“Being Recalled Does Not Prohibit Future Service On Board,” News-Press

August 19, 2019

By: Joseph E. Adams

Q: A group of owners in my condominium association are considering recalling certain members of our board of directors. However, a question has arisen as to how long a recalled person is barred from serving on the Board. (B.K., via e-mail)

A: Section 718.112(2)(j) of the Florida Condominium Act states that the unit owners are entitled to recall any or all members of the board of directors, with or without cause. The Florida Condominium Act and supporting administrative rules adopted by the Division of Condominium, Timeshares, and Mobile Homes lay out the process for recalling directors. A majority of the entire voting interests must vote in favor of the recall in order for it to be effective. For example, if your condominium had one hundred (100) units, you would need fifty-one (51) votes for the recall.

In the event that less than a majority of the board of directors is recalled, the remaining directors, by a majority vote, are entitled to fill the vacancies created by the recall. In the event the owners are recalling a majority or more of the board, the statute and rules require that the owners also nominate replacement directors and an election be held as part of the recall procedure.

In cases where the board fills the vacancy, the vacancy cannot be filled by the person recalled. However, being recalled does not prohibit future service on the board. For example, a director recalled today could put their name into nomination and be put on the ballot for the next annual meeting where director seats are up for election.

Q: Can a condominium association restrict the number of units a person or corporation can own? The concerns are financial, more rental units, and voting control. (C.K., via e-mail)

A: Establishing a limit on the total number of units that any one individual or corporate entity can own, may (or may not) discourage potential commercial investors from seeking to purchase a large number of units in a community. This could offer some protection against skewed voting control, encourage a stable resident population, and, perhaps, protect property values.

However, such a restriction may be considered to be a "restraint on alienation," which is a legal term for covenants and agreements which restrict the free transferability of property. Courts will allow such a restraint, provided that it is reasonable. In 1983, the Massachusetts Supreme Court found such a restriction to be reasonable in the condominium context. The Court in *Franklin v. Spadafora*, 388 Mass. 764 (1983) held that the restriction was a reasonable means imparting continuity of residence, inhibiting transiency, and safeguarding the value of investment.

A Florida appellate court also recently addressed this issue in *The Tropicana Condominium Ass'n, Inc., v. Tropical Condominium. LLC*, No. 3D15-2583 (Fla. Dist. Ct. App. Nov. 16, 2016). The Court upheld the amendment and applied a "reasonableness" standard to the amendment. Specifically, the Court noted that one owner had acquired six units, and allowed all of them to go into foreclosure. The Court further stated that given the relatively small size of the condominium (having only 48 units), multiple foreclosures caused by a single owner's financial circumstances, could have a significant, detrimental financial impact on the condominium association. You will also note that the Court analyzed the application of the provision to the ability of a mortgagee to foreclose, and, thus, presumably the availability of mortgage lending as facture in analyzing the reasonableness of the restraint.

So it would appear that such amendments will be upheld if reasonable if the context of the community, which would presumably include the stated reasons for the restriction. It would be necessary to have a Florida licensed attorney prepare such an amendment and this work should also include review of the association's particular circumstances.
