

“Only Directors Can Vote,” News-Press

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By: Joseph E. Adams



Q: If our secretary steps down, we will only have 4 directors. How do we break a tie when voting on upcoming issues? (S.K., via e-mail)

A: I think you are confusing the roles of officers and directors. Directors are elected by the members (they are “the board”) and only directors vote at meetings of the board. If your various officers are also directors (which is usually the case, though many associations have officers who are not directors), they get to vote as a board member.

Generally speaking, a vote on any motion that ends in a tie vote is considered to have failed. One common misperception is that the president of the association can break a tie. While Robert’s Rules of Order and similar parliamentary guides provide that the chair only votes in the event of a tie, even if your association’s bylaws incorporate Robert’s Rules, state law supersedes the procedural guidance from these manuals and there is no provision in the statutes authorizing the president of the association to break ties. Assuming the president is also a director, he or she gets 1 vote, just like all the other directors.

Both the Florida Condominium Act and the Florida Homeowners’ Association Act provide that when a vacancy on the board of directors occurs before the expiration of the term, the vacancy may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum of the board. In your case, 3 directors would need to agree on who should fill the vacancy and that is the goal I would recommend you seek to accomplish.

Q: I am a member of my condominium association’s board of directors, and we were recently discussing our options in enforcing violations of the documents. One issue that came up was suspending owners’ use rights in our amenities. I think this may be helpful for us, but I am not sure how it would work, and how such suspensions are enforced. Can you elaborate? (G.M., via e-mail)

A: Section 718.303 of the Florida Condominium Act gives the association the right to impose fines and common facilities use rights suspensions against owners for violating the condominium documents.

While the process is somewhat complicated, the main issue that associations should understand in proceeding with imposing fines or common facilities use rights suspensions is that before a fine and/or suspension can be imposed, there must be a hearing in front of an impartial committee. The statute states that the committee must be made of at least 3 members who are appointed by the board, but who are not officers, directors, employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee of the association.

If the impartial committee upholds the fine and/or suspension the board can then impose it. The notice of the hearing before the committee must be received by the person to be fined or suspended no less than 14 days before the hearing date.

The statute also states that while a person can be suspended from using the common facilities of the association, the suspension for a condominium does not apply to limited common elements intended to only be used by that unit, common elements needed to access the unit, or utility services, parking spaces, or elevators. However, typical recreational amenities, such as swimming pools, gyms, clubhouses, tennis courts, etc. are subject to the suspension.

While the statute gives associations the right to impose suspensions, the statute does not outline any mechanism for enforcing it. As such, if the association does not have the means to “lock out” the unit owner from the facility, such as electronic fob systems that can be turned on and off, suspensions can be difficult to enforce, you would probably need to go to court.

Chapter 720, the Florida Homeowners’ Association Act, contains similar language regarding the imposition of fines and suspensions.