

Directors may abstain from voting



Condo Q&A
Joe Adams
Guest columnist

Q: In your column of August 5, 2018, titled “Board President Should Vote,” you state that “[u]nder previous law, directors could only abstain from voting if they had a conflict of interest” and “[u]nder current law, directors are permitted to abstain from voting without articulating a reason, though the abstention must be noted in the minutes.” What law was changed and when was it changed? (*L.C., via e-mail*)

A: Prior to July 1, 2008, directors on condominium boards could only abstain from voting in the event of a conflict of interest. Otherwise, the director was deemed to have voted with the majority of the board. The version of Section 718.111(1)(b) of the Florida Condominium Act which existed from 1977 through 2007 stated that a director who was present at a meeting was presumed to have assented to the action taken “unless he or she voted against the action or abstained from voting in because

of an asserted conflict of interest.”

The July 1, 2008, amendment to this section removed the conflict of interest requirement for directors to abstain from voting. The law now states that a director who is present at a meeting is presumed to have assented to the action taken “unless he or she votes against such action or abstains from voting.”

As such, condominium association directors are permitted to abstain from voting without stating a reason and even if there is not a conflict of interest, although the abstention must be noted in the meeting minutes. However, directors also owe a fiduciary duty and in my opinion should take a stand on matters before the board, even if highly controversial, unless there is a conflict or other good reason to abstain.

By comparison, the homeowners’ association abstention law has always been more liberal than the earlier versions of the Florida Condominium Act. The Florida Homeowners’ Association Act provides that a director’s abstention must be noted in the minutes, but does not (nor did it ever) limit abstentions to conflict of interest situations. Section 710.303(3) of the Homeowners’ Association Act provides that “[a] vote or ab-

stention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.”

Q: Recently, our management company informed the board of directors that proxies may not be used for the election of directors pursuant to Florida condominium law. Is this correct? (*P.B., via by e-mail*)

A: That is correct. Proxies have not been permitted in condominium elections since 1992. Condominium elections are governed by Section 718.112(d)2, of the Florida Condominium Act, which provides that the election of directors must be by secret ballot. The law does permit condominiums with 10 or fewer units to adopt a custom election process, which could include the use of proxies.

Rule 61B-23.0021 of the Florida Administrative Code requires that the ballots be returned in an unmarked ballot envelope which must be placed in a signed outer envelope which includes the eligible voter’s signature and unit identification.

Proxies may be used to vote on other matters, such as amendments to the document or votes to waive or reduce

reserves. In general, a “limited proxy” form must be used, which is for all intents and purposes a signed absentee ballot.

This is one area where the law for homeowners’ associations is quite different. Because the election of directors is mainly governed by the procedures contained in the association’s bylaws, it is common for a homeowners’ association to be able to use proxies for elections. While some homeowner associations’ bylaws adopt the condominium procedure, many don’t. Further, nominations from the floor must be permitted in HOA elections (unless the election procedures allow any owner to nominate themselves in advance) while nominations from the floor are prohibited in condominiums. Also, there is no statutory requirement for the use of limited proxies in homeowners’ associations, although that is common and preferred practice.

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Eagle Reserve

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The Loiacanos were attracted to the models’ open gathering areas, well-appointed kitchens, and functional and flexible living spaces, as well as the community’s overall low-maintenance lifestyle. Eagle Reserve’s convenient location was the icing on the cake.

“Eagle Reserve is in the middle of it all, yet still feels tucked away,” she said.

The neighborhood is adjacent to Southwest Florida Christian Academy, where the boys attend school, as well as the family’s church.

“We’re so close, we will be able to walk to school sports events and church activities,” said Loiacano.

Twix, the family’s dachshund, will also have plenty of room for walks around the neighborhood paths that lead to the Eagle Reserve pool and playground area.

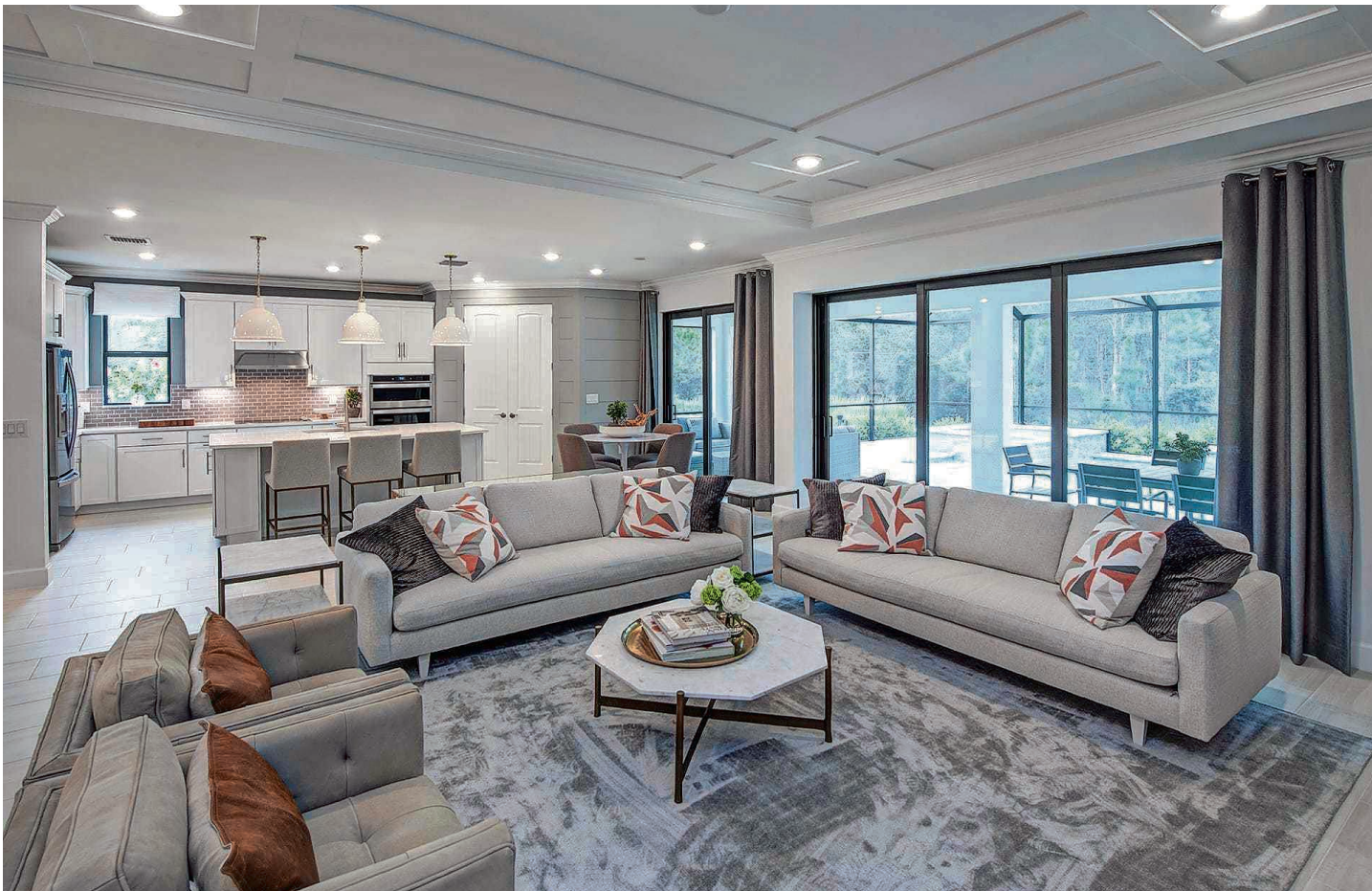
The family selected the two-story Palm, a stylish home design that offers four to six bedrooms and two to four full baths in 2,500 to 4,000 square feet of living space, and plenty of room to spread out with additional flex space and a three-car garage. They personalized their home by adding a loft for even more flexibility.

“The layout is perfect, with kids upstairs and grownups downstairs,” said Loiacano. “And we love our homesite’s view of a bald eagle’s nest!”

She added that Pulte’s friendly team made the homebuying process effortless.

“Everyone has been so professional and kind,” she said.

At Eagle Reserve’s recent Community Grand Opening event, visitors toured three of Pulte’s most popular Life Tested® home designs: the 1,972 square foot,



The Dockside offers a wonderfully flexible floor plan that meets the needs of growing families. SUBMITTED

three- to four-bedroom, two- to three-bath Canopy; the two-story Driftwood, which offers three- to five-bedrooms and two-and-a-half or three-and-a-half baths in 2,470 square feet; and the spacious Dockside, with two- to six-bedrooms and two-and-a-half to five baths in 2,537-4,248 square feet of living space.

“In addition to offering a central location near top-rated schools and major employment corridors, Eagle Reserve’s low-maintenance lifestyle and low fee

structure will give residents more time to take advantage of the family-friendly amenities we’ve planned, as well as close proximity to the beaches of Fort Myers, Sanibel and Captiva Islands,” said Josh Graeve, vice president of sales for PulteGroup’s Southwest Florida Division.

Eagle Reserve’s amenity campus will include a resort-style pool with a sun-deck for lounging, a pool cabana with covered outdoor seating and barbeque grill, and a tot lot playground.

Located 2.5 miles west of I-75 and 2.5 miles east of U.S. 41, Eagle Reserve’s homes range from 1,565 to more than 4,000 square feet and are priced starting from \$264,990. Several quick move-in homes are available as well. Through Pulte’s in-house mortgage consulting services, homeowners can also take advantage of a streamlined home finance process that ensures an enjoyable loan experience. For more information, visit www.pulte.com/eaglereserve or call 239-309-1625.

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