

# Q&A: Holding Two Board Roles Simultaneously

BY MICHAEL M. KAYAM 2018 DECEMBER

Q&A



**Q.** The president of our board holds two positions, and his wife holds another. Their friend holds the last position. We had an election yesterday, and two new residents gave speeches running for positions on the board – one for the president’s seat, the other for a regular member position; they lost. The president told us about the three positions available; however, he said he was keeping the treasurer’s seat, but the president’s seat was up for grabs, which to my

understanding means the new man running unopposed for the seat was an automatic shoo-in? The other man ran against the president’s wife for board VP and lost, which I feel is legal. Can the president hold two positions even after we had an election with two new individuals running? I also read in the Michigan State Housing Development Authority Act of 1966 that no one gets paid to hold a position. Is that correct?

—Conflict of Interest?

**A.** “In New York, the corporate affairs and structure of a co-op’s board of directors are governed by the Business Corporation Law of New York (BCL),” says Michael M. Kayam of the Lasser Law Group in Manhattan. “The BCL provides that, ‘The board of directors shall consist of one or more members,’ and a co-op’s Certificate of Incorporation or bylaws typically specify the number of directors that will comprise the board. As a result, if the bylaws in this situation state that there shall be three directors on the board, then there must be three different individuals on the board holding three separate seats and votes – not one individual holding two seats or more with disproportionate voting power over the other board members.

“The members of the board of directors are responsible for making decisions on behalf of the co-op. Day-to-day decision making authority and roles of the members of the board are typically further delegated by the board of directors to individual directors, or other individuals who are not directors by assigning titles and roles as officers of the co-op – i.e., the president, vice president, treasurer and secretary. The appointment of officers by the board usually takes place immediately or shortly after the annual election of directors by the shareholders. In other words, the shareholders typically elect directors, and the directors then typically elect officers.

“Pursuant to the BCL, ‘any two or more offices may be held by the same person,’ and ‘The board may elect or appoint a president, one or more vice presidents, a secretary and a treasurer, and such other officers as it may

determine, or as may be provided in the bylaws.' Thus, under the BCL one director can hold two or more offices at the same time – unless the bylaws provide otherwise.

"As a result, under New York law, the president of your co-op board would not be permitted to hold two board of directors' seats at the same time. However, he may be able to hold two offices at the same time (i.e., act as both the board president and treasurer), depending upon the language in your particular co-op's bylaws.

"Based upon the question you posed, it appears that your board of directors consists of four members, and the husband and wife, their friend, and one other person should each have been elected to one seat on the board. In addition, unless there is prohibitive language in the bylaws, it would be possible for the husband to hold two officer positions at the same time if a majority of the board elected him to those positions.

"Lastly, if your building is a condominium (and not a co-op), Article 9-B of the Real Property Law (known as the Condominium Act) would initially determine your board's governance. However, the Condominium Act does not address many of the corporate governance issues faced by condominium boards (which operate similar to co-op boards), and courts have consistently applied the BCL to condominium boards when the Condominium Act or a condominium's bylaws are silent on certain issues. Thus, if you are living in a condominium, the first place to find answers to your questions would be the Condominium Act and your bylaws and, if they are silent on the matter, it would probably be safe to assume a court reviewing this issue would apply the BCL analysis set forth above."