

July 19, 2013

## HOA Boards: Investors Need Not Apply?

In this week's tip, we broach the touchy topic of restricting board membership to association residents.

Some states permit associations to require board members to be community residents. Florida, however, probably isn't one of those states, though it's not completely clear.

"I don't think there's any definitive law in Florida whether you can or not," says Alessandra Stivelman, an associate attorney who specializes in community association law at Eisinger Brown Lewis Frankel & Chaiet in Hollywood, Fla. "Our statute says you can't serve if, for example, you're a felon or 90 days delinquent. But residency isn't listed among the reasons to prohibit someone from board membership. Because of that, I and my colleagues don't believe you're allowed to have that requirement to be on the board of directors."

In California, such a restriction would probably be permitted. "There's no requirement by law in California that board members have to be residents of the community," says Andrew Schlegel, CCAM®, executive vice president of community management for Orange County and Los Angeles at Merit Property Management in Aliso Viejo, Calif. "If those requirements exist, they'd probably be in an association's bylaws. Some associations spell out in their governing documents that board members have to be owners, not just residents. But I don't think I've ever seen any one saying they have to be living there as a resident."

Residency, schmesidency! Minnesota doesn't even require board members to be members of the association, says Nancy T. Polomis, a partner at Hellmuth & Johnson PLLC who advises homeowners associations. "There's nothing in the law that addresses it in Minnesota. Since they're not even required to be members of the association, board members could have no skin in the game."

That doesn't mean that Minnesota governing documents can't include those provisions. "Usually when I'm drafting documents, I'll put a provision in that requires board members to at least be members because I think that's important," says Polomis. "And sometimes when I'm rewriting governing documents, at the board's request, I'll put in the residency restriction."

OK, so your state may permit you to keep nonresidents off your board. Should you? Get the skinny in our new article, [The Pros and Cons of HOA Board Residency Requirements](#).

Best regards,  
Matt Humphrey  
President