



Violations Can Expose Boards to Lawsuit

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: Our community, which includes single family homes and coach homes, is governed by an elected board of directors. Some residents think that the board may be having private meetings. I was told that the Florida Homeowners' Association Act states that meetings with a quorum of directors present are to be open to all members, but does not specify any penalty for noncompliance. Is this true? **D.F. (via e-mail)**

A: Chapter 720 of the Florida Statutes is also commonly (although not officially) known as the Florida Homeowners' Association Act, or HOA Act. Under the HOA Act, a meeting of the board of directors occurs whenever a quorum of the board gathers (in person or by telephone) to conduct association business. All meetings of the board must be open to all members, except for meetings between the board and the association's attorney with respect to pending litigation, proposed litigation, or personnel matters, and where the contents of the discussion are otherwise governed by the attorney-client privilege. (The Florida Condominium Act is similar but curiously does not contain the exception regarding personnel matters.)

Further, notice of all HOA board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not

posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least seven days before the meeting, except in an emergency. For communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association.

The HOA Act does not contain any "penalty" for a violation of the open meeting laws. However, board members have a fiduciary responsibility to operate the community within the bounds of the law and, can expose the association to legal action, and the complaining party's attorney's fees, for violations of the law.

Q: I am a member of the board of directors of our condominium association and I am also a snowbird. Our president has called board meetings without notifying me or another board member, although the meeting notice was apparently posted on the condominium property, in accordance with condominium law. A quorum of three was present at the board meetings. My question is this: Does the condominium law require that all board members be notified of the meeting date and

agenda prior to the scheduled meeting? If not, how does an absent board member make his views known regarding issues discussed at those meetings prior to the meeting? **C.H. (via e-mail)**

A: The Condominium Act addresses the notice of board meetings that must be given to unit owners. The condominium law requires 48 hours posted notice on the condominium property of all board meetings. If the board is adopting the budget or levying a special assessment or changing the rules and regulations regarding unit use, the notice of the board meeting must be mailed fourteen days in advance of the meeting to all unit owners and also posted fourteen days in advance.

The condominium law does not address specifically the notice that must be given to other board members. However, most association bylaws will address the notice that must be given to other board members. You should look in the section of your association's bylaws that discusses board meetings and see if there is a provision that addresses the notice that must be given to other board members for regularly scheduled board meetings and/or special meetings of the board. I suspect that there will be something in there requiring notice to the board members. Typical bylaws provisions require two days notice to the board members of the meeting, either by mail, e-mail, telephone, or facsimile, but the provisions vary from association to association and also will vary based on the age of the bylaws. As a duly elected board member, you have the right to insist that you be given proper notice of board meetings.

Q: We live in a new development operated by a homeowners' association. The board is considering a proposal to amend some of the governing documents but there is confusion as to what number constitutes the "total votes of the

association." The current declaration reads: "This declaration may be amended, changed, or added to, at any time and from time to time, upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of owners holding not less than two-thirds (2/3) of the total votes of the association..."

Our HOA bylaws give the board the power to suspend a member's voting right if the member is in default of payment of any assessment. Currently, a substantial number of voting members are 3 months or more delinquent in paying their monthly assessment. A majority of these homes are vacant and are in various stages of lien/foreclosure. If the board suspends the rights of these members, is the "total votes of the association" reduced? **L.C. (via e-mail)**

A: Your question points out a distinction between the condominium statute (Chapter 718, Florida Statutes) and the homeowners' association statute (Chapter 720, Florida Statutes). In the condominium context, voting rights cannot be suspended. But, pursuant to Section 720.305(3) of the Homeowners' Association Act, voting rights in a homeowner's association can be suspended if the governing documents provide, and if the homeowner is more than 90 days delinquent in the payment of regular annual assessments.

Although a homeowner's voting rights can be suspended, it is my opinion that it does not change the number of "total votes of the association", the standard apparently used in your current governing documents." If your documents based amendments on "eligible voters", a different result might apply. I suppose this is a fairly debatable point of law, and perhaps a good issue for legislative refinement.

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.

