



It May Not Be Legal To Not Invite Board Member

Spot for Notices Must Be Designated

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Q: Would you please give me your opinion on the following issues in the condominium setting. First, is it legal to deliberately not invite a board member to participate in a board meeting unless the board member is needed to attain a quorum? Secondly, what is your opinion about posting board meeting notices and minutes of such meetings only in the lobby of the building when half of the owners are seasonal residents. The only time these “snowbirds” know what is going on is when they are here in residence or once a year when they are notified of the annual meeting. **J.C. (via e-mail)**

A: Regarding your first question, deliberately not inviting a board member to participate in a board meeting is, in my opinion, not legal. There is no express provision governing this issue under the Florida Condominium Act (Chapter 718) nor under the Florida Not-for-Profit Act (Chapter 617) except a provision in Section 617.0822(2) of the statute which requires two days’ notice for special board meetings, unless the articles of incorporation or bylaws provide for a longer or shorter period.

However, every set of association bylaws I have ever read require the board to send notice to all directors prior to holding a board meeting. Every elected director has a fiduciary duty to actively participate in the affairs of the association, and use

their best judgment in advancing the interests of the association. Obviously, this requires the ability to attend board meetings and listen to information upon which such decisions can be made. If a group of directors “cut out” a particular director for political purposes, I would go so far as to say as those directors could face breach of fiduciary duty claims.

One issue that frequently arises is whether an association must allow absentee directors to participate in board meetings by telephone. While the statutes clearly make it permissible for board members to participate in board meetings by telephone, there is nothing in the law which says that an association must allow their directors to call into board meetings. In my view, directors who cannot be physically present when a board meeting is being held should be given the right to call into the meeting, at the association’s expense.

In response to your second question, the Florida Condominium Act requires that the board adopt a rule designating a specific location on the condominium property where notices of board meetings must be posted.

Many associations are unaware of or forget about the requirement to adopt a rule designating a specific location on the condominium property

where notices are posted. If the lobby of your building is a conspicuous location on the condominium property, which I assume it is, it is entirely appropriate for the board to notify unit owners of scheduled board meetings through posting notices in the lobby.

It is not legally required, nor customary, to personally notify every unit owner in a condominium when a board meeting is going to be held other than through the posting method. You should be aware that notice of certain board meetings must be mailed to every unit owner, fourteen days in advance, including notice of the board's budget meeting, notice of board meetings where special assessments will be considered, and notice of board meetings where changes to rules and regulations regarding the use of units will be considered.

As to posting meeting minutes, there is no requirement to post minutes on the condominium property and again, it is not customary to do so. Some associations mail out the minutes or post them on a web-site, but this is not legally required either.

As you may already know, the association is required to keep a book of all minutes of board and membership meetings, which minutes must be retained for a period of not less than seven years. Any owner wishing to personally see the minutes can then send a written request to do so.

Q: Our timeshare condominium uses proxies to elect directors. However, I was of the impression that proxies were prohibited in the election of

directors. Can you clarify? Also, what is the difference between a general proxy and a limited proxy? **L.P. (via e-mail)**

A: Timeshare condominiums are governed by both the Florida Condominium Act (Chapter 718) and the Florida Vacation Plan and Timesharing Act (Chapter 721).

Although the Condominium Act requires directors to be elected by secret written ballot or voting machine only, timeshare condominiums are specifically exempt from this requirement, as well as several other election requirements under the Condominium Act. Further, there are no established election procedures codified under the Timeshare Act that a timeshare association must follow. Accordingly, the issue of elections is generally guided by the association's bylaws, which are usually written to permit the use of proxies in elections. Therefore, unless specifically prohibited by the timeshare documents, timeshare associations may use proxies to elect their directors.

As to your second question, the difference between a "general proxy" and a "limited proxy" is the amount of authority given to the proxyholder. A general proxy permits proxyholders to vote however they see fit on any matter presented at a membership meeting. Conversely, a limited proxy asks the unit owners (or unit week owners in the timeshare context) to specify their vote on a particular matter, and the proxyholder must thereafter vote in that manner at the membership meeting.

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.