

## “Former Felon Board Member Eligibility,” FCAP Managers Report

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Fla. Stat. §§ 718.112, 719.106 and 720.306 each contain a limitation on an individual’s ability to serve on a community association board of directors if the person is a convicted felon. Specifically, a convicted felon is not eligible to serve on a community association board “unless such felon’s civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board.”

The restoration process for voting rights and a person’s eligibility for such restoration were previously dictated by the rules of clemency that each Florida governor set. Prior to Governor DeSantis, Governor Scott had adopted clemency rules that that differed from prior rules in that:

People with nonviolent convictions had to wait 5 years after they completed all of the terms of their sentence before being allowed to apply for restoration of civil rights.

The 5-year period noted above would reset if an individual was arrested for even a misdemeanor during that five-year period, even if no charges were ever filed.

Certain felons were required to wait seven years before being able to apply to have their voting rights restored, and had to appear for a hearing before the clemency board.

A provision allowing people to apply for a waiver of the rules, in place under Bush and Crist, was eliminated.

Under this system, the Florida Commission on Offender Review had a database that one could search in order to determine if a person’s voting rights had been restored. This database can be accessed at: <https://fpcweb.fcor.state.fl.us>. Presently, this database can be used to determine whether a convicted felon can

serve on a community association's board of directors.

The foregoing process has been upended by the passage of Amendment 4 in 2018. Amendment 4 provided that:

**Article VI, Section 4. Disqualifications.—**

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation. (b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

The intent of Amendment 4 was that a former felon's voting rights would be automatically restored upon completion of the felon's sentence. Thus, a former felon would not have to go through the clemency process by applying for restoration of voting rights.

This year the Florida legislature enacted Fla. Stat. § 98.0751 to provide additional provisions related to the qualifications for restoration pursuant to Amendment 4 as well as the process for an election supervisor to determine eligibility. Notably, the Legislature also enacted Fla. Stat. § 98.0585 which provides that out of "public necessity that information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored through executive clemency or pursuant to s. 4, Art. VI, of the State Constitution, which is held by an agency and obtained for the purpose of voter registration, be confidential and exempt from public records requirements and be used only for purposes of voter registration." Accordingly, a voter registration form submitted to a supervisor of election is confidential and not subject to disclosure. Fla Stat. § 98.0585.

The difficulty that community associations will face is that it is not easy to determine whether a person has completed their sentence as defined by Fla. Stat. § 98.0751 so as to have their voting rights automatically restored.

First, there is not a central database accessible by the general public of judgments of conviction. One would have to know the county in which the conviction occurred. Once that information is obtained, the next difficulty is that many judgments of conviction are not readily viewable online through a clerk of court's online record viewing system thus requiring obtaining the judgment of conviction from the clerk of court. Lastly, while the determination of whether a person has actually completed their prison sentence may be relatively easy to make, whether that person completed any obligation for restitution and the repayment of court costs and fees is not.

This determination will likely require the assistance of the association's attorney. While the effects of Amendment 4 will not be fully felt for a few years, the problems in readily being able to determine a potential director's eligibility may warrant the creation of a database such as the one maintained by the Florida Commission on Offender Review or a legislative change that would make determining whether a convicted felon is eligible to serve on a community association board of directors more straight forward.