

## Follow the Law

There has been quite a bit of discussion about the possibility (now likelihood) of PIPOA Board Member Vicki Marsden resigning her seat. Due to personal circumstances, Vicki is selling her home and, once sold, is no longer eligible as a Board Member. Vicki, we are sorry, and you will be missed.

But, what does this mean to our Board and our Community?

Situations like this are to be expected in any organization. Board Members resign for a variety of reasons. So, processes are defined in an organization's Bylaws to fill any vacant seats.

What do our Bylaw's say about this situation? Paragraph 2.03 says:

"Upon the death, removal, resignation, or incapacity of any member of the Board, a majority of the then remaining directors shall elect his/her successor."

And, just in case our Bylaws did not cover this issue, Texas State Code 209 says:

Sec. 209.00593. ELECTION OF BOARD MEMBERS. (a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board to fill a vacancy on the board. A board member appointed to fill a vacant position shall serve for the remainder of the unexpired term of the position.

So, our Bylaws say that the Board elects the replacement Member. But since our Bylaws are silent on the length of the appointment, we must go to Texas 209 for clarification. And 209 says that the appointment is valid for the rest of the unexpired term.

In layman's term, the Board elects Vicki's replacement and that person serves out the rest of the term which expires in 2021.

Now, right now, many of you are thinking "Waaaait a minute. The last time this happened, wasn't there an election for a partial term?" Yes, that is true. In the summer of 2015, Board Member Jeff Carlson resigned only a few months into his 3-year term. The Board elected JR Miller to replace him. Then, at the next Annual Member Meeting, an election was held to fill the remaining 2 years of the term. JR Miller and Leslie Hess ran for that seat, in which Leslie Hess garnered the most votes.

However, nothing in our Bylaws or Texas 209 say anything about this "partial term election" process. It was invalid. And I will go so far to say that Leslie Hess was sitting in JR Miller's Board seat the entire time she sat on the Board. She was not a legally elected (or appointed) Board Member. JR Miller was appointed and should have remained. Any Board action taken by Leslie Hess may be subject to legal challenge and possible recall. It is very disappointing that former Board President Brent Moore and Board Attorney John Bell did not seem to understand our Bylaws, Texas Code 209 and how these dedicatory instruments are critical to the governance of our PIPOA.

Where does this leave us?

Once Vicki resigns, it falls to the Board to elect her replacement. If the Board cannot reach a consensus then the seat will remain open until a future Board can agree on a replacement. No "partial term election" is authorized under either our Bylaws or Texas law. The Law shows us that there will be only 2 open seats for the upcoming March election and both of those seats will be for 3-year terms.

It is important to Follow the Law.