

## “Notice of Annual Meeting Requirement,” Naples Daily News

October 19, 2019

By: David G. Muller



**Q: The manager of my condominium association sent out the first notice of annual meeting and election late. Instead of sending out the first notice 60 days in advance of the annual meeting he sent the first notice out 55 days before. When I raised my concern he said there likely won't be enough candidates for an election anyway and he doesn't want to move back the date of the annual meeting because the Bylaws require the annual meeting to be held on a specific date. The manager also said that he doesn't want to move back the annual meeting date because several owners have already purchased flights to come down for the annual meeting and he doesn't want to mess up their travel plans. Must the annual meeting be moved back and another first notice sent out? *B.P.***

**A:** Yes, the annual meeting must be moved back and a new first notice of annual meeting must be sent to the owners not less than 60 days prior to the new date selected.

Rules from the Division of Florida Condominiums, Timeshares and Mobile Homes (the “Division”) state that there are three “fatal” election flaws for condominium associations which require a new election: (1) Failure to send the first notice by the 60 day deadline; (2) Failure to timely deliver each candidates information sheet in the second notice; and (3) failure to include the names of all the candidates on the ballot.

Here, a fatal flaw has been committed as the first notice was not sent by the subject 60 day deadline. If the Association goes forward with the current annual meeting date and the election is challenged the Division will order a new election.

**Q: It is a requirement to be an owner to be eligible to serve on the Board of Directors at my condominium association. A unit is owned by a**

**trust and the person residing in the unit (full-time) is apparently the beneficiary of the trust. This person has indicated that he plans to run for the Board at the December annual meeting. Is he eligible? A. R.**

**A:** Yes. Section 617.0802, Florida Statutes, which governs not-for-profit corporations (note: most community associations are not-for-profit corporations), states that in the event that the eligibility to serve as a member of the board of directors of a condominium association is restricted to membership, a “grantor” of a trust or a “beneficiary” of a trust which owns a unit shall be deemed a member of the association and eligible to serve as a director, provided that said beneficiary occupies the unit.

Since this person meets one of these criteria, as a beneficiary of the trust who resides in the unit, he is eligible to serve on the Board, assuming he meets all other eligibility requirements.

This article was originally published in *Naples Daily News*.