



## Statutes Disallow Three-Year Terms for Condo Board

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**Q:** Can you tell me if there has been any clarification of Section 718.112(2)(d)(1), Florida Statutes, regarding the terms of condo board members. Our association currently has three-year staggered terms for our five board members. We will likely be unable to hold a special meeting before our annual meeting in January. Can you tell me what our available options might be? **B.D. (via e-mail)**

**A:** 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).

It should be noted that the new law does not specifically address how terms of three-years or more should be handled. It is my understanding from speaking with representatives from the

Division of Condominiums, Timeshares and Mobile Homes (the “Division”) that the new law implies that only two-year terms are allowed, if approved by the members, and new terms of three-years or more are no longer permissible. As a result, you will likely need to amend your governing documents to allow for two-year terms, instead of the three-year terms currently authorized by your governing documents, and hold the “ratification” vote prior to your annual meeting.

If you do not amend your governing documents and obtain the “ratification” vote prior to the annual meeting, newly elected board members in your association will serve one-year terms.

**Q:** Does the board of directors of a homeowner’s association have the legal right to ban renters from having pets? **A.R. (via e-mail)**

**A:** Typically, a board of directors has the authority to adopt reasonable rules. This authority should be specified in your association’s recorded declaration of covenants, articles of incorporation, or bylaws. If the board has this authority, it is important to determine whether the board may adopt rules without a vote of the owners. Sometimes, the owners need to vote and approve rules that are adopted by the board. In some cases, the owners may actually have the right to veto a board rule. However, in most instances the board

has the power to adopt rules without owner input or approval, at a properly noticed board meeting.

A board-made rule cannot contradict any existing provision within the association's recorded declaration of covenants, articles of incorporation or bylaws. If, for example, your association's declaration of covenants (sometimes called deed restrictions) actually permits tenants to have pets, then the board rule would not be enforceable.

You indicate that your association is a homeowners' association. While I am not aware of any Florida case law concerning the enforceability of a board-made rule that applies only to tenants in a homeowner's association, there are a couple of arbitration decisions concerning such rules in the condominium setting. Arbitration decisions apply only in the condominium context, and have no binding legal effect in a court of law. As such, a judge is free to accept or reject the holding of any condominium arbitration decision.

Condominium law arbitrators have concluded that a properly adopted board-made rule that applies only to tenants use rights regarding units (apartments) is valid and enforceable. However, at least in the condominium context, tenants cannot be treated differently regarding the right to use common elements. The condominium arbitrators have specifically stated that certain tenant-specific rules regarding unit use are not arbitrary in their application, do not violate public policy and are not violative of any constitutional right.

**Q:** We own a unit in a condominium located on the water. We have a local owner who does not live in his unit, but who shares it with family and personal friends as guests. In the past few months, he has apparently allowed a friend to bring a boat in, using the association's ramp and keeping the boat at the association's docks. The boat owner does not stay at the condo, but comes and goes, usually on weekends. Some members are concerned that, 1) it does not seem right for someone who is not an owner to have the privilege of using our association docks, and 2) we are concerned that our association has liability if some

kind of accident occurs at our docks or on the seawall. We would appreciate your insight. **P.C. (via e-mail)**

**A:** You may know that owners of condominium units can make use of the unit in any legally permissible way, subject to covenants and restrictions contained in the declaration of condominium or the rules and regulations. I am not aware of any state laws or local ordinances that are violated when a guest of an owner of a condominium unit uses the association's amenities in the manner you have described in your question. However, it may be possible that some local ordinance is being violated by such use, and you may wish to explore that possibility.

The more practical solution for the association, assuming that most of the other members share your concern, would be to include provisions in the declaration of condominium or rules and regulations which limit guest usage of condominium property, including the association's docks. Such provisions are common as many associations wish to control the use of condominium property in order to preserve the quality of life for permanent residents and owners. You should first confirm that your current condominium documents do not already contain adequate provisions to restrict guest activity. If no such provisions exist, you may consider amending the documents to prohibit guests from utilizing association amenities in the absence of the association member. Alternatively, the association could allow guests to occupy a unit and use common amenities, but such guest usage could be reasonably limited. The association's legal counsel should be asked to draft the provision, once an internal consensus is reached on the appropriate policy.

Your second concern regarding potential liability of the association is always an important issue for associations, even in the absence of the guest issue that you describe. Your first line of defense as an association is to be certain to have adequate insurance in place. Moreover, if there are concerns about the physical integrity of the marina area, the

board of directors should consult with a qualified construction professional to confirm that the design and condition of the docks and seawall are adequate to meet state and local requirements and

do not include any hazardous or dangerous conditions.

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