

Minutes Bring Order to Conduct of Board

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Florida's courts have referred to community associations as "democratic sub-societies." At least in theory, American democracy requires the governmental decision-making process to be conducted in the open. Not surprisingly, Florida's "sunshine" laws have imposed open-government requirements on association boards.

Today's column is the fourth installment of a primer on sunshine laws which I have dubbed "Community Association Sunshine Law, Course 101" (See Time to let in a little sunshine, January 20, 2005; Shedding more light on laws of sunshine, January 27, 2005; and Sunshine laws apply to condo boards, February 3, 2005).

Chapter 4: Keeping Minutes of Board Meetings

I have heard corporate minutes referred to as the line between organization and disaster. I have also seen "minutes" that are so lengthy, perhaps they should have been called "hours."

The purpose of minutes is to record what was done, not what was said. Where detailed findings of facts are appropriate for inclusion with minutes, they should be recited in a separate resolution of the board.

A typical set of board minutes should be one to three pages in length. The minutes should reflect:

- The date, time, and place at which the meeting was called to order.
- The presiding officer.
- The establishment of a quorum, with attendees listed by name.
- Proof of proper notice for the meeting.
- Disposal of unapproved minutes from previous board meetings.

- A summary of reports given to the board and a statement by whom the reports were given (a one or two sentence summary is typically sufficient).
- Unfinished business.
- New business.
- Adjournment.

Whenever an item of board business is put to a vote, the person making the motion for approval of the item should be identified in the minutes, as should the name of the person who seconds the motion. The exact wording of the motion should also be included in the minutes. The points raised in debate are typically not included in the minutes.

The condominium law requires the vote of every director to be recorded in the minutes. Accordingly, if five directors vote in favor of a motion and two are opposed, the minutes should reflect the names of the five who voted for the item, as well as the names of the two who voted against. There is a similar requirement in the statute for homeowners' associations.

Most boards operate under Robert's Rules of Order, either through mandate from the bylaws, or simply because most people are familiar with Robert's as a standard reference for parliamentary procedure.

Under Robert's Rules of Order, the chair of a meeting typically does not vote, except to break ties. This is not the case for associations. Typically, the chair of board meetings is the association's president, who is also a member of the board. As a member of the board, the president is entitled (and probably legally obligated) to vote on issues before the board.

One area where there is some significant difference between the condominium and homeowners' association law involves abstentions. Directors may desire to abstain from voting be-

cause they may not know enough about the topic (for example, if they just joined the board), or if they do not wish to take sides on a politically sensitive issue.

Directors are obliged by law and concepts of fiduciary duty to abstain from voting when the subject matter of the vote presents a conflict of interest. For example, if a board member owned two units and approval of a lease application for one of those units was on the agenda, that director should abstain from voting on that item due to a conflict of interest.

In condominiums, directors may only abstain from voting in the event of a conflict of interest. Otherwise, the director is deemed to have voted with the majority of the board. For HOAs, the law is a bit looser. The statute provides that a

director's abstention must be noted in the minutes, but does not limit abstentions to conflict of interest situations. As in condos, unless there is a conflict, it is preferred practice for all HOA directors to vote on items that have been brought to a vote by motion.

Both the laws for condominiums and homeowners' associations require minutes of board meetings to be kept for seven years, as part of the official records of the association. In my opinion, minutes should be kept perpetually (from the beginning of the association) and are one of the few documents that an association should keep in its files for so long as the association is in existence.

Next week, we will address the frequently misunderstood topic of how the sunshine laws apply to association committees.



Question: My condominium association has an annual budget of four hundred thousand dollars. Must we employ a community association manager to run our association? N.M. (via e-mail)

Answer: There is no requirement in the law that a condominium association employ a community association manager to manage the condominium. Some associations decide to self manage. However, if your condominium association decides to hire a community association manager, the manager must be licensed.

The state's condo agency has adopted a rule which provides that in furtherance of its fiduciary duty to the unit owners, a board of directors shall employ only a licensed community association manager where licensure is required by law.

The exception to the licensure law is if the association contains fifty units or less, or has an annual budget of one hundred thousand dollars or less. In that case, the association can hire a manager, and the manager does not have to be licensed (the manager cannot manage multiple associations which result in exceeding the legal limits).

Therefore, if your association has a budget of more than one hundred thousand dollars, then the association can either

be self managed, or you can hire a community association manager. If you choose to hire a community association manager, the manager must be licensed.

Question: Can a homeowner's association levy and collect fines? By what means? Also, can the board of directors amend a rule without amending the deed of restrictions by a vote of the owners? R.F. (via e-mail)

Answer: The ability of a homeowner's association to levy and collect fines is addressed by Section 720.305(2) of the Florida Statutes. In order to have the right to fine, it must be allowed by your documents.

Prior to October 1, 2004, the law allowed a homeowner's association to file a lien against a parcel for non-payment of a fine and collect the fine through foreclosure, if that procedure was authorized by the governing documents. In the alternative, the association could file a lawsuit against the owner to recover the fine. However, the amendments to Chapter 720 during the 2004 Legislative Session included an amendment to prohibit homeowners' associations from filing a lien against a parcel for nonpayment of a fine.

In my opinion, there are serious constitutional issues with applying this change to existing covenants that allow an association to file a lien for the nonpayment of a fine. Nevertheless, if your association were to levy a fine, you could now only collect the fine by filing a personal action against the unit owner, unless your association wanted to be the test case over the constitutionality of the amendments to the law.

In a court action, the association (assuming it wins the case) would be able to collect the association's reasonable attorney's fees and costs from the non-prevailing party.

Regarding the rule changes, you would need to look at your deed of restrictions, articles of incorporation, and bylaws to determine whether the board of directors has the authority to amend rules and regulations without a vote of the owners. If the board has the authority to amend rules and regulations, the rules must be reasonable and may not contravene either the statute governing homeowners' associations or your governing documents (for example, the deed of restrictions).

In addition, the board must also now comply with Section 720.303(2), Florida Statutes, which was amended effective October 1, 2004. The statute now requires that written notice of any board meeting at which amendments to rules regarding parcel (lot) use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than fourteen days before the board meeting. Therefore, if the board of directors has the authority to adopt or amend rules and regulations (and you would need to refer to your governing documents to determine this), then the rules can be adopted by the board of directors at a board meeting at which fourteen days' notice is given as required by the statute, and such rules must be reasonable and consistent with the law and governing documents.

Question: I live in a condominium where we have two different groups running for the board, the incumbents and the new candidates. The current board has designated persons on their side to count the votes on election day. The new candidates suggested that they would like to designate other people to count the votes also. The current board claims that they already made the decision regarding who will be counting the votes, and this is their final answer. Is there anything that we can do before the elections? A.K (via e-mail)

Answer: Chapter 61B-23.0021 of the Florida Administrative Code discusses the handling and counting of ballots at a condominium association's annual meeting. That law states that all of the ballots shall be handled by an impartial committee appointed by the board. An impartial committee means a committee whose members do not include any of the following, or their spouses: current board members; officers; and candidates for the board. Therefore, the current board does have the authority to appoint the committee to handle all of the ballots, so long as the committee is made up of proper persons.

Additionally, part of the "handling" the ballots includes counting them. The law also says that the ballots are to be removed from their envelopes and counted in the presence of the unit owners. Therefore, although only the board has the authority to appoint the committee, the ballots are counted in front of the unit owners who can ensure the process is above board. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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