



Committee Meetings Subject to Requirements

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Q: My question concerns committee meetings and the requirements to provide notice of those meetings to the members and to have those meetings open to the members. Also, is it necessary to keep minutes of committee meetings?
T.L. (via e-mail)

A: Committees can be very useful to associations, both to take some of the workload off of the board, and to involve more members in the operations of the association. However, you are right to note that committee meetings are also subject to certain advertising and open meeting requirements. Depending upon the type of committee, there are differences between the notice and open meeting requirements in condominium and homeowners associations. For homeowners associations, a committee that has the authority to make a final decision concerning an expenditure of association funds, or a committee which is vested with the power to approve or disapprove architectural review issues, must notice meetings according to provisions in the governing documents, and if the governing documents do not address the notice requirement, forty-eight hours posted notice is required. In addition, those meetings must be open to the members and the members have the opportunity to videotape or audiotape the meetings.

In a condominium setting, committee meetings of committees which are empowered to take any final action on behalf of the board or which make

recommendations to the board regarding the association budget, must be preceded by notice and be open to the members.

For homeowners' associations, however, any committee that is not approving architectural decisions or making a final decision concerning the expenditure of association funds is not required to comply with the notice and open meeting requirements unless the homeowners' association governing documents require it. The Condominium Act is different in that any committee which is not empowered to take final action on behalf of the board or make recommendations to the board regarding the association budget may be exempt from the notice and open meeting requirements only if the bylaws for the association so provide. In the absence of an express bylaw provision exempting those condominium committees from the notice and open meeting requirements, the committees must comply with those requirements.

In every case, it is my opinion that it is best for a committee to keep recorded minutes of its meetings. These minutes can be helpful not only to the current committee and board, but to future committees who are attempting to make similar decisions or understand the history of important matters in the association. While the provisions of Condominium Act and Homeowners' Association Act that identify the official records of the association that must be kept do not specifically

include committee minutes as a required official record, both the Condominium Act and Homeowners' Association Act include a "catch-all" provision that includes any records related to the operation of the association. Clearly, committee minutes would be considered part of the official records of the association.

Q: The president of our homeowners' association board owns several units, as an investment. He also manages several rental units in the development. The owners of the units the president manages often give the president a proxy for voting at association meetings. Is this a conflict of interest? **R.C. (via e-mail)**

A: In my opinion, owning several units in a community is not, in and of itself, a conflict of interest. In fact, some might argue that an owner of multiple units has a greater interest in ensuring that property values are maintained, since they have a larger investment than owners of single units. Be that as it may, the fact that a board member owns more than one unit, or owns a unit which is held out for rental, does not disqualify that person from serving on the board on conflict of interest grounds.

That is not to say that issues may not arise where a conflict of interest exists. For example, if the board is dealing with a tenant problem, and the tenant resides in a unit which your president manages, it would be appropriate in that situation for your president to refrain from voting or participation in that issue, on conflict of interest grounds.

With respect to proxy voting, as long as the president is not soliciting proxies in the name of the association, and then voting them contrary to board directives, this is not a conflict of interest either. A director or officer has the same rights as any other owner to hold a neighbor's proxy. This is not much of an issue in the condominium setting, since general proxies are prohibited for voting on most items, and the holder of the proxy is given little discretion in any event. In homeowners' associations, there is a bit more leeway for using general proxies, depending on how the bylaws are written.

Q: I own a condominium unit in a small complex, which is entirely investor owned (there are no resident-owners). Since the directors live all over the country, board meetings are held by telephone conference. I have requested that the board e-mail notice of its meetings and agendas to owners. The board does post notice of its meetings and an agenda on the condominium property, 48 hours in advance. Also, minutes are not readily distributed and are only made available if you request them. Do the Florida Statutes address these issues in non-resident communities? **D.M. (via e-mail)**

A: The same law applies regardless of whether the unit owners reside at the condominium or not. Your board appears to be in compliance with the law by posting the notice on the condominium property 48 hours in advance. While there is nothing in the law that would prohibit the board from providing courtesy e-mail notification to the owners of upcoming board meetings, it is not required in the law.

As to the minutes, there is likewise no requirement that they be mailed out to you. If the board makes minutes available upon written request, it is complying with the law.

While your requests may not be unreasonable given the somewhat unique situation of an entirely investor-owned community, this is not an issue you could force legally. Rather, your remedies are "political", including getting yourself elected to the board and attempting to change policies internally.

Q: My question concerns the use of reserve accounts in a multi-condominium association, and the use of reserves for non-scheduled purposes. Can reserve monies be used to cover operating expenses if there is a vote by the owners to allow this to take place at the annual meeting? Do funds have to be replaced before the end of the year? Does the vote take place on a condominium-by-condominium basis, or for the whole association? **B.M. (via e-mail)**

A: In a multi-condominium association, reserves must be separately accounted for, on a

condominium-by-condominium basis, unless the association has properly consolidated financial operations, which is a procedure available for pre-1977 condominiums.

Whether dealing with a single condominium, or a multi-condominium association, it is proper to use reserve funds for operating purposes if that has been approved by a majority vote of the unit

owners. In a multi-condominium association, the vote should be taken on a condominium-by-condominium basis. The funds do not need to be “replaced” by the end of the year, unless that is what the owners voted on. However, if reserve funds have been depleted, the reserve account balances would need to be adjusted in calculating the following year’s reserve funding requirements.

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.