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You're Short Some Condo/HOA Board Members: Can You Act?

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An [HOAleader.com reader asks](#): "We're in Florida. The president and another board member resigned. Someone wrote a nasty email to the entire board and condo owners. This person is telling the community the board doesn't have adequate members to make decisions and doesn't have the right to take care of the community while they're working on replacing the board members.

"I believe the number on our documents says five board members, and they are currently functioning with three. The board is working on replacing the board members. What's the grace period allowed?"

Stunner: Our experts say this owner is mistaken in criticizing the board.

Board Vacancies Don't Require Paralysis

In most cases, boards with vacant seats can act, meaning this reader's resident is simply wrong. Here's how a few of our experts say their state's law would address this issue:

California—"A quorum of the board can conduct business," according to [Alex Noland](#), CCAL, founder of Noland Law PC in San Francisco, which represents 200-plus community associations throughout California. "Usually, in most governing documents, the quorum is a majority of the board. If the board has that, business can still be done. If you have less than a quorum, no business can be done.

"Let's say you have a three-member board, so the quorum is two members," he explains. "Let's also say that board was already down one member, and then another owner just sold and moved. Now you have one of three seats filled, so you don't have a quorum.

"The remaining board member can appoint another owner to the board so the board will have a quorum," says Noland. "But that sole remaining board member can do nothing except appoint an owner to one of the other seats so they have a quorum. That's something I see in almost every set of bylaws I have."

Colorado—"In Colorado, the board can still act, but it depends," says [Elina Gilbert](#), a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 23 years. "Quorum is generally going to be a majority of those in office rather than a majority of seats on the board.

"So if you have five seats, three would be quorum," she explains. "If you have two seats filled, technically you have no quorum. But you could conduct business if both of those two board members are present and both agree to take action. If you have one person on the board, it's not ideal, but technically, they can still conduct business."

Florida—"In Florida, boards can be down a member or two as long as you still have a quorum of the board," explains Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations. "So if you have seven board seats, if you have four board members serving, you can still operate."

Massachusetts, Rhode Island, and New Hampshire—"This happens frequently because of residents' lack of interest in serving on the board," says Janet Oulousian Aronson, a partner at Marcus Errico Emmer & Brooks in Braintree, Mass., who is licensed in that state, in addition to Rhode Island and New Hampshire. "To me, this board should be making reasonable efforts to fill the position by holding another election. Or some documents give the board appointment authority to fill open seats until an annual meeting where an election will be held. They should be proceeding reasonably to accomplish that."

"In the meantime, the world doesn't stop," she adds. "I think it's fine that they do continue to act. If they're making a major decision, I do have a caution for my boards. Let's say they're supposed to have five board members, they're down two, and their documents are typical in saying that the board needs a majority to make a decision."

"In that case, I'd want the three remaining board members to agree to any decision," says Aronson. "So effectively the outcome is the same as if the board had no vacancies. But I don't think day-to-day decisions should be put off."

Vacancies Shouldn't Get Stale

Even if you *can* operate while you're down a few board members, it's best to be working diligently to fill your open seats as soon as they arise.

Of course, your documents could have a deadline, though Maribona says she hasn't seen that in the communities she manages. "Sometimes documents can have crazy language, so I always recommend you read your documents," she says.

"But boards do have the right to say they'd rather not appoint and instead they'd like to put the decision to a community vote," says Maribona. "But that decision depends on how long after the last election the vacancy occurs. I've seen some boards go back to the results of the last election and appoint the next runner up in votes."

In California, if you dawdle, your owners may take matters into their own hands. "Under California law, 5 percent of members can petition the board to have a meeting for any lawful purpose, and having an election would be a lawful purpose," says Noland.

"It's also possible your bylaws would have a provision requiring you to fill a seat within a certain time or to hold an election," he adds. "I don't know if I've ever seen that, though it would be presumptively valid. But if you're two months out from an election

and you already have a lot going on, maybe it's OK that you don't fill that seat. Maybe you can get by for 60 days to wait for the election."

In Colorado, boards have a duty to look for replacements. "In Colorado, there's not a specific time frame you have to fill open seats," says Gilbert. "There's also not a duty to fill an open seat with the first person who comes along. But you have to act in good faith, sending letters to owners, asking for volunteers, and doing what you have to do to fill those seats."

There's no deadline for acting for Aronson's clients, either. "There's not typically a mandatory time in the documents that it happens," she explains. "But it should be reasonable. If the vacancy happens in December during the holidays or your property is full of snowbirds, the search may have to go into January. Or maybe you're dealing with a number of things and the board can't put aside the time to deal with the search. The term has to be reasonable.

"Some boards can get down to three members, and they don't want to replace the board members who are gone because those remaining board members get along great," says Aronson. "In that situation, some boards will push filling those seats off a bit, but they shouldn't. Someone *could* challenge their decisions, even if they might not win. I just wouldn't want that challenge to occur."