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## **CONDOMINIUM BOARD CANDIDATE ELIGIBILITY**

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We receive many questions as to whether individuals are eligible to run and serve on the Board of Directors of their condominium associations. This article will provide an overview on how and when to determine whether a person is eligible to run and serve on the Board in light of the recent updates to the condominium law that became effective July 1, 2021.

Eligibility to serve on a condominium association's Board of Directors is governed by two Chapters of Florida Law: Chapter 617, Florida Statutes (the Florida Not-For Profit Corporation Act), and Chapter 718, Florida Statutes (the Florida Condominium Act). Chapter 617 only applies to the extent that it does not conflict with Chapter 718.

Chapter 617 (specifically Section 617.0802), provides that Directors are only required to be natural persons who are 18 years of age or older, and need not be residents of the State of Florida or members of the corporation unless the Articles of Incorporation or Bylaws so require. Section 617.0802(1) states that the Articles of Incorporation or the Bylaws may prescribe additional qualifications for Directors.

Section 617.0802(2) provides a further qualification for grantors and beneficiaries of trusts in which the trust owns property and who wish to serve on the Board of Directors for a condominium association, in that the grantor or a beneficiary of a trust that owns a unit shall be deemed a member of the association and eligible to serve as a Director of the condominium association, provided that the beneficiary occupies the unit.

### **DISQUALIFYING FACTORS FOR BOARD ELIGIBILITY**

Chapter 718 provides that a unit owner or eligible person may be a candidate for the Board, but also includes disqualifying factors not found in Chapter 617. Such disqualifications include delinquent assessments, felony convictions, term limits, co-ownership, and removal or suspension by the Division of Florida Condominiums, Timeshares, and Mobile Homes ("Division").

## Delinquent Assessments

If a candidate has not paid all assessments due to the association as of the deadline to submit a Notice of Intent to be a Candidate, then such candidate is not eligible to serve on the Board. As of July 1, 2021, in Section 718.112(2)(d)2, the term “monetary obligation” was replaced with the term “assessment” for the purposes of determining whether a person is ineligible to be a candidate to serve on the Board. This means a person is no longer ineligible to be a candidate because they are delinquent on fines, fees, or any other monetary obligation other than assessments.

However, it is important to note that Section 718.112(2)(n) was not amended and still provides that a Director or Officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law. As such, it is unclear how to treat a candidate running for the Board that is more than 90 days delinquent regarding a monetary obligation other than an assessment. It would appear that a person is eligible to be elected and then, immediately upon being seated, would be deemed to have abandoned his or her seat.

The law also now provides that a person is delinquent if a payment is not made by the due date as specifically identified in the Declaration of Condominium, Articles of Incorporation, or Bylaws. If a due date is not specifically identified in the Declaration of Condominium, Articles of Incorporation, or Bylaws, the due date is the first day of the assessment period (Section 718.112(2)(d)2).

## Felony Convictions

Section 718.112(2)(d)2 provides that “a person who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board.” It is important to note that the foregoing sentence does not specify which civil rights a candidate must have restored to be eligible to serve on a condominium Board. Civil rights include the right to vote, the right to hold office, the right to serve on a jury, and the right to bear arms, among other civil rights afforded by both the federal and state constitutions.

In 2010, the Division issued a declaratory statement which provides that all of a felon’s civil rights must have been restored for at least 5 years before such person is eligible to serve on a condominium association’s Board of Directors. For example, if a candidate who is also a convicted felon has had all of his or her civil rights restored except for the right to own a gun, that person is not eligible to serve on a condominium Board.

## Term Limits

Section 718.112(2)(d)2 provides that individual Board members may not serve more than 8 consecutive years. As of July 1, 2021, Section 718.112(2)(d)2 was amended to clarify that only service on the Board of a condominium association that occurs on or after July 1, 2018, may be used when calculating a Board member’s term limit of 8 consecutive years. Therefore, Section 718.112(2)(d)2 will not affect Board candidates’ eligibility until 2026.

Note, however, Section 718.112(2)(d)2 also provides that a Director may serve for a term longer than 8 consecutive years if approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or if there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

## Co-Ownership

In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the Board of Directors at the same time, unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.

## Persons Removed or Suspended by the Division

A person who been suspended or removed by the Division is not eligible to serve on the Board.

## **ADDITIONAL REQUIREMENTS FOR ELIGIBILITY IN THE GOVERNING DOCUMENTS**

In addition to the statutory requirements listed above, there are generally additional requirements for eligibility in the condominium associations' governing documents.

The most common requirement is that the person must be a unit owner. If the unit owner is married, the governing documents often extend eligibility to the spouse of the unit owner. If there is more than one unit owner (i.e. co-ownership), any of the co-owners may be eligible unless the governing documents require that only one of the co-owners be designated as the eligible member.

With respect to partnerships, corporations, and limited liability companies, the governing documents will generally control as to who is eligible to serve on the Board of Directors on behalf of these entities. The governing documents may include the requirement that one person be designated by a "voting certificate", which is defined by Section 718.101(29) as "a document which designates one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity."

## **SUSPENSION AND REMOVAL OF DIRECTORS**

Once a person has been elected or appointed to the Board, within 90 days, he or she must certify in writing to the Secretary of the association that he or she has read the association's Declaration of Condominium, Articles of Incorporation, Bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. A Director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the Board until he or she complies.

An individual may subsequently be removed from the Board if charged with a felony theft or embezzlement offense involving the association's funds or property (Section 718.112(2)(o)).

Finally, the membership may recall a Director pursuant to Section 718.112(2)(j). The method of removing Board members by recall and the procedures for filling such vacancies are set forth in Rules 61B-23.0026 through 61B-23.0028 of the Florida Administrative Code.

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*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

Questions regarding the content of this article may be emailed to Christopher Pope at [chrispope@paveselaw.com](mailto:chrispope@paveselaw.com). To view past articles, please click “Publications” on our firm website. Mr. Pope is one of only two attorneys in Florida that is Florida Bar Board Certified in both Construction Law and Condominium and Planned Development Law. He is a partner and an experienced construction and real estate attorney; and Mr. Swick is an associate attorney with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243.

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