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## MEMORANDUM

TO: Trailer Estates Board of Trustees  
TJ Miller, Office Manager

FROM: Mark P. Barnebey, Esq. <sup>7/28/10</sup> *MS*

RE: Vacancy of the Chair

DATE: July 28, 2010

### Issue Presented:

A question has arisen as to who is responsible for the day-to-day operation of the District when the Chair is not physically present at the District. The short answer is that unless otherwise determined by policy of the Board, the Chair continues to be responsible for the day-to-day operation of the District until the office is vacated pursuant to law.

### Discussion:

Article X, Section 3, of the Florida Constitution defines vacancy in office as follows:

**“Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent’s succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.”**

Thus, the mere absence of an officer from the state for a specified reason does not create a vacancy in the office.

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Article VI, Section B., of the District's By-Laws provide that "The First Vice Chairman shall assist the Chairman, and in the absence of the Chairman, shall preside at any meeting." Thus, if the Chair is absent for a meeting of the Board, the meeting would be chaired by the First Vice Chair, if that person is present, then Second Vice Chair, and so on.

Neither the District's Charter, By-Laws nor Policies appear to fully address the responsibility for the day-to-day operation of the District if there was a vacancy by the Chair, although pursuant to Robert's Rules of Order and general parliamentary practice, the First Vice Chair would generally assume that role.

Given the foregoing, it is our opinion that the Chair remains responsible for the day-to-day operation unless a vacancy occurs or the Chair temporarily turns over responsibility to the First Vice Chair. If the Chair cannot be reached in a timely manner on a specific issue, then the First Vice Chair should be contacted and would be authorized to make any determinations consistent with District rules and regulations. If the First Vice Chair cannot be reached, then the Second Vice Chair should be contacted, and this authorization continues down the line of officers.

If the Board has concerns about ensuring continuous on-site management of the District, there are a couple of ways this could be addressed. The policies of the District could be amended to provide that the Chair's day-to-day operational duties would pass to the Vice Chair or another Board member upon absence from the District for a certain period. This issue could also be largely resolved if there was a District Manager or other administrative personnel to handle day-to-day administrative matters.