“Directors Can’t Vote by Proxy,” News-Press

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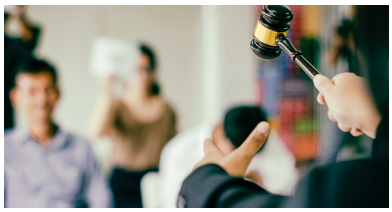

Q: If a board member in a homeowners’ association can’t be present at a board meeting, can they vote in advance and in writing for a specific issue? Can another board member submit their written vote at the board meeting? (J.T., via e-mail)

A: No. Section 720.303(2)(c)3 of the Florida Homeowners’ Association Act specifically provides that “directors may not vote by proxy or by secret ballot at board meetings.” The only exception is for the use of secret ballots for the election of officers. Black’s Law Dictionary defines a “proxy” as the written authorization given by one person to another so that the second person can act for the first.

A board member may only vote by attending a meeting in person and voting on the measure after it has been presented for vote. In person participation includes physical presence at the meeting or presence by remote means such as telephone or video conference.

The Condominium Act contains similar language regarding voting by directors.

Q: I am a condominium unit owner. Our landscaping contractors were incorrectly maintaining part of the property. I approached them and told them that they were doing their work wrong and directed them to what they should be doing. The next day, I received a note from the condominium association telling me not to give instructions to the association’s contractors, and that I should contact a member of the board if I had concerns. Don’t I co-own this property, and shouldn’t I be able to make sure work I am paying for is done correctly? (J.O., via e-mail)

A: While you are indeed a co-owner of the common elements, you do not have the right to give direction to the association’s vendors. Section 718.111(1)(c) of

the Florida Condominium Act states that a unit owner does not have the authority to act for the association by reason of being a unit owner.

The authority to oversee contractors rests with the board of directors, its officers, and management. If you see something that you feel needs to be addressed, you should contact the association's manager or a member of the board. Many contractors are hesitant to work at condominium projects for this exact reason, and you are not doing your community any favors.

Q: The president of our condominium association makes our manager get three bids for every contract we are considering. I am a board member and think this is unnecessary, especially for small contracts or contracts with long-time vendors. What are the legal rules on this? (T.B., via e-mail)

A: In general, competitive bidding is desirable and part of the board's exercise of its fiduciary responsibility. As a starting point, you should review your association's condominium documents because sometimes they contain requirements stricter than the minimum requirements of the law.

Section 718.3026 of the Florida Condominium Act sets forth the minimum requirements of law. The requirement for "competitive bids" only requires 2 bids (not 3), though there is nothing wrong with getting 3 bids or more if the board wishes to do so.

Competitive bidding is required for any contract that requires the expenditure of more than five percent of the association's annual revenue. There are exceptions to the legal requirement for bidding including emergency situations or where there is only one provider of the goods or services at issue in the county where the condominium is located. Also exempt are contracts with employees of the association, attorneys, architects, managers, engineers, and landscape architects.

It is not uncommon for boards to have bidding policies that exceed the minimum requirements of statute, though this would be a decision of the board as a whole, not any single person, including the board president.