



## Board Vote For New Rules by E-mail Not Valid

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**Q:** My condominium association's board repeatedly makes decisions without holding board meetings. Recently, the board allegedly adopted a new set of rules and regulations which they are now attempting to enforce. These rules and regulations were not adopted at a board meeting. Rather when I asked how the rules and regulations were approved, I was shown a series of e-mails between the board members, where the board made changes to the proposed rules and regulations and subsequently took a poll (via e-mail) to adopt them. Are the rules and regulations valid if they were not adopted at a board meeting? **C.K. (via e-mail)**

**A:** Many lawyers who are experienced in representing community associations in Florida would opine that board members may e-mail each other without violating the so called "sunshine laws". This is based on the idea that sending an e-mail is similar to writing a letter and would likely not constitute a board meeting unless the electronic communication were in a "real time" setting.

However, it is clear that a board can not use e-mail to "vote" on matters, nor conduct association business through e-mail, in place of holding properly noticed board meetings.

While e-mail communication can greatly assist the board members to communicate ideas and keep up to date on important issues, such communications

should not replace the regular board meetings where business is conducted and votes are taken, and which are open to all members (except in limited circumstances). I am further of the opinion that e-mails between board members pertaining to association affairs constitute "official records" of the association, and should be kept (and made available for inspection) as such.

The Florida Condominium Act requires written notice of any board meeting at which amendments to rules regarding unit use will be considered to be mailed, delivered, or electronically transmitted to the unit owners, and posted conspicuously on the condominium property, at least 14 days prior to the meeting. Meetings at which rules that do not affect unit use are to be considered must be posted on the condominium property at least 48 hours preceding the meeting, except in an emergency.

Actions taken by the board (such as the adoption of rules and regulations) without holding a properly noticed board meeting are invalid, although they can often be "fixed" by properly noticing and holding a board meeting where the action is re-voted or ratified.

**Q:** Many of the owners in my homeowners' association regularly attend the association's board meetings. Several homeowners recently attempted to

to speak at a board meeting regarding a rather controversial issue which the board was discussing. The board president indicated that members are not permitted to speak at board meetings and are only permitted to speak at meetings of the members. Is this correct? **E.A. (via e-mail)**

**A:** Yes and no. Chapter 720 of the Florida Statutes is the law governing homeowners' associations. The law is unofficially referred to as the Homeowners' Association Act. The statute provides that members have the right to attend all board meetings. Members also have the right to speak on any matter placed on the agenda by petition of at least 20 percent of the membership, for at least three minutes. If the board receives such a petition, the business item must be on the agenda of the board's next regular meeting, or at a special meeting of the board, but not later than sixty days after the receipt of the petition. Items discussed by the board that are not the subject of a petition do not carry the right to speak (contrasted to the condominium laws, where members are entitled to speak at board meetings with respect to all designated agenda items).

A homeowners' association may adopt rules governing the frequency, duration (but not less than three minutes), and manner of member statements, which may include a sign-up sheet for members wishing to speak. Although the board is not required to permit members to speak on topics that are not placed on the agenda by petition, some homeowners' associations set aside time to permit members to speak (also, some HOA bylaws provide for expanded participation rights).

In a condominium setting, the Florida Condominium Act gives unit owners both the right to attend the board meetings and speak about designated agenda items. There is no requirement that the owners submit a petition in order to speak at board meetings of condominium associations. Condominium associations may also adopt rules governing the frequency, duration, and manner of unit owner statements.

In both homeowners' and condominium associations, the board is entitled to hold closed meetings closed

to the membership when the board meets with the association's attorney with respect to proposed or pending litigation. The Homeowners' Association Act also provides that the board can hold closed meetings with the association's attorney for the purpose of discussing personnel matters.

**Q:** We are owners of a home in a large Fort Myers development. One of the entrances to our community has a very poorly designed guard gate. The owner of the adjacent property has agreed to quit claim enough of the edge of his property to allow us better access to the guard gate entrance. He is asking for no payment for this small parcel of property. Does the acquisition of this property require membership approval to be completed? We have read the Homeowners' Association Act to try to find the answer to our question but have been unable to do so. **D.W. (via e-mail)**

**A:** This question is not specifically answered by the Homeowners' Association Act. However, most governing documents will address the powers of the association to acquire property. You should look at your declaration of covenants, articles of incorporation, and by-laws. There is typically a section describing the powers of the association and/or the board. Many governing documents permit the association to acquire property by a vote of the board of directors only. However, you should review the governing documents because some documents require a membership vote. If the governing documents are silent on this issue, then I believe the board would have the authority to approve the acquisition without a vote of the owners.

**Q:** Can you explain why our declaration of condominium can only be amended if the owners vote on it, but the board of directors seems to change our rules all the time on their own. Many of us are concerned that the board is exceeding their authority, and their rules are not valid. Should we, as the owners, have the ability to vote on the rules?

**A:** The condominium documents will typically address the board's authority to adopt and amend rules and regulations. Although sometimes a vote of the owners is required, most often that authority is vested solely with the board. Typically, the board will be given the authority to adopt rules and regulations for the "condominium property", which includes the common elements as well as the units. You should review your condominium documents to see if the board has rule-making authority, or whether a vote of the owners is required.

Even if your board does have rule-making authority, such authority is not completely unfettered and there are certain boundaries that the board must stay within. Any rules and regulations adopted by the board must be reasonable and not discriminatory, and the rules cannot conflict with any right contained in, or inferable from, the condominium documents.

Rules must also be adopted in a procedurally correct manner. The Florida Condominium Act requires that written notice of any meeting where amendments to rules regarding unit use will be

considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. In a homeowners' association setting, the Florida Homeowners' Association Act also requires notice to be mailed, delivered, or electronically transmitted to members and parcel owners and posted conspicuously on the property not less than 14 days before a meeting where amendments to rules regarding parcel use will be considered.

If your association's board has rule-making authority, the rules it passes will be valid if they are reasonable and not discriminatory, if they do not conflict with any rights contained in, or inferable from, the condominium documents, and if they are adopted in the procedurally correct manner.

*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.*

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