

LEGAL

Director / Officer Questions



**BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST
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Can a non-owner be a Board member?

Every year this question comes up in one form or another. In some cases, it is a spouse who is not on the deed who wants to be on the Board. In other cases, someone who is on the Board moves away but his/her term is not up.

The answer: it depends.

Section 718.112, Florida Statutes, provides in relevant part, “For purposes of this paragraph, the term “candidate” means an eligible person who has timely submitted the written notice, . . . of his or her intention to become a candidate.” Then the statute provides, “A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election.” The law permits anyone to sit on the Board, whether a unit owner or not. Therefore, it is up to your governing documents, usually found in the By-laws and/or Articles, under the section titled, “Director,” to limit who can be on the Board. There are a variety of ways I’ve seen this stated in documents over the years. Some examples are, “a

unit owner or his/her spouse, even if the spouse is not on the deed”, “Unit owners and the parents of unit owners if the parents reside in the condominium”, “Members or tenants for as long as the tenant is leasing a unit at the condominium” or “all directors shall be Members”. If you have concerns about the way your documents address this issue, revisions must be approved and recorded prior to the annual meeting.

Can officers hold more than one position at the same time?

This also depends on your governing documents.

Section 718.112, Florida Statutes, provides, “In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations.” Further, Section 617.0840(4) provides that “the same individual may simultaneously hold more than one office in a corporation.” Once again, we need to refer back to your Articles of Incorporation and Bylaws to determine if there is any limitation on the ability to hold multiple offices at your association. Notwithstanding the foregoing, we rec-

ommend against the president and secretary offices being held by the same person because the secretary may have to attest to the president’s signature on documents.

Can directors vote for the officers by secret ballot?

The only time a secret ballot may be used by the board of directors is when voting for the officers. This was set up years ago because oftentimes directors felt uncomfortable during this type of vote as they either didn’t want to hurt someone’s feelings or were intimidated by a fellow director, by having to openly approve or disapprove that person to a particular seat. The board doesn’t have to vote by secret ballot for the election of officers, but it can.

Mark D. Friedman, B.C.S., is a shareholder in the law firm of Becker and is recognized by the Florida Bar as Board Certified Specialist in Condominium and Planned Development Law. This article is meant for educational purposes only and is not intended as legal advice. If you have any questions or concerns about the topics addressed herein, speak to your attorney before proceeding. Mr. Friedman may be reached at MFriedman@becker-lawyers.com.



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