



Committee Meeting Notices Aren't Required

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Q: Our homeowners' association has several standing committees, including a beautification committee and a social committee. Are these groups required to post notices of their meetings and keep minutes as well? **P.O. (via e-mail)**

A: Probably not.

In the homeowners' association context, the only "committees" which must conduct their business "in the sunshine" are committees with architectural review/approval authority, and any committee that is authorized to spend association funds. If your committees are authorized to execute either of those functions, they would need to post notice of their meetings and allow other owners to attend their meetings.

The law does not, in general, require committees to keep minutes. However, 617.1601 of the Florida Not For Profit Corporation Act requires that minutes be kept for any "committee of the board of directors in place of the board of directors on behalf of the corporation".

However, I believe it is good practice for all committees to keep minutes of their meetings, whether legally required or not. Further, the board can impose whatever requirements it chooses when it appoints a committee. For example, a board could require a committee to post notices, allow

other owners to attend, and keep minutes, even if not legally required.

The law in the condominium context is slightly different. Generally speaking, any committee which makes recommendations to the board of directors regarding the budget (usually called the "budget committee"), as well as any committee that can take final action on behalf of the association, must follow the "sunshine" rules. Many attorneys refer to these committees as "statutory committees", and they must always follow the notice posting requirements and allow unit owner attendance and participation.

Other condominium association committees (sometimes called "non-statutory committees") must also follow the "sunshine" rules unless the bylaws provide otherwise, in which case those committees are exempt. As in the case of homeowners' associations, the board can also impose additional requirements on non-statutory committees above what is contained in the law.

Q: I have a question about removal of a board member for nonpayment of assessments. Our association was involved in a situation where a board member was removed from office for not paying a special assessment as well as regular monthly assessments. At the time the director was removed, he was about sixty days late with the

payment of monthly assessments and thirty days late with the special assessment. I thought the director had to be more than ninety days delinquent in order to be removed. **C.R. (via e-mail)**

A: You are correct. Section 718.112(2)(n) of the Florida Condominium Act was amended in 2008 to provide that a director or officer “more than 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.” Accordingly, the director whose seat was “taken away” could “reclaim” the seat if he had made up his monthly maintenance fees within the ninety-day deadline. If he had not, even though prematurely removed, he would be deemed to have “abandoned” his office on the ninety-first day.

Per the terms of the current statute, special assessment delinquencies may not be considered for the purpose of removal of officers or directors based on delinquency.

Q: Is the organizational meeting of our association’s newly-elected board, where officers

are elected for the upcoming year, supposed to be an open meeting? **A.B. (via e-mail)**

A: Yes.

For condominiums, cooperatives, and homeowners’ associations, the law is the same. The only board meetings which may be closed to unit owners/parcel owner observation are meetings with legal counsel to discuss pending or proposed litigation. In the homeowners’ association context, there is an additional exception for meetings with legal counsel to discuss “personnel matters.”

It is also important to note that in all associations, directors must generally vote “on the record”, with their individual vote for any particular matter being recorded in the minutes of the meeting. However, in the case of the board’s annual election of its officers, the statutes permit voting by secret ballot.

Accordingly, while owners are entitled to attend a board’s organizational meeting, if the board wishes to have “secrecy” in terms of the election of officers, the board may elect its officers by secret ballot.

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.