



## Condominium Law Q&A

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**Question** – Our homeowners’ association just held its annual membership meeting, at which time the annual election of the board of directors took place. According to the association documents, the entire board is up for re-election each year. The articles of incorporation specify that the board shall consist of at least 3 but not more than 15 directors. Each year, in advance of the meeting date, volunteers are solicited to create the slate. This year there were eight volunteers for the board. In past years, the annual meeting package has contained a limited proxy form to assign voting authority for other routine, and/or special business items, together with a ballot form, sent to each member household, containing the names of volunteer candidates with blank write-in lines for other volunteers or write-ins. The association by-laws specify, in the order of business for the annual meeting, that prior to the election the members present shall determine the number of directors (that number changes from year to year). This year, the existing board of directors, with advice from their attorney, decided not to provide ballot forms to the general membership in the membership mailing. The rationale was that, if a ballot were returned which specified a number of votes in excess of the final determination of the number of directors to be elected, the ballot would be invalid. The result was that ballots were handed out at the meeting, but only to those members in physical attendance, disenfranchising those association members who were not in attendance. Considering limited proxies, there were a sufficient number of members present to constitute a quorum for the transaction of business. However, because the electorate did not include ALL ELIGIBLE VOTERS

(or even a simple majority of all eligible voters), it would appear that the board may not have been elected by a plurality of the eligible voters (Florida Statutes). There was one additional nomination from the floor. The number of directors was set at seven (7), and the seven (of nine total) candidates receiving the most votes were elected. Was the election procedure properly done? Yours is an interesting and very informative column. E.L.K, Palm City

**Answer** – There is no requirement for a homeowners association to send ballots to the members. In fact, it is probably not permitted largely for the reasons stated; it precludes members nominated from the floor from being given equal consideration as those whose name(s) appears on the ballot. We do not have this problem in a condominium because the Condominium Act specifies how elections are to be conducted, including allowing for candidate qualifications and then the use of ballots listing all candidates. The situation at your homeowners association needs to be cleaned up. First, the by-laws should be amended to establish the board at a given number, which shall govern, unless the members vote to increase or decrease the number, and if done, the new number shall apply to future elections not the one at hand. I would recommend following the same process used in condominiums, allowing for candidate qualification followed by the authorized use of ballots and ballot envelopes to preclude election fraud.

**Question** – I live in a 108 unit condominium and recently had to call the electrician to determine why the air-conditioner located on my patio in a closet was not cooling. The electrician found that the conduit under the patio

concrete floor (the slab), which carries the electric wires to the circuit breaker in the kitchen, was corroded with rust. The electricians replaced the conduit and fed new wire through it. I had to pay the electrician and then requested reimbursement from the condo association. My request was denied. The president of the association stated it was my responsibility to replace the wires under the concrete floor. Am I responsible for the wiring under the concrete floors of my apartment? M.R.S. – Indian Harbor Beach

**Answer** – In accordance with the provisions of your condominium documents, which you sent with your inquiry, the unit owners are solely responsible for the repair, maintenance and replacement of air conditioning equipment and associated piping and wiring appurtenant to the unit and part of the unit's air conditioning system, even though located apart from the unit. In this case, I agree with the association that the cost of repairing the wiring is a unit responsibility. ■

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*Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) and has served as its President since the inception of the Firm. He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.*

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