

## Articles of Incorporation

**Article III** of the AOI is very clear in that the three Board Members are to serve three-year terms with one position on the board expiring every year. Each year an election to fill the vacant Director position on the Board at the Annual Membership Meeting. While the Articles of Corporation requires a quorum to be present at such elections, and it defines what is a quorum, it only implies what should be done if a quorum is not present at the Membership Meeting.

## By-Laws

The By-Laws back up the Articles of Incorporation and provide additional detail to several aspects of the election of members to offices within the Association.

**Article III, Section 2** allows the President, a majority of the Board or Members to call a Special Meeting. (One assumed purpose for a Special Meeting would be to achieve a quorum for the purpose of electing a Director to the Board when a quorum was not present at the Membership Meeting)

**Section 4** defines a quorum as being one-third of the members plus the number of valid proxies from members not present.

**Article IV** supports the Articles of Incorporation in the description of the Board of Director, Their selection for candidates for election to the Board and the term of office of the Directors.

**Section 2** lays out the rotation of Board members.

**Article V** describes the nomination of candidates for the Board and the election itself.

## Rules and Covenants

These do not add much to clarify this issue.

## Relevant Florida Statutes

Section 720.306 is the relevant Florida Statute

720. **720.306 (1)** Quorum; Amendments. – Defines “quorum” for association elections. There is no material difference with the definitions in the official documents. There are also limitations on amendments to official documents of

an association. Requires the consent of mortgagees in amendments to official documents.

721. **720.306 (2)** Annual Meeting, - Requires an annual meeting by the association in which the election of board members be held in conjunction with this meeting.

722. **720.306 (3)** Special Meeting, - A special meeting may be called by the board or by 10% of the membership. These are meetings with a single item which is stated in the notice for the meeting.

**s.720.306 (4)** Contents of Notice, - Defines the difference of the content of the announcement notices between the notices for the Annual Meet and any Special Meetings called.

720. **720.306 (5)** Notice of Meetings, - Provides notice of meetings to the membership.

721. **720.306 (6)** Right to Speak. – All members have the right to speak on any issue before the board at the annual meeting. Such members can be limited to at least three minutes.

722. **720.306 (7)** Adjournment. – Unless otherwise required by the By-Laws the annual meeting or special meeting may be adjourned to a different time, place and time and must be announced at the meeting before the adjournment is taken pursuant to s. 720.303(2). Any business that might have transacted on the original date of the meeting may be transacted at the adjourned meeting. All members who are entitled to vote must be notified to all persons entitled to vote.

**(At this point where the board deviated from given procedures at the BFCA annual meeting. This language applies to the election to fill the vacant board position.)**

**s.720.306 (8)** Proxy Voting. – Allows members entitled to vote to do so by proxy if they are present at the meeting. Also provides the requirements and content for the proxy to be valid. Also limited the age of the proxy to be valid.

720. **720.306 (9)** Elections and Board Vacancies. – Elections of directors must be conducted in accordance with the governing documents of the association. If there is one vacancy on the board and one candidate for the position vacant position, there is no need for an election regardless of whether a quorum is present at the meeting. Any member who is delinquent in the payment of any fee, fine or other monetary obligation may not be elected to the board. Likewise any person convicted of a felony or who is a former felon of this state or any other state may not be elected to the board.

## **Comparison between the Governing Documents and the Statutes**

Both the Governing Documents and the Statutes make it clear that each director has a three-year term on the Board and that any vacancies on the board must be filled at the annual membership. While the governing documents are not explicit about how the board should proceed when a quorum is not achieved at the membership meeting, it implies that the board must try again to hold the election. It is against every reference in the governing documents and the statutes that the director gets a fourth year on the board. Largely the governing documents rely on the intelligence and integrity of the board to apply logic and proceed to have an election to fill the vacancy on the board.

The statutes are clear on the path ahead. The membership meeting should have been adjourned with a special meeting to be held at a date, time and place for the singular purpose of holding the election to fill the vacancy on the board.

At the current time the Board of the BFCA is considered to be made up of two directors until the vacancy in the board is filled by an election by the entitled membership.