“New Law Lays Term Limit Debate to Rest,” News-Press

June 7, 2021

By: Joseph E. Adams

Q: Is there a legal opinion on the impact of a condominium association’s board term limits due to the emergency declarations and emergency powers granted to association boards? (D.S., via e-mail)

A: No. Effective July 1, 2018, the Florida Condominium Act was amended to provide that a board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election, or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

In 2017, a similar law was enacted but it only applied the 8-year term limit to 2-year board terms. Since the law’s 2017 adoption and its 2018 revision, it has been unclear how the statute applied. The statute failed to indicate if the term limit was “retroactive” which led to conflicting interpretations and to some debate within the legal community.

The Division of Florida Condominiums, Timeshares, and Mobile Homes issued a Declaratory Statement stating that any director who had accumulated 8 years of continuous service would be subject to the term limit. But the question of retroactive application of the law was not analyzed in the Declaratory Statement. It remained unclear how or whether the Declaratory Statement would reverberate beyond its specific ruling. The Division later revised its point of view on this issue.

Senate Bill 630, with an effective date of July 1, 2021, will settle this debate if signed into law by the Governor. Senate Bill 630 expressly provides that only board service that occurs on or after July 1, 2018, may be used when calculating a board member’s term limit. This provides a clear start date for calculating board term limits under the statute. It is expected that this Bill will be signed and become law on July 1.

Term limits set forth in bylaws are not affected by this new law. Further, the various States of Emergency applicable to the COVID-19 pandemic have no bearing on this issue.

Q: My homeowners' association board of directors plans to meet in an "executive session" with the association's attorney. I want to attend this meeting. Do I have the legal right to attend? (D.T., via e-mail)

A: It depends on the contents of the discussion at the meeting and who is in attendance. A board meeting occurs when there is a quorum of the board of directors, and they are conducting association business. A vote is not required in order for business to be conducted.

Under Florida law, for both homeowners' and condominium associations, members of the association do not have a legal right to attend a board meeting where the board is discussing: (1) "personnel matters" or (2) "proposed or pending litigation" and the association's attorney is present (in person or via phone/video-conference) and the contents of the discussion would otherwise be protected by attorney-client privilege (meaning the meeting is held for the purpose of seeking or rendering legal advice).

For example, if the "executive session" was to interview attorneys, including the attorney currently representing the association, then the meeting should still technically be open to member attendance. On the other hand, if the board is meeting with the association's counsel to discuss a litigation threat from an owner, that meeting could (and should) be closed to member attendance. Although the law is not entirely clear on this point, the prevailing view is that notice of closed meetings must be posted 48 hours in advance.

Joseph Adams is a Board Certified Specialist in Condominium and Planned Development Law, and an Office Managing Shareholder with Becker & Poliakoff. Please send your community association legal questions to jadams@beckerlawyers.com. Past editions of the Q&A may be viewed at floridacondohoalawblog.com.

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