

Is That Fair?

Q & A

Q My question is pretty straightforward: can a board member hold both the title of president and secretary concurrently? Article VI Paragraph 1 of our bylaws, entitled “Officers” states that “The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer” but our managing agent seems to think there’s no problem with our president also serving as secretary. Could you clear this up for both of us?

-- Queens Shareholder

A According to Adam Leitman Bailey of the Law Offices of Adam Leitman Bailey, P.C. in Manhattan: “You pose an important legal and practical question. Assuming your co-op is governed by the Business Corporation Law, Section 715 of that law controls the election of officers of the Corporation. Section 715 (e) of the Business Corporation law states, “Any two of more offices may be held by the same person” (emphasis added). In addition, said law states, “When all of the issued and outstanding stock of the corporation is owned by one person, such person may hold all or any combination of offices.

Of course, this section—as well as the general powers of a corporation—may be limited or restricted by the charter or bylaws of the corporation. The scope and authority of each officer’s position depends on the proprietary lease and the bylaws as well as what the board of directors could authorize or ratify on behalf of the corporation.

Assuming that none of your corporate documents—including your bylaws, charter or proprietary lease—limits a board member from having more than one officer’s position, said board member may act as both the president and the secretary.

On a practical basis however, I strongly advise against choosing the same person to serve as both president and secretary. Although many boards permit one person to hold two officer’s positions, by allowing one person to hold the two titles, you are inviting potential fraud. The law requires two officers to sign stock certificates. However, if one person obtains both positions, the board is vulnerable to fraud as this same person can sign and transfer shareholder certificates without any checks or balances.

Hence, although the law permits one person to occupy both positions and many co-ops operate this way, such a procedure may result in fraud or other problems that can adversely affect your building.”