

Disputed Condo Election Offers Important Lessons for Association Boards



Commentary by Nicole R. Kurtz, Daily Business Review

January 18, 2017

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The 2016 presidential election was extremely divisive and contentious, but for some South Floridians the political machinations taking place in the election of their community association's boards of directors can be every bit as controversial.

Allegations of questionable or even downright fraudulent tactics by candidates in these annual association elections are not entirely uncommon. When suspicious activities begin to call into question the integrity of the election, some boards of directors hit the panic button and take actions that will not stand the test of their governing documents or the Florida Administrative Code.

Such appears to be what took place in a disputed election at the Palm Aire Country Club Condominium in Pompano Beach that culminated in a recent ruling by Florida's Fourth District Court of Appeal. While the appellate panel's opinion does not address the reasons for the association board's actions, noting only that "there is some ambiguity as to what exactly occurred" at the board's Feb. 29, 2016, meeting, the opinion essentially invalidates the board's 6-3 vote at the meeting to postpone the annual election that was set for two days later on March 2.

Even though a majority of the board voted to postpone the election, it took place as originally scheduled on March 2, and new directors were elected. The management company for the property, M&M Property Management LLC, subsequently refused to recognize the authority of the prior board of directors and instead began working with the newly elected directors.

In response, the prior board of directors filed suit against M&M seeking a temporary injunction to compel the management company to stop operating in service of the new board of directors. The prior board was granted the temporary injunction, and in turn M&M was ordered to recognize the board as it existed prior to the March 2 election.

M&M Property Management appealed the decision, and Florida's Fourth District Court of Appeal ruled in its favor and reversed the lower court's order. The Fourth DCA based its ruling on a provision within the association's bylaws, which states that the association's elections "shall be held on the first Wednesday in March of each year," and also on the Florida Administrative Code, which provides that "in order to adopt different voting and election procedures in its

bylaws ... an association must obtain the affirmative vote of a majority of the total voting interests."

Changing Dates

The appellate panel explained that its unanimous decision was based upon the prior board's failure to provide evidence that it obtained approval from a majority of the total voting interests in the association to postpone the election date as mandated by the association's bylaws and the Administrative Code. Without evidence to confirm that the requisite approval from the unit owners had been obtained, the prior board of directors failed to show it had a "substantial likelihood" of succeeding on the merits of its case, which is one of the requirements for issuing a temporary injunction. The Fourth DCA overturned the lower court's order, concluding that the prior board of directors failed to meet the standard to obtain a temporary injunction.

The ruling provides some important lessons and reminders for community associations and their boards of directors regarding the election process and a board's authority to alter it based upon the language in the association's bylaws. Many governing documents either call for the association's annual election to be held on a specific day or week, or they stipulate that the election should take place on a certain date unless otherwise determined by the board of directors. If language similar to the latter would have been found in the bylaws for the Palm Aire Country Club Condominium, perhaps the outcome in this case would have been different.

Given the contentious nature of some community association elections, boards of directors would be well advised to turn to qualified association legal counsel for a review of their bylaws and election procedures prior to mailing the first notice of the annual meeting and election. Boards of directors and management personnel should begin the election process with a clear understanding of the required procedures to postpone an election once it has been announced as the approval from a majority of all voting interests may be required if their bylaws stipulate a specific date for the meeting and are silent on the board's leeway to alter it.

Disputes involving association elections and questionable campaign tactics by board candidates do occur, and this ruling illustrates the importance for boards of directors to act with a clear understanding of their ability to alter their community's election procedures.

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