



## Association Members Can Place Item On Agenda

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**Q:** I recently asked the board of directors of my association to consider getting bids for a new landscaping contract. Our current landscaping contract has another year to go, but can be terminated on 60 days notice. I am certain that we can get a cheaper landscape contract. I am happy that the board listened and put the issue on the agenda for its meeting, but disappointed the directors only had a brief conversation and never took a vote. Is there any way I can get them to vote on this, or is there any way that the members can take control and vote to get new bids and terminate the current landscaping contract? **R.R. (via e-mail)**

**A:** As you may know, the agenda for a community association board meeting is set based upon the provisions contained in the governing documents of the association, most often the bylaws. Some bylaws contain required agendas, particularly for annual members' meetings. Many bylaws provide that the president shall set the agenda, or in some cases that two or more directors may petition to have an item placed on a board meeting agenda.

I assume from your question that you simply raised the issue with the association president and that he or she voluntarily elected to put the item on the agenda. Even if the president had not been receptive to your request, both the Florida

Homeowners' Associations Act and the Florida Condominium Act provide a statutory right for members of the association to have items placed on the agenda of a regular or special board meeting.

Specifically, the Homeowners' Associations Act provides that, if twenty percent of the total voting interests (there is typically one voting interest per home) petition the board to address an item of business, the board shall take the petitioned item up on an agenda at its next regular or special board meeting, but in no event later than sixty days after the receipt of the petition. In a homeowners' association, when a board receives such a petition, it must then provide a 14-day notice of the board meeting to all members. In addition, for items placed on the agenda by membership petition, each member shall have the right to speak for up to three minutes on the matter, provided they sign up to speak at the meeting or submit a written request prior to the meeting. The Homeowner's Associations Act specifically states that the board is not obligated to take any action on the agenda item.

The Florida Condominium Act contains similar provisions, although, the Condominium Act does not require additional notice to members and does not expressly relieve the board from taking any formal action on the item that was placed on the agenda by member petition, although it is in my

opinion that there is likewise no obligation on a condominium association board to take formal action. Simply stated, a director cannot be forced to make a particular motion or to second a motion, and if no motion is made and seconded, then no formal action can be taken by the board. Also, unlike HOA's, condominium unit owners have the right to speak at all board meetings with respect to designated agenda items, whether raised by petition or not.

Absent some special provision in the governing documents of your association, which would be very unusual, the decision to enter into or terminate contracts is generally a decision for the board of directors. Even if the board were to obtain additional bids, there is no obligation that the board must accept the lowest bid. When entering into contracts, the board may take other factors into consideration, such as the qualifications of the contractor and the history and level of service provided by the contractor.

The association members' authority to have a say in the landscape contract (or contracts in general) is generally confined to electing or recalling, the board, or possibly petitioning for a members' meeting to amend the governing documents of the association to limit the board's authority. However, in my experience, limiting the board's authority to enter into basic services contracts would create a very difficult, practical problem for efficiently administering the association.

**Q:** I moved into my new neighborhood a year ago. Ever since I moved here, several of my neighbors have not followed the association's rules, as they were explained to me, for storing garbage cans inside the garage and for putting garbage out to the street. Our garbage pickup is on Tuesday mornings, and several people put their garbage cans out Sunday afternoon. Also, many of my neighbors do their own lawn maintenance and they will pile lawn debris at the curb on Saturday. Sometimes that debris sits there up to a week before it is removed. The problem seems to be getting worse and complaints to the association

have so far gone unanswered. What can I do to get these rules enforced? **C.D. (via e-mail)**

**A:** These types of detailed restrictions are sometimes found in the declaration of covenants, but most often are included in rules and regulations. Most homeowners' associations have general rule making authority to regulate the exterior appearance of homes and the common areas. Rules are valid if they do not conflict with any of the other governing documents and are reasonable. Since one of the most compelling reasons for having a deed restricted community is to maintain certain standards for the benefit of owners and to support higher property values, rules requiring garbage containers to be kept hidden, and prohibiting garbage cans from being placed at the curb too early before scheduled pickup, are fairly common and generally considered reasonable. I have seen rules prohibiting garbage cans from being placed at the curb more than 12 hours before scheduled pick up, and others that set the restriction at 24 hours, though something in between is probably most practical to serve all interests. Assuming your association has clear and enforceable rules in place, all that is left is for the board to enforce those rules.

Ideally, a letter to the owner reminding them of the rules and asking for compliance would solve most, if not all, of the violations. I would generally advise informational, non-threatening letters as the first step for your board. If members fail to comply, the Homeowners Association's Act allows fining if the governing documents authorize fining. The statute allows a fine of up to \$100 per violation, provided that the offending owner is given the opportunity for a hearing before an independent panel. That is a heavy price to pay for a violation that would be fairly easy to cure. Moreover, repeated violations can also be met with additional \$100 fines. Fines cannot be the subject of a lien against a home, so the actual collection of a fine can be complicated by the need to file a small claims lawsuit. Accordingly, some consider fining to be a fairly ineffective enforcement tool.

Ultimately, rules can be enforced through court proceedings, although that is always the last option for achieving compliance with day-to-day rules and regulations. If the real issue in your

community is the board's failure to act and enforce the rules, then the members have every right to contact the board and insist upon enforcement.

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