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Client Alert: How to Handle Absent Condominium and Homeowners Association Board Members

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Each election season, condominium association members elect one or more directors to serve on the association's Board of Directors. Many members consider their options carefully, understanding the importance of the board and the impact its decisions have on each condominium owner. Each candidate should also consider the responsibilities before running for a board position. But, inevitably, life happens, and a once-enthused board member may become all but absent from the board—missing several meetings at a time. The net result is a board having, for all practical purposes, one less member than the Association chose, risking deadlocks when voting on motions or a failure to achieve quorum.

In an attempt to avoid this, many condominium associations' governing documents include provisions permitting the Board of Directors to remove an individual Director if he or she has been absent for a certain number of consecutive meetings. While this may appear to be an easy remedy, the Department of Business and Professional Regulation Division of Florida Condominiums, Timeshares and Mobile Homes (the DBPR) has determined that such provisions are unenforceable. See, e.g., *Robert Wilson, Petitioners, v. Bayberry Homeowners' Association, Inc., Respondent*, 2017 WL 1277263, at *1 (Fla. DBPR Jan. 9, 2017).

In reaching this conclusion, the arbitrator found that because Section 718.112(2)(k), Florida Statutes "provides for removal of a board member by recall by the unit owners, the board may not remove a board member, notwithstanding any provision to the contrary in the condominium documents purporting to authorize board removal by board action." See *id.* (quoting *Seville Place Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-01-1153, fn 3 (April 8, 2004) and *Hernandez v Pinebark Condominium Association, Inc.*, Arb. Case No. 94-0531, Summary Final Order (May 17, 1995)). The DPBR continued, noting that "[i]f a board may willy-nilly remove board members following a duly conducted election, the board has the ability to change the outcome of any given election in a fundamental way." See *id.*

Thus, regardless of any provision purporting to allow the Board of Directors to oust a director based on a

number of consecutive absences, the board has no authority to exercise this right. As a result, in the event a board member becomes unable to regularly fulfill his or her duties as a board member, the board may consider encouraging the individual to resign from the board. In the event the absent board member declines to do so, the remaining members' only recourse is to seek a recall pursuant to Section 718.112(2)(k), Florida Statutes. However, recalls can create additional intra-board conflicts. As a result, if the board member's seat will be up for election in the near future, it may be more prudent to forego any affirmative act and instead rally support for another candidate at the next election.

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