



Transparency: Building Community Through Governing Your HOA

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Focused on Communities

What kinds of problems do you
encounter with homeowners
and residents in your HOA?



Transparency: What do we mean?

- Conducting the Business of the HOA in an Open Manner
- Making Records of the Association Available for Inspection and Copying
- Notice of Adoption and Amendment of Policies and Rules



Conducting Business In An Open Manner

- Board meetings are open to the Members/Designated Representatives
- Executive Sessions are *ONLY* Utilized in Specified Circumstances
- Action Without a Meeting Should be Used Sparingly
- Use Email Communications Judiciously



Open Board Meetings

- Open to Members and Their Agents
- No Right to Interrupt Business
- Right to Speak for and Against Issue Prior to Vote
- Use of Open Forums



Executive Sessions May *ONLY* be Used in these Circumstances:

- Matters pertaining to the employees of the association or managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
- Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- Investigative proceedings concerning possible or actual criminal misconduct;



Executive Sessions May *ONLY* be Used in these Circumstances:

- Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
- Review or discussion relating to any written or oral communication from legal counsel.

Procedures to Use for Executive Session

- Executive session is closed to members and anyone who is not a necessary participant in the deliberations and discussions.
- Typical Participants in Executive Session
 - Board of Directors
 - Manager
 - Legal Counsel or Other Necessary Expert or Party
- Convening In Executive Session
 - During the regular Board Meeting, make a motion to temporarily adjourn the regular Board Meeting and to convene in Executive Session. Give the general reason you will be convening in Executive Session.
- Do not Take Minutes or Notes During Executive Session
- No formal action is taken in Executive Session!
- Reconvene the Regular Meeting to Take Action (if any action is necessary) Decided Upon In Executive Session

Taking Action Without a Meeting

- If Bylaws Prohibit – do not take action without a meeting.
- If Bylaws specify the procedure – utilize that procedure.
- If Bylaws do not prohibit and do not specify a procedure – follow the Nonprofit Act procedure.



Nonprofit Act: Action Without a Meeting

- Action proposed to be taken *must be transmitted in writing to every Director.*
- The transmitted writing must include:
 - The action that is requested to be taken. (Can be in the form of a motion – but doesn't have to be that formal.)
 - The date and time Directors must respond in writing;
 - Where or to whom the Director must respond in writing; and
 - That failure to respond in writing by the time stated in the notice will have the same effect as abstaining in writing and failing to demand in writing by the time stated in the notice that action not be taken without a meeting.

Action Without Meeting

Options for Directors

- Once Directors receive the written notice, by the time stated in the notice, they have the following options:
 - Vote in writing to support the proposed action;
 - Vote in writing against the proposed action;
 - Abstain in writing;
 - Not respond at all (this is considered the same as abstaining from voting);
 - Demand in writing that action must be taken at a meeting. (If this happens, *action cannot be taken without a meeting.*)

Note: A Director can change a vote or demand that the action be taken at a meeting *prior to the deadline* in the notice.

Action Without a Meeting is Effective When:

- The written notice is properly transmitted to all Directors in writing;
- No Director has demanded in writing prior to the deadline in the notice that action must be taken at a meeting; and
- A sufficient number of affirmative votes have been received that would be necessary to act at an actual meeting of the Board. (Enough votes for quorum and enough votes to pass a motion at an actual meeting.)

Put Action Taken Without a Meeting on the Agenda for the Next Meeting of the Board



Conduct of Meetings Policy

Highlights

- Open Meetings – Member Meetings & BOD Meetings
- Right to Speak at Meetings
- Agendas Include Open Forum
- Limitations on Right to Speak and Procedures
- Recording of Meetings Prohibited
- Expectations for Member Conduct
- Dealing with Disruptive or Unruly Behavior
- Utilization of Executive Session



Other Meeting Tips

- Lay the foundation ahead of time on tough issues
- Utilize the Conduct of Meetings Policy consistently and have copies available for meeting attendees
- If a meeting is going to be a firestorm, considering holding the meeting in a library or church
- If folks get nasty – ALWAYS take the high road!



Transparency and Email Communications

- Courts have found that email communications are records of the Association.
- Be professional and constructive in email communications!
- Keep email deliberations to a minimum – conduct deliberations in the board room.
- The Manager or Secretary of the Association should be responsible for keeping copies of all Board email communications.



Policy Regarding Inspection and Copying of Association Records

- Purpose: To establish uniform procedures for the inspection and copying of association records by members; to establish the types of records to be kept by the association or its agent; and to establish the cost of copying records.
- The following records must be kept as PERMANENT records:
 - Minutes of all meetings;
 - Records of all actions taken by the Owners or the Board by written ballot or written consent;
 - A record of all waivers of notices of meetings of Owners, the Board or any Committee;
 - A record of Owners in a form that permits preparation of a list of the names and addresses of all Owners, showing the number of votes each Owner is entitled to vote.
 - All tax returns filed on behalf of the Association.



Policy Regarding Inspection and Copying of Association Records

- The Association is required to keep a copy of the following records at its principal office:
 - Articles of Incorporation, Declaration, Covenants and Bylaws;
 - Resolutions adopted by the Board;
 - Minutes of all Owner Meetings and records of all actions taken by Owners without a meeting for the past three (3) years.
 - All written communications within the past three (3) years to Owners generally as Owners.
 - A list of the names and business or homes addresses of the Association's current directors and officers.
 - All financial audits or reviews conducted during the immediately preceding three (3) years.



Prior to Inspecting Records, A Member Must:

- Provide written notice to the Association of the intent to inspect records at least five (5) days prior to the planned inspection.
- The written notice must describe the records the Member plans to inspect and the purpose of the inspection.
- Board can set date, time and location of inspection.
- Inspection can be held at the next regularly scheduled meeting of the Board if it occurs within 30 days of the request to inspect.



In Determining Whether Records May be Inspected, the Association Shall Consider:

- Whether the request is made in good faith and for a proper purpose;
- Whether the records requested are relevant to the purpose stated by the Member;
- Whether disclosure is for an illegal or improper purpose, or would violate a constitutional or statutory provision or public policy; and
- Whether disclosure would be an invasion of personal privacy, breach of confidence or privileged information.



These Records Are Not Available for Inspection Without *Written Consent of the Board:*

- Confidential personnel records;
- Confidential litigation files and matters covering consultation with legal counsel concerning disputes that are the subject of pending or imminent litigation (attorney/client privileged communications);
- Files dealing with investigative proceedings concerning possible or actual criminal misconduct;
- Any matter which would constitute an unwarranted invasion of individual privacy;
- Inter-office memos, preliminary data, working papers, draft and general information or investigations which have not been formally approved by the Board.
- Members' personal contact information (telephone numbers, email addresses) except the Association will provide names and addresses.

Membership Lists MAY NOT Be:

- Obtained or used by any person for any purpose unrelated to the Association or property subject to the Declaration;
- Used to solicit money or property – unless that money or property will be used *solely* to solicit the votes of unit owners in an election to be held by the Association;
- Used for any commercial purpose;
- Sold to or purchased by any person.

Obtaining Copies of Records

- Owners may request copies of permitted records;
- Association may only charge actual costs per page for copies.

Bottom Line

- Locate the records in the Policy;
- Determine who will be responsible for collecting and keeping the records;
- Follow the Policy consistently and uniformly;
- Be careful of Conflicts of Interest.



Policy Regarding Adoption and Amendment of Policies and Rules

- Under Colorado law, Boards have the authority to create, adopt, enforce, amend and repeal policies, procedures, rules and regulations.
- Can't use this power to trump the Declaration.
- Many times this power is used to clarify ambiguous provisions in the governing documents.



Procedures for Adoption or Amendment of Policies or Rules

- At a meeting of the Board, Members (or their agents) may speak for or against the adoption prior to the Board voting.
- The Board shall give written notice of the adoption at the address provided by the Owner/Member and shall publish the rules by any other reasonable means available. (Options may include: posting on a website, sending via email, notice in a newsletter or personal delivery.)
- Failure of an Owner to receive this notice is not a defense to enforcement of the Rule.

Questions



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