

“Committee Conundrum Explored,” News-Press

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Q: A director on our condominium board recently resigned, but would still like to volunteer on a committee. Is this permissible? (S.F., via e-mail)

A: I believe so, but the law is a bit of a mess.

Section 718.103(7) of the Florida Condominium Act defines a “committee” as “a group of board members, unit owners, or board members and unit owners appointed by the Board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.” Such committees, sometimes called “statutory committees,” may clearly contain both (or either) board members and non-board members.

With one exception, the composition of other committees, sometimes called “non-statutory committees,” is not addressed in the Florida Condominium Act. The exception is for what is often called the “fining committee” (sometimes called “compliance committee”). Section 718.303(3)(b) of the Condominium Act prohibits board members from serving on this committee.

Section 617.0825 of the Florida Not For Profit Corporation Act authorizes the appointment by a majority of the board “from among its members,” an “executive committee” and “one or more other committees.” Unless restricted by the articles of incorporation or bylaws, the executive committee and these “other committees” may be delegated the powers of the board of directors, subject to certain exception set forth in the statute, such as the inability to fill vacancies on the board. The corporate statute does not appear to authorize or contemplate committees that are not comprised entirely of board members.

So the “glitch” in the law is that there is no clear path in the statutes for persons who are not board members to serve on condominium association committees unless it is the fining committee or a “statutory committee” (budget committee or committee empowered to “take action”). It is unclear where this

leaves most “non-statutory” committees, which are typically advisory to the board, and usually include (and sometimes entirely consist of) people who are not on the board.

Most bylaws probably fill this gap, and well written bylaws should be carefully drafted to address this issue. I do think this is a “glitch” in the law that needs to be fixed.

Q: When I purchased my condominium unit, the assessments were paid quarterly. Recently, the board has stated that assessments must be paid monthly, and have also stated that any payment not paid within 10 days of their due date is subject to late fees, interest, and referral to an attorney for collection. Can the board make these changes without seeking membership approval? (A.S., via e-mail)

A: Possibly. The Florida Condominium Act states that the payment of assessments may not be any less frequently than quarterly. In practice, this means that the two options are quarterly or monthly.

Your condominium documents should address the issue. If your documents specifically state that assessments must be monthly or quarterly, the board could not make that change without an amendment to the documents. Many documents state that the board may determine the payment schedule for assessments and specifically authorize the board to choose monthly or quarterly payments.

The statute likewise does not define when a payment is “delinquent.” That is typically determined by the condominium documents. While I have seen many different documentary provisions, 10 days is a frequent standard. Adding late fees also requires authority in the condominium documents.