

# Board should have rules on length of terms

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Most associations that have been in existence for a period of time face one of two problems when it comes to the annual election. Either the same group has been entrenched for a number of years and people who disagree with their policies complain about a "dictatorship," or the alternative, nobody wants to step forward and run for the board and the association can barely get a minimum number of candidates to fill a minimum number of seats.

At the annual meeting each year, either the room is packed to the rafters or you can hear crickets and frogs chirping in an empty room. The question then arises as to how to conduct a proper election whether you have no interest or when it appears the association is up for grabs. Believe it or not, the same rules apply in both instances. It is important for the board of directors to adopt uniform election procedures and use standard forms.

In past columns, I have addressed such topics as apathy, lack of participation and board member burnout. Here, I will take a look at the board members who serve year after year, making sure that they get re-elected, and are intimately involved in the process of who does get elected to the board.

For those who are left out of the process, they are inclined to challenge or complain about the "fix" or having an emperor.

On one hand, any owner in good standing can run for the board. Those who are dedicated enough to want to serve year in and year out probably have the best interests of the property at heart. On the other hand ...

First, and foremost, the association needs to have clear and concise election rules in place before conducting an election and also have a standard notice, candidate application, proxy forms, ballots, rules of procedure, etc. Without these, the first complaint will be about improper procedures and arbitrary decision making. The election rules should be sent out with the election notice.

Secondly, unless there is some type of limitation or restriction in the rules or the by-laws governing proxies, interested owners are free to accumulate an unlimited amount.

Homeowner associations are strictly governed by their by-laws and the Illinois General Not For Profit Corporation Act. Condominium associations are also subject to their bylaws and the Not For Profit Act, but also the Illinois Condominium Property Act. Unfortunately, the bylaws and the statutory authorities provide very few guidelines and as a result the procedures have to be outlined in the rules adopted by the board.

Section 18(a) of the Illinois Condominium Property Act requires boards to reasonably identify known candidates and not express a preference in any materials. Proxies must have the known candidates listed and give the proxy giver an opportunity to express a preference, but it is not an absentee ballot; the proxy holder can vote any way he or she chooses.

Condominium election voting is tabulated on the basis of percentage of ownership (homeowner associations are one vote per home/lot). The proxy must bear the date of execution and, unless

the by-laws or the proxy itself states otherwise, it is invalid after 11 months. There is no restriction on who can solicit proxies or how many they can acquire.

The leading case in Illinois on this subject is *Adams v. Meyers*, 620 N.E.2d 1298 (1993). Here the Illinois Appellate Court stated:

- The board of directors does not have to notify unit owners in advance of their right to cumulate their votes (bundle votes for a single candidate).
- A condominium is not subject to proxy solicitation restrictions of the Business Corporation Act, which governs regular corporations.
- Unit owners have no standing to challenge the right of the president of the board to vote the ballots of units owned by the association, if so approved by the board.
- If so designated, the board president could also vote any proxies given to the board, if approved by a majority of the board, and any proxies he obtained giving him permission to do so.

Thus, it is conceivable and perfectly legal for a board president to solicit proxies and vote them at an election in order to be re-elected year after year. Unless another owner is willing to mount the same effort to get elected, there is nothing improper about this.

Is this wrong? The answer is - that all depends.

Once again, it is the actions and motivation of a person who wishes to devote an enormous amount of time, year in and year out. The United States Constitution has term limits for the president, but not for a condominium association.

If an individual is willing to devote the time, has the best interests of the association at heart, acts in a fair and impartial manner, for an association with increasing property values, a strong infrastructure and a healthy financial picture, there is no reason that this person should not be able to continue to serve.

On the other hand, if the president is petty and vindictive, intruding into peoples' personal lives, rewarding friends and punishing perceived enemies, property values are declining, the place is falling apart and on the verge of bankruptcy, is this who you want running the association board year in and year out? You, the owner, have to decide.

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