



## Best to Get Majority OK For 2-Year Staggered Terms

### Agenda Items Must Be Specific

Fort Myers The News-Press, February 15, 2009

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** I would like you to please clear up a couple of issues regarding the new condominium election laws. For associations that have two-year staggered terms in their current bylaws, is a majority vote required by the unit owners to "opt in", or can the board make the decision to "opt in" to the staggered terms without a vote of the unit owners? In reading your article, it seems that a special members' meeting must be held in addition to the regular meeting at which the election will be held. And shouldn't the association let the owners know in advance, in the agenda, that elections will be discussed, not just have it under new business without any mention of elections? **G.M. (via e-mail)**

**A:** As with many new statutes, there are uncertainties as to exactly how the statute is to apply in all situations. The plain language of the new two-year staggered term provision in Section 718.112(2)(d)1 of the Florida Condominium Act requires both that the bylaws provide for two-year staggered terms, and that a majority of the entire membership approve operating with a board elected for two-year staggered terms. Presumably, the purpose of the member ratification requirement is to make sure that a majority of the members support two-year terms when the bylaw provision may have been adopted by less than a majority of

all members or when the bylaw provision may have been drafted by the developer.

But what if a two-year staggered term had just been added to an association's bylaws in the past few years and the vote obtained to add that provision was a majority of all members? Unfortunately, the statute does not carve out a clear exception for that situation. Two Declaratory Statements that have recently been issued by the Division of Florida Condominiums, Time Shares and Mobile Homes covering this subject have not clearly determined that such an exception exists. Therefore, the safest approach is to obtain the approval of a majority of the entire membership to continue two-year staggered terms. Furthermore, I believe that the members' resolution be obtained at a members' meeting prior to the annual election in order to have a clear course of action at the annual meeting once it is called to order.

As for your question about meeting notices and agenda items, agenda items must be specific enough to provide reasonable notice of the topic to be addressed. To meet this requirement, it is my advice that specific sub-categories be created under general agenda headings such as "New Business". Otherwise, members might rightly complain that they were not provided with adequate notice of agenda items.

**Q:** In a previous article you stated that “co-owners” from a unit cannot serve on the board of directors pursuant to the new condominium law. What do you mean by “co-owners”? **P.M. (via e-mail)**

**A:** Section 718.112(1)(d)1 of the Florida Condominium Act was amended in 2008 to provide that in a condominium association of more than ten units, “co-owners of a unit may not serve as members of the board of directors at the same time.” The new law does not define what the term “co-owners” means.

In general legal parlance, co-ownership is when two or more natural persons are named on a deed as title holders. The most common form of “co-ownership” is by husband and wife. However, any group of individuals can jointly own real property, including a condominium unit (although some condominium documents contain limitations in this regard).

Where multiple individuals, whether husband and wife or otherwise, own a unit together, they would be considered “co-owners” of the unit and be subject to the limitation of board membership as provided in the new law.

Interestingly, the statute does not address unit ownership by artificial entities (such as corporations or limited liability companies) nor specifically prohibit multiple individuals affiliated with an artificial entity from simultaneously serving on the board. Likewise, the law does not clearly address situations where multiple

individuals (such as husband wife) may own more than one unit as to whether they can run for a board seat affiliated with each unit. It appears that the “intent” of the law is that only one person could represent a given unit on the board, but the wording used to accomplish that objective leaves plenty of room for interpretation.

## **CONFERENCE & TRADE EXPO Local Chapter Show Set for Associations**

On Friday, February 20, 2009, the local chapter of Community Associations Institute (CAI) will host its 15th Annual Conference & Trade Expo at the Alico Arena on the grounds of Florida Gulf Coast University. The Expo is open to the public from 9 A.M. to 3 P.M.

Over 80 exhibitors providing services to community associations will be represented. A two hour continuing education course, “2009 Legal Update” will be presented by Attorney Joe Adams at 8:00 A.M. Both managers and board members are welcome to attend. Registration can be confirmed by calling Robert Podvin at the CAI Chapter’s office. The telephone number is 239-466-5757.

At noon, CAI’s Florida Legislative Alliance, along with several local attorneys and insurance professionals will meet and discuss current legislative issues and proposals. Following this roundtable discussion, there will be an open forum to discuss “Legal and Insurance Issues Confronting Community Associations Today”.

All events are free of charge.

*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.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto: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](http://www.becker-poliakoff.com).*