

## WHEN NO ONE RUNS FOR THE BOARD!

Serving on a homeowner's association board of directors is a thankless job that often fails to receive the recognition it rightfully deserves.

Sadly, communities sometimes experience the dilemma in which nobody is willing to service on the HOA Board.

Under Florida Law, a Board Meeting cannot occur without quorum. The definition of quorum is 51 percent director participation. For example, if an association is made up of a five-member board, a quorum would only be established after three of the board members decided to act. Failure to have enough directors to meet the definition of a quorum under your governing documents will prevent the HOA from being able to hold meetings and conduct meaningful business.

If nobody steps forward, the court will appoint a receiver to run the association. Unlike customary directors who take the position without compensation, Section 720.3053 provides that the receiver is entitled to receive a salary and reimbursement of all costs and attorneys' fees payable from association funds. It also goes on to say that the "Association shall be responsible for the salary of the receiver, court costs and attorneys' fees."

The difference between free volunteer directors and paid receivers with their accompanying fees can be a large number that has a drastic impact on the assessments of an HOA.

Corporations cannot operate without boards of directors. If homeowners do not volunteer to serve on their association's board, the management company cannot make decisions on its own and bills can't be paid.

The following issues must be considered:

- *Personal Exposure.* Without insurance, all owners are personally exposed if someone is injured in your common areas. Each member could be sued and there will be no insurance to defend them or to pay any judgment. Each owner would need to pay out of pocket for an attorney and each could be liable for the entire judgment (joint and several liability).
- *Suspended Corporation.* The association can have its corporate status suspended, which means it cannot defend itself against lawsuits.
- *Deferred Maintenance.* Deferred maintenance will accumulate, leading to more expensive repairs, as well as water damage and mold in the common areas, which means more litigation.
- *Market Values.* The market values of units will plummet. Sellers must disclose to potential buyers the true state of the association's affairs, and buyers would likely not purchase units in the complex.

**Receiver - Custodian.** The superior court may appoint a third party (a receiver or custodian) to manage the association as provided for in Code of Civil Procedure §564(b)(9). The receiver would have the power to run the association, including the power to assess the membership for all costs needed to pay for operations. The downside is that there are no restrictions on the size or frequency of assessments imposed by the receiver. The membership would have no say in what services were provided, what was repaired or when, or how much is paid for operations and repairs. All of that would be in the hands of the receiver. Moreover, the receiver would likely special assess the membership to pay for his/her services.

To prevent receivership from happening, I would encourage everyone who lives in the HOA and is even slightly pondering volunteering as a director to strongly consider stepping up and serving as a director. Your participation may have a greater impact than you ever realized before.