



Condo Association Has Problem Getting Quorum

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Q: I live in an association with a master and three other, separate condominium groups. We have a major problem getting unit owners to turn in their proxy and getting a quorum for the annual meetings. What suggestions do you have to improve our return rate? How many times can a meeting be called without getting a quorum before the court will take over the association? I would like to see some kind of consequences for failure to return the proxy when you are not attending the meeting. Would this be possible in a form of a fine? **C.S. (via e-mail)**

A: Unfortunately, other than encouraging your neighbors to take an interest in their community and become involved in association affairs, there is little you can do, at least from the legal perspective, to improve your proxy return rate. Instead, my typical response to your problem is to suggest that the association lower its quorum requirement and establish workable member approval requirements, where possible.

You may know that the maximum quorum requirement under the Condominium Act is a majority of all members. Certainly, if the association wishes, the quorum requirement can be reduced to any level, and we find that many condominium associations use thirty percent of the members as their quorum. Of course, you would need to amend your bylaws to reflect this reduced

quorum requirement, and passing that amendment, given your lack of participation, may be difficult. However, if you appeal to the apathetic owners and convince them of the value of having lower quorum requirements so that the association can effectively and efficiently operate, perhaps you might succeed in getting this quorum requirement reduced. While you are at it, you should review your amendment and “material alteration” approval requirements to be sure that they provide for reachable and workable approval requirements.

Some important member votes, particularly at the annual meeting, involve a waiver of financial reporting requirements or the waiver of or reduction in reserve funding. By statute, the vote required for these items is a majority of the members present, in person or by proxy, at a duly noticed meeting at which a quorum is attained. You should also be aware that the Florida Condominium Act specifically states that a quorum is not necessary for the purpose of electing directors in a condominium association. Rather, an election can be held as long as twenty percent of the eligible voters cast a vote.

Your question about how many times a meeting can be called without getting a quorum before the court will take over is interesting. The Florida Condominium Act requires that an annual meeting take place and, obviously, this requires that a

quorum be attained. However, I am aware of associations that, despite their best efforts, cannot attain a quorum. Many condominium documents, as well as Roberts Rules of Order, permit a majority of those present in person or by proxy, even if a quorum is not attained, to vote to adjourn the meeting to a date, time and place certain to attempt to attain a quorum. Arguably, these types of adjournments can be repeatedly done, but only until 90 days after the original meeting, as that is when the proxies that have been received expire. However, depending on what issues were on the agenda to be voted upon, there may be no continuing legal infraction or other requirement that must be met that might cause a court or the Division of Condominiums, Time Shares and Mobile Homes to get involved or cause a member to seek to have a receiver appointed.

Finally, there is no penalty that can be assessed against a member who elects not to participate in the affairs of the association. The right to vote is just that, a right, and not an obligation. While I have never seen a provision in governing documents that attempts to impose a fine or other sanctions for the failure to vote, I would expect that such a provision would be viewed as contrary to the Condominium Act with respect to unit owner voting rights, and would be struck down as improper.

Q: Our board changed the date of our annual meeting, setting it for a month later than last year's annual meeting. Therefore, their term was effectively extended from twelve months to thirteen months. Is this legal? **R.E. (via e-mail)**

A: There is no provision in any of the statutes governing Florida's community associations that require that an annual meeting be held on any particular date. Many associations' bylaws permit the board to set the annual meeting date. In my experience, a vast majority of associations hold their annual meeting during the first quarter of the year, since that typically coincides with Southwest Florida's "season" where, in most cases, the maximum number of owners will be in residence.

If your bylaws require that the annual meeting be held on a specific date, then the board should follow that requirement. However, absent going to court or through arbitration proceedings to get an injunction to require future annual meetings be held when the bylaws require, this is one of those situations where there is not an effective remedy in the law.

Q: Can a condominium association tell someone who has failed to pay a fine that they cannot use the recreational facilities? **D.M. (via e-mail)**

A: No.

The Florida Condominium Act does not permit "lock-out" from recreational facilities under any circumstances.

The remedy for collecting an unpaid fine is typically small claims court.

Q: We have a debate raging in our association as to whether the board of directors is empowered to make certain changes to the appearance of our condominium property. Can you tell us what a "material alteration" of the common property is? **J.F. (via e-mail)**

A: The definition that is most often cited comes from a Florida appeals court case written nearly forty years ago called *Sterling Village v. Breitenbach*. In holding that a unit owner's installation of glass jalousie windows on screened lanais constituted a "material alteration", the court said: "We hold that as applied to buildings the term 'material alteration or addition' means to palpably or perceptively 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."

Subsequent court decisions have held that changing building colors and changing roof styles constitutes a "material alteration."

The condominium statute provides that there may be no material alteration or substantial addition to the common elements except as provided in the

declaration of condominium, and if the declaration is silent, seventy-five percent of all members must approve the change.

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 This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.