

## Q&A: Changing the Bylaws

BY ROBERT KAYE 2017 NOVEMBER

Q&A



**Q.** I own a co-op apartment in Fort Lauderdale. The bylaws of the association state that 80 percent of the members of the association have to agree in any changes or alteration of the bylaws. At a special meeting to amend the bylaws, only 50 percent of the members agreed to the changes. The board of directors declared the amendments passed, and issued a new set of bylaws to the members. I pointed out to the board that they did not have enough votes to

change the bylaws, but the board is refusing to nullify the election vote. What are my options to have the amended bylaws declared invalid?

—Enlighten Me

**A.** “Section 719.106(1)(h) of Florida Statute indicates that the method by which bylaws may be amended are to be stated in the bylaws,” says attorney Robert Kaye of the firm Kaye Bender Rembaum, which has offices in Pompano Beach and Palm Beach Gardens. “If the bylaws do not have a stated method, the statute provides the requirement of a vote of not less than two-thirds of the owners. You have indicated that the bylaws for your cooperative indicate the requirement of a vote of not less than 80 percent of the members. As such, the bylaws can only be properly amended by the approval of 80 percent.

“If the board of directors has taken the position that the bylaws were properly changed with a lesser number of owners, any unit owner in the cooperative may challenge that act through legal action if the board refuses to voluntarily fix the problem. Since this type of issue does not fall into the specific matters for which mandatory arbitration is required under Section 719.1255 F.S., it will be necessary to file a legal challenge in court.

“Before doing so however, you should prepare your case by obtaining information. First, you will send a certified letter to the board as a written inquiry under Section 719.106(1)(a)(3) F.S., and ask for a substantive explanation of the voting method used and the number of owners who voted in favor of the proposed amendment change. Additionally, you should make a written request for access to the official records of the association and at that inspection, make copies of all of the voting information on file for the vote on the amendment issue. With the documentation in hand, your legal counsel can notify the board of the need to correct the problem or face legal action.”