

“Death of Candidate Does Not Require New Election,” News-Press

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By: Joseph E. Adams



Q: My condominium association recently held its annual election. Seven people ran for five open seats, including the five incumbent directors and two other candidates. The ballots were sent out properly. An incumbent board member passed away a week before the election. At the annual meeting, the remaining four members of the board were re-elected. There was no mention of any votes the deceased member received. One of the two non-incumbents was also declared a winner. What should have happened to the votes received by the deceased member? Should the original ballots have been changed to remove the deceased candidate and redistributed? (M.W., via e-mail)

A: The votes received for the deceased candidate would not be treated as void or invalidate the election. As of the deadline date for mailing out the ballots, there were seven qualified candidates. If one candidate is disqualified (here due to death), any votes for them should still be counted.

If the deceased person was in the top five place finishers, since they obviously could not be seated on the board, the sixth-place finisher would be elected. The rules are somewhat different if the disqualification existed prior to the ballot deadline date. In those cases, revised notices and ballots are to be sent out.

The rules on condominium association elections are set forth in some detail in Rule 61B-23.0021 of the Florida Administrative Code, which can easily be located through most on line search platforms.

Q: What recourse, if any, does a condominium association have in requiring that every unit owner’s lanai be uncluttered, and not a hoarding situation? I am concerned with unsanitary conditions leading to pest infestation and mold. Thank you. (H.M., via e-mail blog).

A: For an overview of the challenges of dealing with “hoarding,” see my column dated March 31, 2019, titled “*Hoarders Present Difficult Challenges for Association.*” Past issues of the column are available online at <https://www.floridacondoalawblog.com/2019/03/31/hoarders-present-difficult-challenges-for-association/>.

If you were to survey condominium unit owners as to what they like and don’t like about condo living, I suspect you would find that living in a well maintained and aesthetically pleasing community tops the list.

Some condominium documents, usually the rules and regulations, contain specific provisions regarding what may and may not be kept or stored on lanais. I would say, however, that most documents contain more general standards such as requirements for “neat and orderly” appearance, or prohibitions against conditions which constitute a “nuisance.”

The first step would be to document the conditions (such as with a photograph taken from public view areas of the common elements) and send that information to the association’s legal counsel. Counsel will review your current documents and advise if they contain sufficient regulation, or perhaps need to be amended. Typically, a board rule is sufficient to address these situations and board rules regarding common elements (lanais are most often limited common elements) are typically fairly easy to amend.

As with any other violation of the condominium documents, if the unit owner fails to cure the violation after written notice, the association may proceed with other enforcement options. These include fining, suspension of amenity use privileges, and legal action which would seek an order requiring compliance with the documents and payment of the association’s attorney’s fees.