



## Condo Board Members Elected for One-Year Terms

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**Q:** I have heard that it recently became state law that board members are now forbidden to run for two consecutive terms of office. Is this true?  
**S.O. (via e-mail)**

**A:** No.

The amendments to the Florida Condominium Act which became effective October 1, 2008, provide that in future elections of condominium association board members, candidates are to be elected for one-year terms, notwithstanding any contrary provision in the articles of incorporation or bylaws.

The only exception is that if the articles or bylaws allow two-year staggered terms, the association can continue to operate with two-year staggered terms. However, a new vote must be taken, under the new law, to “ratify” the association’s agreement to continue with two-year staggered terms. The vote must be approved by a majority of the entire voting interests (there is usually one voting interest per unit).

However, the new law does not impose “term limits.” Even if a board is elected for one-year terms, nothing would stop a unit owner from standing for re-election every year.

In fact, in a 2007 declaratory statement, the Division of Florida Condominiums, Timeshares, and Mobile Homes ruled that term limits, even if contained in the association’s bylaws, are invalid.

The new law discussed above only applies to condominium associations, not cooperative associations or homeowners’ associations.

**Q:** You recently wrote that the new condominium law prohibits “co-owners” of a unit from serving on the board at the same time. Obviously, a husband and wife owning a single unit could not both serve on the board under the new law. My question involves units owned by corporations. Our bylaws state that any officer of the corporation is eligible to be elected by the board. If a corporation has multiple officers, can they all run for (and be elected to) the board, or can corporate-owned units also only have one director representative on the board? **R.B. (via e-mail)**

**A:** Great question. There is no clear answer. Unfortunately, this new law suffers from some ambiguities. This is one of them.

Clearly, the intent of the new law was to limit situations where multiple owners of the same unit (usually husband and wife) could be elected to the board at the same time. But what if a husband and wife own five units? They are “co-owners”, does that mean they still could only have one of them elected to the Board? In my opinion, they could both be elected since the law prohibits “co-owners” of a “unit” from simultaneously serving, they would be co-owners of multiple units.

As to the corporate officer issue, although probably contrary to the intent of the new law, it would seem that since the corporation is the sole owner, its officers are not “co-owners”, and thus eligible for election. Given the intent of the new law, which I do happen to think is an appropriate public policy, your association may wish to consider amending its bylaws to state that each unit is only entitled to elect one director.

**Q:** I read your recent article regarding assessment collection problems. We are having the same problem that many other communities are having, a high level of delinquencies. Your previous column indicated that the association might be able to rent units that do not pay the association. How is this done? **D.M. (via e-mail)**

**A:** Both the statute applicable to condominium associations (Chapter 718) and the statute applicable to homeowners’ associations (Chapter 720) state that if a unit is rented during the pendency of an association lien foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The law goes on to state that the expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

This can be an effective remedy in some cases. However, because many association lien foreclosure now end up in mortgage foreclosure proceedings too, there is a chance that the mortgagee may claim priority to attach rents. Most mortgages do assign rents as security for the mortgage, I am not aware of any case law as to whether the provisions of the housing statutes

would control over the provisions of the mortgages.

If your community has units in foreclosure that are being rented, the board should consult with the association’s counsel as to whether it is cost effective to seek the appointment of a receiver and the attachment of rental income in a given case.

**Q:** You recently wrote an article which indicated the law regarding “material alterations or substantial additions” has been changed. What is the definition of a “material alteration or substantial addition” to condominium property?  
**J.P. (via e-mail)**

**A:** The most often-cited definition comes from an appellate court case that was decided nearly 40 years ago. In finding that the enclosure of a condo balcony with jalousie windows constituted a “material alteration or substantial addition”, the court said:

We hold that as applied to buildings, the term “material alteration or addition” means to palpably or perceptibly vary or change the form, shape, elements or specifications of a building from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its functions, use or appearance.

*Sterling Village Condominium, Inc. v. Breitenbach*, 251 So. 2d 685 (Fla. 4th DCA 1971)

*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.*

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