

# Don't board members have to be unit owners?



**Gary A. Poliakoff  
and Ryan Poliakoff**  
New Neighborhoods:  
The Condo Consultants

**Q:** I read your columns avidly – thank you for providing such a helpful service.

I own a unit in a medium-size, 30-year-old condo in West Palm Beach. For 30 years, our documents have been interpreted as saying that only unit owners could serve on the board of directors.

Our new lawyer is now saying that anyone, not only unit owners, can serve on the board. He bases his reading on language in the by-laws that states that “The affairs of the Association shall be managed by a Board of Administration, consisting of seven (7) persons.” He says that “persons” means anybody, not just owners. But, he is ignoring other language in the by-laws that clearly states that board members must be unit owners. Do you think this new interpretation has any merit? Many owners like me feel that the language is clear. What can unit owners do to fight this? Have you seen many condo boards consisting of non-unit owners? – **G.M.**

**A:** A large portion of the practice of law is giving opinions, and opinions do reasonably differ. But, based on the limited portion of the by-laws that you provided for our review, we would be hard-pressed to share your attorney’s interpretation. The language you’ve quoted above is very standard, and no provision should be taken in a vacuum. As you pointed

out, there is a further provision that states “any unit owner, any partner of a unit owner and any stockholder of a corporate unit owner” is entitled to be a member of the board. What would be the possible reason for such a provision if, in fact, any “person,” generally, may be a member of the board? It’s a fairly basic principle of contract interpretation that you can’t read a provision to be entirely meaningless. We think the better argument is that, in fact, only owners, partners of partnership owners or stockholders of corporate owners may serve on the board. That said, it’s not uncommon to find community associations without restrictions on who may serve on the board, and it can, in fact, include any person.

As for what you can do to fight your attorney’s interpretation, unfortunately there is very little recourse other than bringing a lawsuit asking a judge to correctly interpret the governing documents.

**Q:** I read your column weekly and it is so helpful covering a lot of common issues. I have two questions that I am trying to find in the Condo Act, but don’t see the answers. However, we have owners that have claimed these to be the laws.

When the board needs to have a “personnel” meeting which must be closed to owners due to the private nature, is there any law requiring us to post a meeting notice for our unit owners, even though they cannot attend? And second, for board members, are there any attendance requirements by law, i.e. termination after three absences from meetings? I am on the board, but I have health issues and am disabled, so I cannot attend all the meetings. – **K.H.**

**A:** As to your first question, the Condo Act states that adequate notice of board meetings must be posted 48 hours in advance of the meeting. There is no stated exception. Separately, the act states that meetings where personnel issues are discussed may be closed to owners. But, it does not additionally say that such meetings do not need to be noticed, and so, reading between the lines (as one must often do when interpreting statutes), all board meetings must be noticed, whether or not they are open to owners. This includes legal meetings and personnel meetings.

Remember, notice of board meetings is intended to benefit the individual board members, as well as the owners.

Regarding removal from a board due to absences from board meetings, there are no attendance requirements in the statute, and, in fact, most attorneys feel that such provisions in governing documents are not enforceable, as, pursuant to the Condo Act, a board member may only be removed from office by the membership (through a recall).

Of course, you are allowed to attend board meetings by telephone so, if you cannot attend in person, perhaps your board can set up a conference line in the meeting room.

Gary A. Poliakoff and Ryan Poliakoff are co-authors of “New Neighborhoods — The Consumer’s Guide to Condominium, Co-Op and HOA Living.” Gary Poliakoff is a founding principal of Becker & Poliakoff, P.A., and Ryan Poliakoff is a senior counsel at Sachs Sax Caplan, P.L. Email questions to [condocolumn@gmail.com](mailto:condocolumn@gmail.com). Please be sure to include your hometown.