



## Meeting Notice Requirements May Differ

Fort Myers The News-Press, November 29, 2009

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**Q:** Our HOA recently held a budget workshop to discuss a draft budget that will be considered and approved at our next board meeting. There is some debate whether we are required to mail the proposed budget out to our membership 14 days in advance of the board meeting where it will be considered. **R.W. (via e-mail)**

**A:** Unlike the Condominium Act, the Florida Homeowners Association Act does not have an explicit requirement that notice of the board meeting at which the budget will be considered be sent along with a copy of the proposed budget to the membership 14 days prior to such meeting.

Rather, Section 720.303(2)(c)2. of the statute provides that 14 days notice must be mailed and posted in advance of a meeting at which a special assessment will be considered. However, your question deals with the board meeting at which the proposed budget will be adopted, not a special assessment. The board's budget meeting need only be noticed as a normal board meeting, which requires posted notice 48 hours in advance of the meeting or if notice is not posted, notice must be mailed or delivered to each member at least 7 days in advance of the meeting. The posted notice would need to disclose that a regular assessment (i.e., the annual assessment resulting from adoption of the budget) will be considered at the meeting.

I would reiterate that this is different than the obligations imposed by the Condominium Act, which does require 14 days mailed and posted notice of the board's meeting. A copy of the proposed annual budget must also be provided with the meeting notice in the condominium context.

Also, your own bylaws can impose additional notice requirements.

**Q:** Our homeowner's association has an Architectural Review Committee consisting of 5 members. Our HOA board of directors has 5 directors, 2 of whom are also permanent members of the ARC. If all ARC members attend a duly noticed ARC meeting, and one of the three remaining board members of the board also attends as an observer, does this constitute a quorum of the board of directors? **P.B. (via e-mail)**

**A:** The Florida Homeowners Association Act defines a board meeting as "whenever a quorum of the board gathers to conduct association business." Accordingly, whenever such a board meeting occurs, the meeting must be properly noticed and be open to attendance by all members, with the limited exception that closed meetings are permitted in the HOA context between the board and the association's attorney to discuss proposed or pending litigation or personnel matters.

Further, the law states that meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community, must be noticed and open to the membership as well.

Given that the third member of the board of directors is attending the Architectural Review Committee meeting to simply observe the proceedings, as is his or her right as an owner in the community, it would be my opinion this is not a meeting of the board of directors. However, notice of Architectural Review Committee meetings must also be posted, regardless of who else attends, and open to attendance by owners, regardless of how many board members may or may not be in attendance.

**Q:** I am a community association manager and handle both condominium and homeowner associations. Recently, one of my homeowner associations adopted an amendment that referenced the wrong section of the bylaws, but the language on the amendment was accurate. I know the Condominium Act addresses nonmaterial errors involving amendments, but what about the Homeowners' Association Act? What constitutes a material error and are numbering mistakes material? **B.M. (via e-mail)**

**A:** Your question illustrates yet another distinction between the Florida Condominium Act and the Florida Homeowners' Association Act. The Condominium Act provides that nonmaterial errors or omissions in the amendment process will

not invalidate an otherwise properly promulgated amendment. Unfortunately, there is no similar provision in the Homeowners' Association Act.

Under general principles of contract law, a document can be "reformed" (corrected) to reflect the true intent of the parties. Thus, I believe that the board of an HOA can reasonably argue that it likewise has the authority to correct nonmaterial errors or omissions in the amendment process, including correction of typographical or numbering errors.

**Q:** We would like to have one of our homeowners' association board members, who is an investor owner, attend board meetings by telephone. Is this legal in Florida? **K. K. (via e-mail)**

**A:** Section 617.0820 of the Florida Not-For-Profit Corporation Act specifically provides that, unless the articles of incorporation or bylaws provide otherwise, directors may participate in regular or special meetings of the board through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.

Also, association members who physically attend the meeting must be able to hear what is said by all directors. Therefore, all board meetings need to have a physical location for association members to attend in order to hear the discussion through the use of a speakerphone or similar apparatus.

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