



Board Talk

Two Seats, One Member

Gloria A board member in a condo resigned two weeks before the annual meeting with two years left to her term. The board member whose term was up at the next annual meeting was elected by the board to fill the other woman's two-year term. He never resigned from his position and took the two-year term in order not to run for re-election. Can you hold two board positions even for one minute? How can a board do this to homeowners? It is not a democratic process. Is this legal?

RLM What does your proprietary lease say about elections to fill uncompleted terms? (I very nearly said "sentences" - lol.) I believe ours states board members can elect officers, and can appoint someone to fill an uncompleted term until the next regular election. Are your terms staggered? Can't say whether this is kosher or not without having seen your PL, sorry.


C/CS Have seen this happen with some frequency, sometimes blessed by counsel. Technically, the member resigns the about-to-expire seat and is then appointed to the seat with lots of miles remaining. Even where all the players are well-intentioned and competent, this always sends bad signals to owners, who naturally assume the transfer is improper and that something's being concealed.

In such cases, I recommend boards: (a) announce that they're not appointing a replacement – though they could – because the election is imminent; (b) endorse the member they want to continue to serve, offering substantive reasons; (c) ask for proxies. Such an approach carries some risk for the board, but tends to generate ample good will and sufficient proxies.

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Attorney Jeff Reich, a partner at Wolf Haldenstein Adler Freeman & Herz, responds: "If the situation is as Gloria presented it, it appears that the board has not acted properly. As an initial matter, the condominium's bylaws should be referred to in order to determine the board's authority to fill the vacant board seat. The bylaws



This discussion about board elections took place in Habitat Magazine's online forum, & was selected by the editors to be featured in their print edition. "C/CS" is the long-standing web name of an ACCO officer.

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will dictate whether the individual selected to fill the vacancy is entitled to serve out the full term or only until the next scheduled unit-owner meeting. Assuming that the condominium bylaws do empower the board members to fill the vacancy and provides that the individual selected shall complete the term of the manager who resigned, it would not be proper for the board to select an existing board member. The reason for this is that while one person can hold two distinct offices (such as vice president and

secretary), no one person can simultaneously hold two seats on a board. Even if the board member resigned his existing seat just prior to being selected to fill out the term of the manager who stepped down, those board members who are up for re-election would have to answer to the unit-owners for this undemocratic act at the upcoming board meeting and could face a hostile electorate and find themselves voted off the board."

C/CS
Thanks for weighing in on this, Jeff...but your response is misleading. You open by saying "it appears the board has not acted properly" but then contradict yourself, acknowledging that a board member could legitimately resign a seat up for election, then be immediately appointed to a seat with a year [or more] remaining. This is exactly the practice I referred to in my earlier post. You point out that board members employing these tactics risk offending voters and could be voted out of office themselves; I agree fully. However, the board action we envision here is not improper, and therefore not actionable ... except via the ballot box.

I've seen such maneuvers take place hours before an annual meeting. The election is literally over before most owners grasp what's happening. (Indeed – the election is often over before the meeting begins, determined by proxy.) When the dust clears, few have the money and drive needed to pursue redress ... particularly when the best possible outcome is often another undemocratic election. I'm aware of just one pending solution to such problems: the ombudsman bill sponsored by Senator Krueger and Assemblyman Farrell. If you can suggest any possible alternatives for Gloria, or for others in her situation, I'll certainly help spread the word. ■

"Board Talk" is an online discussion forum where board members can post questions to which other board members can respond. Topics range from mouse-proofing to legal retainers – really, anything, and all things, that boards encounter on a daily basis. Some of the responses have been edited for clarity. Want to participate? Go to: www.habitatmag.com/activities/board_talk