

“Candidate Statements Permitted in Board Elections,” News-Press

January 4, 2021

By: Joseph E. Adams



Q: Is it permissible for a candidate for the board to include personal information about himself or herself in the official ballot mailing sent by our condominium association? Does the board have the right to edit these or withhold inflammatory comments? (S.M., via e-mail)

A: Section 718.112(2)(d)4 of the Florida Condominium Act provides that upon request of a candidate, an information sheet must be furnished with the mailing of the ballot. The information sheet may not be larger than 8 ½ by 11 inches, on one side only, and the candidate must provide it to the association no later than 35 days before the election. Practically speaking, this serves as a great opportunity for the candidate to introduce himself or herself to owners and set forth any priorities or philosophies they have. However, there is no legal requirement to provide an information sheet if an owner chooses to run for the board.

I sometimes see controversy over the content of a candidate’s information sheet, especially when it is critical of the incumbent board or management, or makes statements that others feel are false or unfair. I have even seen information sheets that are clearly defamatory, and this raises concern over whether the association can or should play the role of editor or censor.

In my opinion, although there is some debate in legal circles about this, the answer is no.

The statute specifically states that the association is not liable for the contents of the information sheets prepared by the candidates. There is no similar immunity for the author of the information sheet. So, while the candidate has the right of free speech, they also face potential liability if they engage in defamation.

The relevant provision of the Florida Administrative Code provides that upon timely request of a candidate, the association shall include, with the second notice of election, a copy of the information sheet, “which may describe the candidate’s background, education, and qualifications.” Some argue that an association may limit an “information sheet” to “information” (not opinions), bolstered by what the regulation states the document “may” include.

However, the same rule goes on to state that the association may not “edit, alter, or otherwise modify the content of the information sheet.” Therefore, if the material is one side of an 8 ½ by 11-inch sheet of paper, I believe the information sheet must be sent out exactly as received from the candidate.

The failure of an association to transmit a copy of a timely delivered information sheet of each eligible candidate to the eligible voters requires the association to transmit an amended second notice within the time required by the rule. The amended notice must explain the need for the amended notice and include the information sheet(s) not included with the initial second notice. If an amended second notice cannot be timely transmitted, the association must re-notice and reschedule the election.

If the election has already occurred, or there is insufficient time under the rule to timely transmit the information sheet, the election is deemed void and the association must re-notice the election, following the procedures set forth in the law. Election disputes are adjudicated through the State’s arbitration program. While most election procedure errors are reviewed for materiality (whether they affect the outcome of the vote), there are “three deadly sins” that will always result in the invalidation of an election. This is one of them.

I would also point out that there are no similar statutes and rules in the homeowners’ association context, although I do occasionally see HOA bylaws that incorporate many of the details of the condominium election laws and procedures.

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