



No One Can Force You to Participate in Association Meetings

Fort Myers The News-Press, October 4, 2009

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Q: Our board and management company require that members of our homeowners' association submit proxies before the annual meeting to establish a quorum, even if the members are in attendance at the meeting. Can they do this? Many of us want to vote at the meeting. **M.H. (via e-mail)**

A: First, there is nothing an association can do to "force" an owner to participate in meetings at all. Participation in the affairs of your association, like voting for elected officials, is something of a civic duty.

Parcel owners in a homeowners' association have the right to vote in person and subject to provisions of the governing documents, vote by proxy. It is customary for associations to encourage owners to send in proxies for the meeting, so that the association can determine in advance whether a quorum will be established. As you may know, Chapter 720 of the Florida Statutes, commonly referred to as the Florida Homeowners' Association Act, states that a quorum at a meeting of the HOA members is thirty percent of the voting interests, unless a lower number is specified in the bylaws.

Generally speaking, a proxy is revocable at any time by the person who gives the proxy. Therefore, it would seem appropriate for your association to encourage owners to send in proxies before the meeting, just in case the owner cannot make it to the meeting, or decides not to attend. But, if the owner shows up at the meeting and wishes to vote in person, they have the right to revoke their proxy and vote in person.

Q: Our condominium association employs a building and grounds maintenance person, and an office administrator. Both of our employees have had a difficult year because their spouses have lost their jobs. However, in both cases, our employees' performance has been excellent. We are aware that both employees are struggling to make ends meet and the board wishes to give each of them a bonus now, in addition to the year-end bonus that we have given in the past. The board discussed this at a recent meeting and one of the members protested that the board is not permitted to give such a bonus because it was not included as an item in the budget, whereas the year-end bonus was accounted for in the budget. In fact, our association has a fairly significant surplus this year because our landscape project ended up costing much less than we anticipated in our budget. Could you please confirm our understanding that the board can give

a bonus to these employees regardless of the fact that the bonus is not specifically included in the budget? **J.C. (via e-mail)**

A: The Florida Condominium Act empowers the association to manage and operate the condominium property, which includes the hiring and management of employees. Most condominium documents vest the authority for day-to-day operation of the association in the board. Barring any specific prohibition in your governing documents, the general powers and authority contained in the Florida Condominium Act and in the Florida Not-For-Profit Corporations Act would allow the board to pay the mid-year bonuses you described. In my experience it would be unusual for any of the governing documents of the association to limit the board's authority in this matter.

A couple of cautionary notes may be in order in this situation. First, as I am sure you are aware, the year-end bonus that I understand you typically award reflects a full year's service. Obviously, it is possible that one or both of your employees might not complete this year of service. However, I understand from your question that the employees' performances to-date have been exemplary and I assume the board has decided to reward that service to-date. In addition, as with any bonus program, it is important to manage expectations of the employee, especially to avoid creating a reasonable expectation that might give rise to an

obligation to pay a bonus. This point highlights the need for a written employment agreement that clearly spells out the compensation requirements, together with clear communication to the employees that any bonus is a discretionary reward for service, and should not be relied upon by the employee.

Also, the board should always be mindful of one of its primary obligations to the association to operate in a fiscally prudent manner. If paying these bonuses would in any way adversely affect or endanger the association's finances, then I would agree that the board should reconsider paying them. However, you have indicated that the association account has adequate surplus from a landscape project that came in under budget. This raises an important point about annual budget surpluses. Specifically, a budget is a good faith estimate of anticipated expenses in the coming year. Those good faith estimates are reflected in specific line items, and I would expect that your budget for this year included a line item for the anticipated landscape project. Since that project came in under budget, the surplus is retained in the association account and can be used in this fiscal year for any proper common expense of the association. As noted above, the management and operation of the condominium, together with the right to hire employees to assist the board in performing those management and operation functions, is a proper common expense of the association.

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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