



## Condominium Law Q&A

June 11, 2007

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**Question** – I live in a condo and, recently, a notice was put up on a Monday for a committee meeting the following Friday. All owners were invited to attend. The committee consisted of four board members. The manager and some owners were in attendance. A discussion was entered into and a decision was agreed to by the committee members as to which vendor to recommend to the board. This decision was then presented to the board at the next regularly scheduled board meeting. My question is this – since there were 4 of 5 board members on the committee, does this not constitute a violation of the Sunshine Law where more than 2 board members meeting together should be posted as a board meeting and minutes taken? E.R., Jensen Beach

**Answer** – While Florida's Government In the Sunshine Act [Section 286.011, Florida Statutes] does not govern common interest ownership housing communities [The Sunshine Act applies whenever 2 or more elected officials or advisory board members meet and discuss matters which might reasonably come before a legislative committee or government council; it strictly applies to government meetings], both the Homeowners Association Act and Condominium Act provide for notice and the opportunity for unit owners to be present whenever a quorum of the board is present. That said, there are some slight variances between the two Acts. In a condominium, the right to attend board and committee meetings applies to meetings of a committee which takes final action on behalf of the board or makes recommendations to the board regarding the association's budget. Meetings

between the board or a committee and the association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice, are exempt from the open meeting provision of the Condominium Act. Homeowners Associations, on the other hand, only need to provide notice and open meetings to the members, when committee meetings, or meetings of other similar entities, are making a final decision regarding the expenditure of association funds, and when there is a meeting of any entity vested with the power to approve or disapprove architectural decisions with respect to the lots governed by the association. The purpose of both the Sunshine Act and the open meetings provision of the Condominium and Homeowners Association Acts is to ensure that all business be conducted in the open. Accordingly, given the fact that the committee meeting was noticed and opened to the members, I do not find any violation of the law.

**Question** – Our homeowners association is in the process of amending our covenants, conditions and restrictions and the association's bylaws. We need information regarding the procedures which must be followed to do so. Do we need a lawyer? Once amended, where do we record the changes? To what extent can the manager assist with this project? G.C., New Smyrna Beach

**Answer** – For the most part, the procedure and vote required to amend the governing documents is set forth in the governing documents. That said, both

the Condominium and Homeowners Association Acts provide some guidelines in this area. The Homeowners Association Act provides that, if there is no provision within the governing documents being amended to the contrary, the vote to amend is the affirmative vote of two-thirds of the voting interests. Furthermore, unless otherwise permitted by the Homeowners Association Act or the original governing documents, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses, unless 100% of the parcel owners and all lien holders of record join in the execution of the amendment. The Condominium Act contains the same restrictions as it relates to changes in voting and the common expenses. In addition, unless the original declaration provided otherwise, the Condominium Act restricts amendments which change the size or configuration of a unit or materially alter or modify the appurtenances to a unit without 100% affirmative

approval of the unit owners and all lien holders of record. Furthermore, any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consented to the amendment and unit owners who purchased their units after the effective date of the amendment. Amendments become effective after being recorded in the public records of the county where the condominium or homeowners associations are located. As a general rule, additions are shown by underlining and deletions by strike-throughs. An experienced community association attorney can be helpful in both drafting the form of the amendment to satisfy both statutory requirements and the goals of the community. While a community association manager can assist with the process and make recommendations, the Florida Supreme Court has determined that managers cannot prepare the form of the amendment because doing so constitutes the unauthorized practice of law.

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