

Q&A: Are Extended Terms Legal?

By: Pamela Jonah

The condominium will be starting a major rehab project in February 2014. It is expected to last between 12-18 months. The Board of Trustees unilaterally voted to have their terms automatically extended until the end of the rehab project. I don't believe that the board can legally do that. The declaration of trust states that the election of board of trustee members whose terms have expired will be held at the annual meeting in June.

—Trustworthy Trustee

“In general the trustee’s term limits, unit owner meeting dates (election dates) and percentage beneficial unit owner vote required to obtain a seat on the board are spelled out in the community association’s governing documents, usually the bylaws,” says Pamela Jonah, an attorney at the law firm of Goodman, Shapiro & Lombardi, LLC in Dedham, MA. “While the trustees have some latitude to vote and establish administrative rules concerning how voting will take place, such as deadlines for nominations and the use of proxies, to the extent of the above, the documents are silent on said issues. Trustees may not take a vote amongst themselves to extend their own term limits as established in the governing documents.

“The proper way to change term limits, would be by an amendment to the governing documents, which requires assent of unit owners holding a certain percentage of beneficial interest. The beneficial percentage required and the procedure to hold a meeting and vote is also spelled out in the governing documents, usually in the section concerning amendments.

“While there may be a reasonable argument for extending the date for a trustee election as spelled out in the governing documents, to another date in cases of emergency and such. Extending a trustee election for 7 months, without amending the documents would most likely not be deemed reasonable. Absent the authority to do so in the governing documents, trustees may not vote to extend their own terms.”