

LEGAL



What number of Board members are we required to have?

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN CONDOMINIUM AND PLANNED DEVELOPMENT LAW

Section 617.0803, Florida Statutes, provides that a board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or the bylaws. That is the minimum number of directors you can have.

Section 718.112(2)(a) of the Florida Condominium Act sets the default size at five directors, unless the condominium has five or fewer units, in which case the board must have at least three members. This is a default when the documents are not clear.

Most condominium bylaws fix the size of the board. I have seen some bylaws that say, "the board shall be between 3 and 7 members." However, an arbitration decision from Division of Florida Condominiums, interpreted a similar bylaw provision to default to a five-member board. Subsequent decisions have up-

held "sliding-scale" sized boards, but the manner of implementing them must be clearly stated in the bylaws. I recommend that the bylaws fix the size of the board. Bylaw amendments are usually not overly complicated to achieve for something like this.

As to the number of directors usually found in condominiums, three directors is the low end and, from my experience, 7 or 9 is the high end (although I have seen larger boards, particularly in "master association" situations with as many as 29 Board members). The ideal board size may vary, and there is no magic formula. For example, in a condominium with 16 or 20 units, three Board members should suffice.

Having an odd number of members can prevent deadlocks, is the norm, and is what I recommend when asked about

this issue. The quorum requirement is also a factor. The quorum requirement for a six-member board is four, the same as for a seven-member board, so having one extra person available to participate makes quorums more likely. Remember, the quorum is always based on the number of directors you are supposed to have, not the number of directors you actually have through resignations, etc. While there are certainly exceptions to this rule about having a board with an odd number of members, anecdotally, and based on my twenty years of experience, most condominium association board decisions are made by unanimous or near-unanimous consent. I do represent associations with an even number of board members, and some manage it well. Remember, however, that a tie vote does not carry a motion.

I have also found that having a "staggered term" for the directors is beneficial and, again, more common than associations electing all directors for a one-year term. The most common method of establishing this protocol is to have two-year terms. For example, if you had a five-member board, three seats would come up one year for election to a two-year term, two seats would come up the following year for election to a two-year term, three seats the following year, and so on.

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