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# Affidavit accuses Frank of violating fiduciary duties

A rift between former President Mike Dixon and Frank began almost immediately after their election in May 2007, documents filed with the ombudsman's office show.

"Mr. Frank believed he should be in charge of the board, due to his receiving the most votes in this year's board election. The board disagreed and elected me president," Dixon wrote in the affidavit.

Dixon was contacted for this story, but said he would not comment on the performance or qualifications of another board member.

On Aug. 6 Dixon sent a certified letter to Frank, who was vice president at the time, asking him to pledge in writing that he would cease behaviors that the board felt were illegal under Nevada statutes governing common interest communities and were detrimental to the association. Both are no longer officers but remain on the board.

Among other complaints, the board asserted that Frank violated the contract with Sun City Anthem's management company by giving work instructions and critiques to RMI employees, which is a sole responsibility of the board president, and sharing private board discussions and information with residents.

The letter also noted, "Please also be advised that it is the intent of the Board to add an agenda item to the upcoming



Frank

board meeting to change the officers of the Association. This will allow the Board to remove you as Vice-President if the conduct continues."

Frank responded to the letter on Aug. 14, asking for more specifics on the alleged transgressions and challenging the contention that he was in violation of Nevada law.

For the Aug. 23 SCA board meeting an item entitled "Complaints Against Board Members (Action May Be Taken)" was added to the agenda. By a 5-1 vote, the board voted to remove Frank as vice president, with Frank as the lone dissenting vote and board member Barry Friedman abstaining. Two weeks later the board submitted the affidavit to the Real Estate Division asking for intervention.

A complaint was filed with the ombudsman's office that alleged the vote was illegal because the agenda item was vague and did not meet requirements of Nevada law stating a meeting agenda must have a "clear and complete statement of the topics scheduled to be considered." The board voted again at its Sept. 27 meeting to remove Frank as vice president.

The ombudsman's office

asked for both parties to attend a mediation hearing in an attempt to settle the dispute laid out in the board's complaint against Frank.

Frank said he felt that Dixon and the board had not fulfilled their responsibility to give a detailed and specific account of his alleged transgressions, refused to attend.

After receiving a response to the affidavit from Frank's lawyer in January, the Real Estate Division concluded enough evidence was present to warrant a hearing and passed the case to the attorney general's office.

Maddox contends that Frank is not in violation of Nevada law, nor the Sun City Anthem's governing documents, and that the board never fulfilled its responsibility to address the issue in detail with Frank before filing the affidavit. The ombudsman's office should have never accepted the complaint, he said.

"The division isn't really equipped to handle a dispute between a board and one of its members. It's set up for disputes between the board and residents," Maddox said.

Officials of the Real Estate Division said they could not comment on an ongoing investigation.

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