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Preparation of Meeting Minutes: How to Avoid Information Overload

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One issue that causes confusion among our clients is the preparation of meeting minutes. It is a rare week when one of our clients does not contact us to ask: (a) when it is required to prepare minutes; or (2) what materials must be contained in meeting minutes.

Generally speaking, a Board or its committees owe a duty to the Association to keep an accurate record of the actions taken at Board and committee meetings. Both the Virginia and Maryland codes require Boards of community associations to maintain minutes of Board and membership meetings of the association. Also, the “sunshine” provisions in both state codes clearly contemplate that the actions of the Board and the Association’s books and records shall be open to the membership, except for certain exceptions set forth in those codes.

The relevant statutes do not mandate the keeping of minutes of committee meetings. However, it is good corporate practice to keep such minutes, and I encourage your committees to do so.

I. Minutes as Historical Record

Minutes are important for a variety of reasons. They serve as the historical record of the actions of the Association. Several years from now, others will be reviewing the minutes. They should be able to understand what happened at a meeting of your Board.

Moreover, minutes may become an important piece of evidence in a future court action. Minutes are always discoverable in litigation;

accordingly, it is imperative that the minutes accurately reflect the actions taken during the meeting. A good set of minutes can make or break a case. Each motion must be clearly and concisely stated in the minutes or it may not hold up under courtroom scrutiny in the future. The Association's records may some day need to support the Board's position in court, and the meeting minutes may be a central component to the case.

Imprecisely drafted minutes also can result in the Board being unable to enforce its Rules and Regulations and/or Use Restrictions, particularly if the minutes do not accurately reflect the adoption of a Rule or the decision on an application to the Association. As a result, thousands of dollars could be lost in legal fees and court costs on failed enforcement efforts if the meeting minutes are inaccurate.

II. Form and Format of Minutes

Taking minutes properly is an important matter. Minutes are the record of the official action of the Board or its committees. The Board should keep meeting minutes that are meticulous and comprehensive in order to establish a clear record of events.

The minutes should state who made the motion, who seconded the motion, the exact wording of the motion, and the vote.

The law does not require minutes to be a transcript of the meeting, and, in fact, we discourage this practice. Board members must

be free to discuss issues on the record. The transcription of a debate will serve to curb open discussion at the meeting. While it may be appropriate for the Board to include more information in the minutes than the official acts of the Board or committee, it is not appropriate to turn the minutes into a transcript.

Minutes are not for the purpose of telling members about every discussion that took place at the meeting. Members are always permitted to attend meetings if they wish to have more detail about what happened at the meeting or a newsletter may be written to keep them apprised of other meeting particulars. The minutes are for the purpose of recording the actions of the Board (or committee). All Board and committee meetings are open to the public. If a member wants to obtain more detail regarding the debate on issues, they are welcome to attend the meeting. That is the purpose of the sunshine provisions of the Acts.

In particular, Boards and committees are not required to provide an explanation as to why they chose not to take a particular action, or disfavored one option over the action the Board (or committee) chose to take. In our experience, it is unusual (although not unheard of) for meeting minutes to provide the rationale for why the Board chose not to do something.

III. Meeting Minutes Should Contain the Following:

1. The exact corporate name and the words "Minutes of the Meeting of The Board of Directors (or _____ Committee)";
2. The date, time and location of the meeting;
3. Call to Order, indicating who called the meeting to order and the time;

4. The determination of a quorum including the names of the people present in an official capacity;

5. Reading (or waiving the reading) and approval of minutes of the previous meeting;

6. The motions of the Board or its committee with the exact wording in the final the final motion that was made and seconded;

7. The vote on each motion and whether it passed or was defeated; (List those in minority vote or abstaining.)

8. Call to adjourn; and

9. The signature of the Secretary, preceded by the word "submitted". (This is not a legal requirement, but it a recommended practice.)

IV. Approving Minutes

Parliamentary procedure provides a second chance to all Board and committee members to ensure that the minutes accurately reflect the decisions of the Board (or committee). The minutes should be distributed to Board (or committee) members prior to each regularly-scheduled meeting. This provides the members with the opportunity to review the minutes prior to the next meeting. The minutes do not become final until they are adopted by the Board (or committee), which will take place by vote at the next meeting. Any necessary changes to the minutes may be made before they are approved at the next meeting. This is done not by rewriting the minutes, but rather, by noting the change required within the motion that is made or to otherwise approve the minutes.

V. Executive Session

One question that is often raised by our clients is whether they need to prepare a separate set of minutes to summarize the issues discussed in the executive session portion of their Board

meetings. For our clients in Virginia, the answer is quite simple: They do not! While a Board is free to meet in executive session to discuss certain matters allowed under the law (such as pending litigation, employment matters, consult with counsel, contracts under negotiation, etc.), the law prohibits a Board from making any decisions in executive session. All decisions of a Board must be voted on in open session. As noted above, it is inappropriate for the minutes to contain a transcription or summary of the debate on an issue. This is doubly so for executive session discussion, which typically involve the most legally sensitive matters before the Board. We strongly discourage the keeping of detailed or additional minutes for executive sessions, since such records are potentially discoverable in a future court action. Therefore, we recommend that the minutes only contain the vote to meet in executive session and the general purpose for entering executive session.

This issue is a bit different in Maryland, where the applicable statutes require the Board to keep abbreviated minutes of an executive session. Such minutes should only include: (1) the time, place and purpose of the executive session; (2) the record of the vote by which the meeting was closed to the membership; and (3) the statutory authority for closing the session. These abbreviated minutes must be attached to the minutes of the next meeting of the Board.

VI. Conclusion

The bottom line is that it is important to record the actions of the Board (and its committees) so that a history of the official Association actions can be maintained and so the Board (or committee) has an historical record that can confirm its prior actions. It is not appropriate to maintain a detailed record of the debate on a

particular issue. Such a record would serve to discourage open debate and may serve to undermine the decisions of the majority.

If you have any additional questions on this issue, please do not hesitate to contact one of our community association attorneys at (703) 790-1911.

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