



Community Life: Impartial Committee Can Verify Voters

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Q: Our condominium association held its annual meeting last month. Because we have so many unit owners, it took over 2 hours just to verify the information on the envelopes and count the election ballots. Can we count the ballots ahead of time and then add the votes that were submitted at the annual meeting and then announce the results? **F.C. (via e-mail)**

A: The Division of Florida Land Sales, Condominiums, and Mobile Homes has adopted a rule allowing an association to verify outer envelope information in advance of the annual meeting. The rule allows the board of directors to appoint an “impartial committee.” The appointment of the impartial committee should be at a properly noticed meeting of the board.

The impartial committee can meet prior to the annual meeting, but only on the same date as the annual meeting. The meeting of the impartial committee to verify outer envelope information must be noticed 48 hours in advance and must be open to all unit owners. The term “impartial” means a committee whose members do not include any current board members, officers, candidates for the board, or the spouses of any of these individuals.

At the committee meeting, the signature and unit identification on the outer envelope must be

checked against the list of qualified voters. The voters must be checked off on the list as having voted. The inner envelope which contains the ballots, however, cannot be opened and counted until the annual meeting. However, the outer envelopes cannot be opened, and the ballots therefore cannot be counted, until the actual annual meeting.

Q: I know you have answered questions before concerning official records requirements for associations. Can you also discuss the length of time that an association should keep various records, such as tax returns, insurance policies, contracts, minutes, and especially ballots and voting records. **T.M. (via e-mail)**

A: Both the Florida Condominium Act and the Florida Homeowners’ Association Act provide specific guidance for record retention requirements as to certain records. For other records, the statutes offer no guidance and the concept of reasonableness comes into play.

Clearly, property records including plans, specifications, permits, and warranties related to improvements provided by the developer should be kept indefinitely. Similarly, the governing documents, including the declaration, articles of incorporation, bylaws, and rules and regulations,

and any amendments thereto, should be maintained at all times.

In both condominium associations and homeowners' associations, all pending contracts for work to be performed must be maintained, and bids for work to be performed shall be maintained for a period of one year after the bid was received. For condominium associations, ballots, sign-in sheets, voting proxies and other voting records must also be kept for a period of one year from the date of election, vote or meeting.

Several items are required by statute to be retained for seven years, and those include minutes of meetings of the association board of directors and unit owners, accounting and financial records and, for condominiums, as a result of the Florida Administrative Code, proposed and adopted budgets must be kept with the minutes for a period of seven years. I recommend that minutes be retained permanently. Interestingly for homeowners' associations, all of the association's insurance policies are required to be retained for at least seven years, while the condominium act only requires that all current insurance policies be retained.

Related to the general issue of record retention is a frequent question concerning the need to retain any audio or video recordings made by the board. The Florida Administrative Code addresses this issue and provides that if the board or committee elects to audio or video tape their meetings for the purpose of creating accurate written minutes, the recording may be discarded after the minutes are created. However, if the board or committee elects to retain the recording even after the minutes are created, those recordings shall be part of the official records.

Q: I live in a fairly new gated community of single family homes with a master association and several homeowners' associations, and the board of directors is doing little to enforce the covenants and restrictions. For example, the board is ignoring overnight parking on the streets, outdoor storage of trash and garbage, the presence of commercial vehicles, the six-month or more deployment of storm shutters, etc. All of these

issues are clearly prohibited in the governing documents. What is a person to do to get the board to do its job and correct these violations? **R.S. (via e-mail)**

A: Encouraging (and in some cases, compelling) the board to act may be as simple as notifying the board of your concerns. One approach is to draft a letter to the board, advising it of your concerns. You could also have an attorney write the letter for you. At a minimum, the letter should cite specific examples of violations, as well as provisions from your governing documents which prohibit such activity. Because the law changes often and the provisions of your governing documents may not be easy to interpret, the assistance of an attorney could be very helpful.

There may also be factors you are not aware of, such as what your documents provide about enforcement authority. For example, you indicate there is a master association and several sub-associations. Each association will have its own set of governing documents. You would have to look at the restrictions and enforcement authority in the master association's governing documents and the governing documents of the sub-association where the violation is occurring to determine which entity (or both) is responsible for correcting that violation.

If communicating your concerns with the board proves futile, and the matter results in a dispute between you and the association, you will be required to submit your dispute to the Department of Business and Professional Regulation for mandatory mediation. Under the Florida Homeowners' Association Act, disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes are subject to mandatory mediation before the dispute is filed in court. Mediation proceedings are conducted pursuant to the Florida Rules of Civil Procedure. If mediation is unsuccessful, the parties can file the unresolved dispute in court or elect to enter into binding or non-binding arbitration. If all parties to the dispute do not agree to arbitration, any party can file the dispute in court.

As you can see, there are various ways to address your concerns. Obviously, filing legal action should be the option of last resort. You should first try to communicate your concerns with the board

and attempt to resolve the problem through such communication before resorting to legal action.

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.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.