# “Delinquent Owners Can’t Serve on Board,” News-Press

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**By: Joseph E. Adams**

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**Q: Our condominium association’s bylaws provide that for an owner to be qualified to serve on the board, he or she cannot be delinquent more than 30 days. Our manager says the state statute says 90 days and supersedes our bylaws. Do our bylaws or the statute control? (R.G., via e-mail)**

A: The controlling authority when condominium documents conflict with the statute is an exceedingly complex issue, which often confounds even Florida Bar board certified attorneys who practice in this field. I assume your manager was relaying advice from the association’s counsel, as managers are prohibited by law from rendering legal opinions and among other things, risk their license when they cross the line. In my experience, the vast majority of managers stay in their lane and would not venture a legal opinion of this nature.

Although debatable, it would be my opinion that the statute governs in this situation because it is procedural and regulatory. However, that is a fairly debatable point. Section 718.112(2)(n) of the Florida Condominium Act states that a director or officer who is more than 90 days delinquent in the payment of any monetary obligation due to the association is considered to have abandoned his or her position. The remaining board members can then appoint someone to fill the vacancy. Similarly, a candidate for the board who is delinquent in the payment of any monetary obligation due to the condominium association is ineligible for board service pursuant to Section 718.112(2)(d)2 of the Florida Condominium Act.

Section 720.306(9)(b) of the Florida Homeowners’ Association Act also provides that a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the homeowners’ association with respect to any parcel is deemed to have abandoned his or her seat on the board, creating a vacancy to be filled according to law. Further, this same section, like with the Florida Condominium Act, provides that a person

who is delinquent in the payment of any monetary obligation due to the homeowners' association may not seek election to the board.

**Q: I sent an e-mail to everyone on our homeowners' association board five weeks prior to our annual meeting, responding to a newsletter soliciting us to put in our name if we wanted a board position. I put in for president. I was not mentioned in the newsletter prior to the meeting, not on the proxy for the meeting and I was not on the ballot handed out at the election meeting. Is this fair practice? What are my options? (D.M., via e-mail)**

A: Section 720.306 of the Florida Homeowners' Association Act provides that the election of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Some governing documents provide for an advance self-nomination process, some don't. When self-nominations are permitted, some documents provide detailed procedures, some don't.

Some associations solicit self-nominations though not required by the documents. In such cases, an owner whose name did not appear in the pre-meeting materials would have the right to nominate themselves from the floor at the annual meeting. If the documents contain a self-nomination right and procedure that was not followed, that would be a basis to challenge the election. Generally, such challenges must be undertaken within 60 days of the election.

My advice to homeowners' associations has been, for many years, to adopt bylaws that essentially mirror the election procedures required by statute for condominiums. They are fair, secret, and relatively easy to administer.

**Q: Must draft meeting minutes be made available to owners on request, or do they need to wait until the minutes are formally approved? (K.N., via e-mail)**

A: Although I don't believe the courts have ever addressed this, it has always been my interpretation that draft meeting minutes would be considered "official records" under the applicable statutes, and subject to owner inspection rights. Of course, they should be labeled as a draft and are not to be considered the actual meeting minutes until properly approved.

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