

# THE LAW: WHAT HAPPENS WHEN NOBODY WANTS TO SERVE ON AN HOA BOARD? [3-12-18]

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Serving on a homeowners association board of directors is a thankless job that often fails to receive the recognition it rightfully deserves.

Sadly, communities sometimes experience a dilemma in which the old board members have served to their term limits and no other volunteers are interested in stepping up to the plate to volunteer their time and effort as a replacement board member. This creates two legal issues: Whether the old "termed out" board members can stay on the board, as well as what happens if nobody is willing to serve on the HOA board moving forward.

Under Florida law, HOA directors are entitled to serve for their term and until their successor is duly elected. What this means is that if no new directors are willing to volunteer, Florida law permits those people who are already on the board to continue to serve until a replacement steps forward to take their position.

With that being said, you may be asking yourself whether that means an existing board member is ever able to resign or step down from their position as a board member? The answer is yes. Any board member at any time can express their intent to resign as a director or an officer, but the resignation might not be without consequences because an HOA board needs officers and a quorum to conduct day-to-day business.

The definition of a quorum will change depending on the language of your governing documents, but the most common quorum definition is generally 51 percent director participation. For example, if an association is made up of a five-member board, a quorum would only be established after three of the board members decided to act. Failure to have enough directors to meet the definition of a quorum under your governing documents will prevent the HOA from being able to hold meetings and conduct meaningful business.

Resignations can also have a grave impact if the person stepping down is not only a director, but an officer.

Officers of the board include the president, secretary, treasurer and sometimes vice president. The roles and duties of those officers are generally outlined in your association's governing documents and provide each officer with certain abilities and powers. If a director who is also an officer decides to resign, the vacancy might impact the association's ability to sign checks to pay third parties, access the HOA's bank account or enter into contracts with vendors and other providers.

Up to this point, all scenarios have assumed that at least one director is willing to serve on the board, but what happens when all directors have resigned and nobody is willing to replace them? Section 720.3053, Florida Statutes, provides that "if an association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any member may give notice of the member's intent to apply to the circuit court within whose jurisdiction the association lies for the appointment of a receiver to manage the affairs of the association."

There is a particular form for the notice, which is provided in Section 720.3053, that states that the petition to the court will not be filed if the necessary vacancies to establish a quorum are filled with 30 days after the notice is posted or transmitted to all owners. The Florida Legislature added this provision in hopes that the notice will conjure up enough volunteers willing to serve on the board to prevent the appointment of a receiver. If the 30-day window expires and nobody steps forward, the member who transmitted the notice can then petition the court for a receiver to run the association.

Unlike customary directors who take the position without compensation, Section 720.3053 provides that the receiver is entitled to receive a salary and reimbursement of all costs and attorneys' fees payable from association funds. It also goes on to say that the "association shall be responsible for the salary of the receiver, court costs and attorneys' fees."

The difference between free volunteer directors and paid receivers with their accompanying fees can be a large number that has a drastic impact on the reserves of an HOA. Monies reserved for common-area maintenance, repairs and just general upkeep could be directed to pay the receiver's salary to run your community. That's never a good idea, as it will inevitably take a visible toll on your community.

To prevent receivership from happening, I would encourage everyone who lives in a HOA and is even slightly pondering volunteering as a director to strongly consider stepping up and serving as a director the next time your community has an election. Your participation may have a greater impact than you ever realized before.