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Discussion Forum Follow-Up: Coordinating New Board Takeover and Accounting Deadlines

This article is part of an ongoing series in which we'll take your questions from the HOAleader.com discussion forum and get you the answers you need from experts who specialize in association management. If you have a question you need answered, post it on the message board.

An HOAleader.com reader writes: "I have been searching in vain for a recommendation regarding fiscal year and when a new board is instated. Years ago, our fiscal year ended June 30. It was changed to end December 31 as annual dues are due January 1. However, our elections and annual meeting still occur in September, with the new board instated immediately after the annual meeting in September.
"This doesn't make sense to me for a treasurer to come in so late in the year. In our original rules, the treasurer came in two–plus months after the beginning of the fiscal year. To me, it seems OK to have the elections in October or November, but to not instate the board until January 1.

"What's typical nowadays? From a fiscal viewpoint, it seems more logical for the treasurer to finish up the books at the end of the fiscal year before the new treasurer starts. Also, if an audit is done between treasurers, it could be the end–of–year audit as well (regardless of fiscal year)….Bottom line: When is the best time for a new board to start in relation to the fiscal year?"

Here our experts offer insights.

Easy Answers First

Let's start with the easy answers. "In Florida, associations customarily have their annual meetings and election in December, and usually the budget is adopted that same night or a couple of weeks before by the outgoing board," says Dennis J. Eisinger, a partner at Eisinger, Brown, Lewis & Frankel PA in Hollywood, Fla., who represents more than 500 condo and HOA associations. "That seems to work well and is what most often happens here."

What if governing documents don't have provisions requiring a certain schedule? "If they don't say that, associations can do what they want," says Eisinger. "Certain associations do allow the new board to adopt the new budget; that's how they're set up," he says. "I don't think it's the best thing, but an argument could be made that maybe the new board should be living or dying with the new budget. I can't say there's anything statutorily wrong with that, but I think the old board should do the budget. However, that's a business call each association makes."

To answer our reader's other questions, a few pieces of information are missing. "There are factors I don't know," says James R. McCormick Jr., a partner at Peters & Freedman LLP in Encinitas, Calif., who represents associations. "Is the reader's board a staggered board, or is the entire board elected in September? It doesn't make sense to have the entire board elected right before the process of budget preparation. You'd want someone with at least a year's experience to be involved. And you can't say, 'OK, we'll have our election in October but the new board members won't take office until January.' Once the election is certified, those are the new board members."

What Do the Docs Say

But we're getting ahead of ourselves. As with just about any issue, our reader has to look closely at his governing documents. "The bylaws are going to establish the term of officers, and they likely talk about the fiscal year of the organization," explains Eric Gould, a lawyer at Couzens Lansky in Farmington Hills, Mich., who represents as many as 10 condos or HOAs at any given time. "It's possible, however, that the governing documents may not be as specific as to when officers take office, or sometimes they may not talk about the organization's fiscal year."

In other words, if your governing documents don't come right out and specify actual times for these events to happen, our reader's HOA board can easily change its rules. "If the fiscal year isn't defined in the governing documents, and it's just set through a process," explains McCormick, "maybe it's easier to change your process than amending your governing documents to change another date that's set forth in your governing documents."

However, there may be a catch to changing your fiscal year. "Aside from what it says in the bylaws, an HOA has to realize that once you've established a fiscal year with the Internal Revenue Service, you've sort of locked it in," says Gould. "You may be able to change it, but it's not just an easy, 'Were moving from September 30 to December 31' change. So you have to look above and beyond the organizational documents to what you've been doing with the government."

Another factor to consider is the cost of your accounting services. "Many associations don't follow a calendar year because accountants are busy with businesses that have a December 31 year end," adds Gould. "There are fewer business clients that have a midyear year end date, so there's always a big rush because that needs to be done between then and the April deadline. Many nonprofits have a year end of May or July 31 because they can usually get a lower rate on their return preparation and financial statement fees because there's less demand for those services during that time of year."

So from a financial perspective, there may have been valid financial reasons for our reader's HOA to have had its year–end date in June.

Bottom Line

OK, so our reader thinks this schedule is a problem. Is it? "He's right that it doesn't quite seem to make sense to have this change of officership before the finances get done," says Gould. "But on the other hand, if I'm a treasurer and I'm done at the end of September, unless I've really been alienated from the board or I've moved away, I'm generally going to be available to answer questions or deal with transitional issues. Or other members of the board may have experience so they know what needs to be taken care of.

"That said," Gould adds, "it's a worthwhile discussion as to what makes the most sense and whether the board has made things more confusing along the way."

Our reader's question also brings up an issue raised by another reader—whether the board has to follow its own rules—discussed in HOA Board: We Don't Follow Our Own Rules. Sue Us! In that article, McCormick noted that he can't advise boards to violate their own governing documents, but he may say, "I'm not going to advise you to violate your documents. That's malpractice on my part. But the practical effect of doing it is X, Y, and Z and if you understand the risks and want to continue, that's your call."

Our reader's situation may be an example of an instance in which the board chooses to not follow its own documents. "The easiest way to fix this would be to amend the bylaws or change the HOA's fiscal year, which the board can do unless the bylaws prohibit it," says McCormick. "On the other hand, this could be one of those cases where I advise the board of the risks and penalties for not following their own documents. Maybe you push your meeting back to a later date. Or maybe you don't happen to get a quorum on the scheduled date, so you end up starting your annual meeting at a later date."