire property? D.V. (via e-mail)

A: There are two types of mergers. The first is what is commonly called a "property merger". The twelve condominiums would be "merged" into a

single condominium. In that case, the owners in each of the original condominiums would help to maintain the buildings of all of the other condominiums. A “property merger” is rarely a viable alternative. That is because property mergers require the approval 100% of all owners and all holders of liens against units, including first mortgages, second mortgagees, judgment creditors, etc., unless the declaration of condominium, as originally recorded, provides otherwise. In many cases, for a variety of reasons, a property merger is not a good idea anyway.

The second type of merger is what is called a “corporate merger.” As the name implies, two or more separate corporations merge their identity into a single organization. Thus, in a corporate merger, you would end up with one board of directors to operate the twelve condominiums as well as any commonly owned property (such as a recreation area used by all twelve condominiums). However, in that case, separate budgets and reserves would still need to be kept for each condominium and the recreational facilities. Stated otherwise, the corporate merger results in the creation of what is known as a “multi-condominium association”. Multi-condominium associations are a bit more complex to operate accounting wise than a single condominium association, but they are indeed quite common.

The Florida Condominium Act provides that amendments creating a multi-condominium by the merger of two or more associations must be approved by a majority vote of the entire voting interests. Most attorneys also prepare amendments to all of the condominium documents to address a number of multi-condominium issues. In order to amend the documents, the vote needed may be higher than the vote needed to approve the merger.

Q: I live in a condominium in Fort Myers that overlooks a private golf course that is not part of my community. The owner of the golf course has asked our association’s board of directors to maintain a fence that separates the two properties

and protects our community from stray golf balls. I do not think the association should pay for something that is located on the property of the golf course. May the association spend money to take care of this fence? G.B. (via e-mail)

A: It is doubtful that the maintenance of the fence that you describe as being located on the golf course property is a proper common expense. The Florida Condominium Act provides that common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, as well as the costs of carrying out the powers and duties of the association, and any other expense designated as a common expense by the Condominium Act, or the association’s declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in house communications, and security services, which are related to the general benefit of the unit owners even if such expenses are not part of the condominium property. However, such common expenses must either be services or items provided from the date the control of the board of administration of the association was transferred from the developer to the unit owners or must be services or items provided for in the declaration or bylaws.

The Condominium Act does not specifically authorize an association to make the type of expenditure you describe. In order for your association to expend association funds to maintain the fence, you likely need to amend the condominium documents to designate this expenditure as a proper common expense.

Q: The declaration of covenants of my homeowners’ association contains a passage that only an American flag may be flown from an association approved flagpole. Several homeowners occasionally fly the national flags of their native

country. It seems to me that it is my free speech right to fly whatever flag I want to display. Is the prohibition against flying flags of other countries legal? T.W. (via e-mail)

A: Florida law provides that any parcel owner in a homeowners' association may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display portable and removable official flags of the United State Armed Forces not larger than 4 1/2 feet by 6 feet, regardless of any declaration rules or requirements dealing with flags or decorations.

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Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

The Condominium Act contains similar provisions, but does not contain a guarantee that unit owners be allowed to fly the Florida flag.

President Bush signed the "Freedom to Display the American Flag Act of 2005" in July of 2006. This law requires community associations to permit members to display the U.S. Flag on the owner's lot, unit, or other area set aside for the exclusive use of the member such as a lanai. The new federal law does not prohibit associations from passing rules pertaining to the time, place, and manner of displaying the United States flag so long as the rule is necessary to protect a substantial interest of the association.