

Avoiding an Election Do-Over, Understanding Florida Condominium Association Director Term Limits.

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As Florida's condominium association election season nears, two distinct groups of condominium owners will emerge with each claiming a totally opposite meaning and application of Florida's condominium director term limit statute (Florida Statute §718.111 (2)(d)2):

1. Condominium associations struggling to attract candidates to serve on its board of directors will claim the statute does not apply retroactively. Therefore, candidates that have served the eight-year consecutive maximum can continue to serve.
2. Condominium associations with boards stacked with so-called "lifers" will claim the statute applies retroactively and those that already served or are about to serve (if they win) more than eight consecutive years are prohibited.

Florida's legislature provided little help when it amended Statute §718.111 (2)(d)2) without indicating whether the statute applies retroactively or proactively. Ordinarily, unless a statute expressly states it is to be applied retroactively, the statute is applied only to circumstances arising after its enactment. However, Florida's condominium laws are anything but ordinary and sometimes new statutes are applied retroactively depending on whether the retroactive application impairs a "right". If so, the statute is only applied proactively.

This above calculation of a statute's retroactive application versus impaired rights changes again if a condominium association declaration contains the magic language known as the "Kaufman language". The Kaufman language is verbiage in a condominium association's declaration that automatically incorporates and retroactively applies new statutes by expressing the declaration follows Florida law as "it is amended from time to time".

Recently, The State of Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes ("Division") somewhat clarified this issue with its arbitration decision in *Glantz v. Hidden Lake of Manatee Owners' Association, Inc.* Case No.: 2019-01-5048 (click here for the case). In *Glantz*, the condominium association

declaration did **not** have the magic Kaufman language. Without Kaufman language in its declaration the Division held the condominium association members were “. . . not subject in any way to the term limit provision in the 2018 amendment to Section 718.111 (2)(d)2. because the Declaration does not contain "Kaufman language”.

Whether the Division concludes a declaration actually containing the Kaufman language will cause the term limit statute to be retroactively applied, remains to be seen. For now, condominium associations are advised to check their Declaration for the Kaufman language for a determination of a candidate’s eligibility (and consult with their attorney).



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