Directors Usually Permitted To Hold More Than One Office

November 18, 2018

By: Joseph E. Adams

Q: Can the president of a condominium association also serve as the treasurer? None of the other board members would accept the treasurer's position, and our president now has a dual role. (K.S., via e-mail)

A: Unless prohibited by the condominium documents, yes. Section 718.112(2)(a)1 of the Florida Condominium Act provides that a condominium association's bylaws must provide for the title of the officers and specify their powers, duties, manner of selection, removal, and compensation, if any. If the bylaws are silent with respect to these items, this same section provides default provisions that are deemed to be included in the bylaws.

The statute also states that the association "shall have a president, secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations," who serve at the pleasure of the board, and without compensation unless otherwise provided in the bylaws.

Most directly on point, Section 617.0840(4) of the Florida Not For Profit Corporations Act (which applies to most condominium associations) specifically provides that same individual may simultaneously hold more than one office in a corporation, unless prohibited by the bylaws.

In fact, unless required by the bylaws, there is no requirement that officers be members of the board. I am familiar with many communities where the treasurer is a person with a financial background who chooses not to serve on the board, for whatever reason. It is important to note that in situations such as this, a treasurer who is not a board member must still be added to the association's fidelity bond.

While your president is to be lauded for taking on the extra work, I do not think this is a good idea for several reasons. For one, overloading any volunteer

contributes to “director burnout” and makes it more difficult to find anyone to serve when this person is no longer willing to do so. Of equal importance, I believe your accountants would advise that allowing one person to hold those two offices does not provide the “separation of control” that is appropriate in associations as a customary protection against defalcation of association funds.

Grilling on Townhouse Deck Permissible Sometimes

Q: We live in a townhouse with a back deck. The end of the deck is 10 feet from the living area of the townhouse. Can we use our grill there? It is propane. (S., via e-mail)

A: Maybe.

Section 10.10.6.1 of The Sixth Edition of the Florida Fire Prevention Code prohibits using grills on any balcony under any overhang portion of the balcony, or within 10 feet of any structure. However, this prohibition does not apply to one- and two-family dwellings, defined by Section 3.3.183.22 of the Code as “buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms.”

If the townhomes in your community are arranged with three or more units joined together, use of a propane grill must be more than 10 feet away from any structure, to the extent there is not an overhang above. If the townhomes in your community are instead arranged with only two townhome units sharing one party wall, then they may constitute a two-family dwelling as defined and would not be subject to that restriction.

Even if permitted by the Code, you also need to confirm that your association has not adopted any covenants or rules which prohibit or limit the use of grills. Properly enacted provisions of a community’s governing documents can be more restrictive than the minimum safety standards of state or local law.

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