Can I serve on the board if my name is not on the deed?

Q: My wife and I took title to our condominium unit in my wife's name for estate planning purposes based on our estate planning attorney's advice. Now the board is telling me that I am not eligible to serve on the board because I am not on the deed. We have been married for 30 years. How am I not eligible to be on the board?

M.S., Naples

A: Under previous tax laws, it was much more common for spouses (even those married for 30 years) to divide assets so that each spouse had separate assets. This was because each spouse was individually only able to pass a certain amount of wealth to his or her heirs free of federal estate taxes. The act of splitting up assets was intended to minimize estate taxes. The law today employs a concept called portability which allows spouses to share tax benefits, but splitting up assets is still a common estate planning tool.

Your eligibility for the board, however, will depend on the specific language in your governing documents. If the condominium documents self-impose restrictions on eligibility so that only record title owners are eligible, those restrictions would control. You would first review the director eligibility provisions which are usually found in the bylaws. If it is important that you become eligible for the board, I would recommend you consult your estate planning attorney and/or accountant to determine whether a title transfer is appropriate.

Q: The developer of our homeowners association (HOA) is about to turn over control of the board to the homeowners and we feel that the property has been poorly maintained and that the developer-appointed board has neglected its duties. Is there anything we can do to force the board to do a better job leading up to turnover?

B.A., Fort Myers

A: Florida law allows the developer to appoint the entire board of directors until the community reaches various thresholds of sales, meaning that as the developer sells more lots to third parties, the more presence the owners have on the board of directors. The board of directors manages the contracts for maintenance of the common areas and sometimes bulk cable agreements and even landscape agreements for your individual lot. Often times, a developer is excused from paying full assessments and instead is able to only pay the shortfall of funds necessary to meet actual expenses to operate the association. Thus, if the board is able to keep expenses to a minimum, the board also reduces the developer's spending in the community.

Hence, these directors are often placed in a difficult position of serving two masters. That being said, just because the directors are employees of the developer does not mean that the fiduciary duties are diminished. The director must still exercise business judgment as a director of the HOA.

If the directors are truly ignoring their obligations to the association or if the directors are operating the association in a manner that violates the governing documents, there may be a cause of action for breach of duty and/or negligence. As you can imagine, however, maintenance levels can be a very subjective issue and although you believe the maintenance levels are sub-standard, that does not mean a judge or jury would agree with you. I would recommend you engage legal counsel to perform a thorough review of the governing documents to determine the actual responsibilities set forth in the documents in addition to those responsibilities under Chapter 720, Florida Statutes. Your remedy may require pre-suit mediation before you can file a lawsuit or you may be best suited to run for the post-turnover board of directors and then pursue the prior directors in the name of the association.

Q: Our condominium election is next week and the election is very divisive. I am a candidate and believe that I will win big and want the results shared with the community to demonstrate the level of support. The other candidates are claiming the results are private. Is this true?

D.R., Bonita Springs

A: Fortunately or unfortunately, the election results are not confidential. Because it is a written record created by the association and relative to the operation of the association, the tally sheet is an official record and Florida Statutes Section 718.111 specifically requires the association to maintain all election materials for at least one (1) year from the date of the election. Thus, the association must make the results available to an owner upon request and there is nothing in the statute to make these results confidential. What you choose to do with the results is up to you.

Q: We live in a no pet community and my neighbor is strutting around a dog with a service animal vest and claiming she is entitled to have this dog. I am allergic to most dog furs and bought my home here specifically to avoid pets and dogs. How is this legal?

R.S., Naples

A: Fair housing laws provide that an association must make a reasonable accommodation to a disabled person, so it is possible that the dog will be permitted in the community. We have written a number of articles on when the accommodation must be granted and the information that must be provided by the individual requesting the accommodation. I would add, however, that the use of a service animal vest or registration is generally completely irrelevant to whether the individual is actually entitled to an accommodation. Most of the online services that allow dogs to be “registered” provide no independent medical review. These websites allow you to certify that you are disabled without any confirmation and therefore they are not reliable. Fair housing laws will generally allow the association to request reliable medical documentation from a health care provider. Therefore, I would determine whether the board has performed its due diligence, and if it has not, then the board should consult legal counsel to make sure the board is lawfully granting an exception to the covenants.

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