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Is New Term Limit Restriction Retroactive?

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By: David G. Muller

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Q: Is the new director term limit law for condominium associations retroactive? M.N. via e-mail

A: You are referring to a recent 2018 change to the Condominium Act which further clarified a change that was initially made in 2017. The 2017 change provided for no more than four consecutive two-year terms, and required two-thirds of the total voting interests to override the term limit. The previous (2017) language did not address one-year terms and also made it very difficult for "term-limited" board members to be elected. Under the previous (2017) language, even if a term-limited board member received the highest number of votes, if the board member did not receive the approval of two-thirds of the total voting interests, the board member would not be elected. Because the Condominium Act only requires that 20% of owners vote in an election, it would be atypical for a candidate to receive the vote of two-thirds of all owners.

The new (2018) language confirms that no board member may serve more than eight consecutive years, unless approved by an affirmative vote of two-thirds of the voting interests voting in the election or unless there are not enough eligible candidates to fill the vacancies.

There has been no formal guidance from the Division of Condominiums, Timeshares and Mobile Homes, as to whether the new term limit language is retroactive or prospective. In my opinion, this new law is not retroactive.

My interpretation is based on a long-standing rule of statutory construction. Florida courts have consistently held that condominium legislation is not to be retroactively applied, unless the legislatures evinces an intent that it be applied retroactively. There are certain exceptions to this rule for "procedural" and "remedial" changes to the statute.

If legislation is intended to be retroactively applied, then a second level of analysis needs to take place which largely focuses on constitutional issues. However, in the case of the new "term limit" law, there was no statement of retroactive application in the new law, so no need to consider constitutional implications.

Of further relevance is the fact that a similar law was enacted a couple of years ago (dealing with term limits on two-year terms) and most attorneys conversant in

this field of law, as well as the state agency charged with enforcement of the law, took the position that it was likewise was not to be retroactively applied.

However, internal term limits contained in an association's bylaws have been legal for a number of years, and would still be effective regardless of the recent statutory changes.

Q: I am a new director for my homeowners association. We have a few owners who have failed to pay their quarterly assessments. What is the process to collect these unpaid assessments? G.H. via e-mail

A: To begin, the association should follow any specific procedure it has adopted regarding the collection of delinquent accounts. Further, Florida Statutes, mandate a procedure whereby an owner is provided an initial 45-day notice of the association's intent to record a lien as a result of the delinquent assessment. Thereafter, after the lien is recorded in the county official records, there is another 45-day notice of intent to file a foreclosure lawsuit which must be provided to the owner before commencing litigation. The association is able to seek the recovery of attorney fees and costs incurred pursuing the delinquent account. Please note that there are additional requirements and procedures which must be followed. I recommend your board consult with the association's attorney to go over these requirements.

Attorney David G. Muller is a shareholder with the law firm of Becker & Poliakoff, P.A., Naples (www.beckerlawyers.com). The information provided herein is for informational purposes only and should not be construed as legal advice. The publication of this column does not create an attorney-client relationship between the reader and Becker & Poliakoff, P.A. or any of our attorneys. Readers should not act or refrain from acting based upon the information contained in this article without first contacting an attorney, if you have questions about any of the issues raised herein. The hiring of an attorney is a decision that should not be based solely on advertisements or this column.

Editor's Note: David G. Muller is a Board Certified Attorney in Condominium and Planned Development Law with Becker & Poliakoff, P.A., which represents community associations throughout Florida, with offices in Naples, Fort Myers and 10 other Florida cities. The Firm focuses a substantial amount of its practice on condominium and homeowners association law. Attorney Muller responds to your community association questions. Send questions to Attorney Muller by e-mail to dmuller@beckerlawyers.com.