

“HOA Proxy Elections Permissible,” News-Press

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By: Joseph E. Adams

Q: Are owners allowed to use proxies to vote at a meeting in a homeowners' association and what is required for a proxy? (S.T., via e-mail)

A: Yes, generally, members of a homeowners' association are permitted to vote by proxy at membership meetings. Section 720.303(8) of the Homeowners' Association Act states that unless otherwise provided by the Act or the governing documents, members may vote in person or by proxy. The Act goes on to define what is required for a proxy. The proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the owner or other authorized person. Proxies are only effective for the meeting for which they were given and as the meeting may lawfully be adjourned and reconvened from time to time, a proxy automatically expires 90 days after the date of the meeting for which it was originally given.

In a homeowners' association, the statute does not limit what votes may be cast by proxy, and unless prohibited by the governing document, votes for the election of directors may be cast by proxy. Further, in a homeowners' association there is no requirement that votes be cast by limited proxy, and general proxies, which give the proxyholder the ability to cast the vote for the proxy as they see fit, are permitted by the Act. However, the governing documents may provide for stricter procedures.

By contrast, the Florida Condominium Act, Chapter 718 of the Florida Statutes, limits the use of proxies and requires that any substantive vote, such as votes on document amendments, reserve questions, waiver of financial reporting, must be cast by limited proxy. Voting for the election of directors may not be done by proxy and may only be done by secret ballot.

Q: Can my Florida HOA force me to have my roof, driveway, and garage doors power washed? (C.D., via e-mail)

A: If the governing documents include properly adopted provisions that are sufficiently clear and reasonably related to property values and the aesthetics of the community, it is my opinion that such a requirement is enforceable.

A typical document provision might prohibit the accumulation of any visible dirt, mold, or algae on the homes or driveways. If other methods of cleaning would

accomplish the same result, you may be able to pursue solutions other than “power washing.”

There are several different ways governing documents of a community can be enforced. The customary way is a lawsuit where the association would seek an injunction requiring you to clean your home. The winner of the lawsuit would be able to recoup their legal fees from the loser. Prior to starting a suit, the association would have to provide you with the opportunity to participate in pre-suit mediation, for which you be liable for half the cost.

Fining and suspension of common amenity use rights is another way to enforce governing documents. Depending on what the governing documents say, fines are typically one hundred dollars per day, capped at one thousand dollars for an ongoing violation, although the statute permits the governing documents to authorize higher fines. The HOA could potentially put a lien on your home if the fine reaches one thousand dollars. You would be entitled to a hearing before an independent committee before the fine could be finalized or common area use right suspension imposed.

Depending on how your declaration of covenants reads, the association may also be entitled to pursue the remedy of “self-help,” sometimes called “enforcement of maintenance.” This would typically involve the association hiring a contractor to do the work after you have failed to do so and after them giving you reasonable notice and opportunity to correct the alleged violation. The association may also be entitled by the declaration to put a lien on your home which could be foreclosed just like a mortgage.

Joseph Adams is a Board Certified Specialist in Condominium and Planned Development Law, and an Office Managing Shareholder with Becker & Poliakoff. Please send your community association legal questions to jadams@beckerlawyers.com. Past editions of the Q&A may be viewed at floridacondohoalawblog.com.