

## “Authority of Board President Questioned,” News-Press

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By: Joseph E. Adams



**Q: An issue has come up in my condominium association regarding the role of the association president. Some members, including the current president, feel that the president of the association has the authority to take any action on behalf of the association without the consent of the rest of the board. Is this correct? (M.U., via e-mail)**

A: Typically, no. Under most condominium documents, except when unit owner approval is specifically required by statute or the documents, all of the powers and duties of the association are vested in the board of directors. There is nothing in either Chapter 617, the Florida Not For Profit Corporation Act, or Chapter 718, the Florida Condominium Act, that gives a board president of an association any specific or inherent authorities.

The Condominium Act likewise does not discuss the authority of the officers of the association in any substantive manner. The Florida Not For Profit Corporation Act provides that each officer has the authorities, and must perform the duties, set forth in the bylaws of the association.

Well drafted bylaws should provide what express authorities the officers of the association, including the president, have. Typically, the bylaws provide that the president presides over all meetings of the board and the association and has the general responsibility to supervise the affairs of the association and implement the actions of the board. If there are questions regarding the authority of the president of your association, the most efficient way to address that issue would be for the board, at a properly noticed board meeting, and by a majority vote of the board, to establish specifically what the president is and is not authorized to do.

Some associations authorize the president to take certain actions without further board action in order to facilitate the operations of the association. For

example, the president may be authorized to spend up to a certain dollar amount in order to maintain the property, or have the authority to interact with the association's management company or employees. However, the board of directors also has the ability to limit the authority of any officer, including the president.

If a power has not been conferred to an officer by the bylaws or action of the board, it doesn't exist. For example, in most businesses, there is little doubt that the president/CEO of the company has the unilateral authority to hire and fire employees. Conversely, the president of a condominium association would rarely have this authority, unless authorized by action of the board.

Finally, it is important to remember that while directors can only be removed from the board of directors by a recall by the unit owners, the officers may be removed from their office by a majority vote of the board at any time.

**Q: Does a homeowner have the right to request a copy of the management agreement from the property manager? (C.L., via e-mail)**

A: A member of the association is legally entitled to inspect and make a copy of the current management contract, because it is one of the "official records" listed in the Florida Homeowners' Association Act. A written request must be made to the association.

Official records must be made available to the member for inspection within 10 business days after receipt of a written request to the board or its designee. The request is made to the association, not the management company, although the manager usually acts as the custodian of the association's records.

The law does not require an association to mail or e-mail official records to those who request them. Rather, the member must "come to the records" unless the association makes them available over the internet or engages in records policies more liberal than mandated by the statute, which some do.

The failure of the association to make an official record available for inspection or copying within 10 business days after receipt of a written request for same creates a rebuttable presumption that the association willfully failed to comply with the law. The owner is then entitled to the actual damages or minimum damages of \$50.00 per calendar day up to 10 days, beginning on the 11th business day, after the date the written request was received by the association. Legal proceedings can also be initiated to require production of the records and the owner would be entitled to recovery of their attorneys' fees if they win the suit.

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