

Who Said What

Should we add owners' comments from the open forum of our meetings to the minutes? What are the reasons for and against this? —*Lake Worth, Florida*

A Florida's Homeowners' Association, Condominium, and Cooperative Acts all make retention of the minutes from both board meetings and membership meetings mandatory, but there is little guidance as to what must or may be included in them. The Condominium Act, for example, requires only that minutes from a board meeting contain record of a vote or abstention for each member present. While some provisions, such as those pertaining to recall procedures, require specific findings, as a general matter minutes are merely a record of all the actions taken at a meeting.

Perhaps Sgt. Joe Friday from TV's *Dragnet* said it best when he requested, "Just the facts, ma'am." In my opinion, there are too many opportunities to editorialize when you include summaries of members' statements in the minutes. Unless the board secretary—or whoever else prepares the minutes—has made a video or audio tape of the meeting, attributing specific comments to specific people rarely helps but frequently hurts an association. Owners often argue that their remarks appear out of context and are therefore misleading. But creating a verbatim transcript of a meeting is overly cumbersome and unnecessary.

If your association really wants to include in its minutes any items raised at an open forum, I suggest identifying issues only in a general (and neutral) way. For example, Mr. Smith may have spent 15 minutes complaining about how ineffectively the manager handles maintenance issues. I would summarize that item in the minutes as "Mr. Smith

made comments regarding the manager and maintenance issues."

It's my belief that minutes should be prepared in outline form, following the agenda of the meeting. Record the association's complete name, the date, time, place, and type of meeting, whether a quorum has been obtained, and the method of notice—whether posted, mailed, or otherwise delivered, and how many days prior. In some cases, proof of notice is required. Of course, it's important to include all motions, noting who made and seconded each one, along with the corresponding vote. You should also attach copies of committee reports. But there is no legal reason to include summaries of owner comments, especially if they relate to issues that aren't identified as agenda items.

» Lisa A. Magill is a shareholder with the law firm of Becker & Poliakoff, P.A. She works in the Ft. Lauderdale, Florida, office.

Breathing Easy

Q My HOA made a new rule that we are not permitted to use our air conditioners after 10 p.m. because some people like to sleep with the windows open and it wakes them up. I have asthma and need the air when I sleep on hot or high-pollen days. Does my HOA have the right to enforce this, and can they fine me if I use the air after 10 p.m.? —*Sonoma, California*

A Even CC&Rs recorded against homes have certain limitations. In the 1994 decision *Nabrstedt v. Lakeside Village Condominium Assn.*, a California court found that such restrictions "are presumed reasonable and will be enforced uniformly against all association members

unless the restrictions are arbitrary, impose burdens on the property that substantially outweigh the restriction's benefits to the development's residents, or violate a fundamental public policy." Subsequent rulings have found that duly adopted amendments to CC&Rs are similarly valid and that the burden of proving otherwise rests on a challenging owner.

In terms of what this question is really about, the California Civil Code defines an operating rule as "a regulation adopted by the board of directors of the association that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association." An operating rule is valid and enforceable only if it is: in writing; within the authority of the board; not inconsistent with the association's governing documents or municipal law; adopted, amended, or repealed in good faith; and reasonable. In promulgating such a rule, according to the 1981 case *Laguna Royale Owners Assoc. v. Darger*, an association must act reasonably, exercising its power in a fair and nondiscriminatory manner and for a reason that's rationally related to the purposes of the association as set forth in its governing documents.

That could be a difficult standard for this association to meet with its air-conditioner-use rule—although, relevant to this question, in the 1997 case *Benson v. Lawrence Livermore Nat'l Lab*, the U.S. District Court for the Northern District of California held that, under the Americans With Disabilities Act (ADA), asthma is not a disability. Therefore, the plaintiff's claim for discrimination as a result of her asthma affliction failed.

That said, while I can't answer this specific question because of the lack of information about the language of the

rule, the type of association, and other facts that might support the rule, I do think the association would be hard pressed to prevent such use through a court of law. As such, I would think a fine based on such a rule is likewise going to be hard to justify to a small-claims judge. **»»** Richard P. Neuland is a founding partner in the law firm of Neuland, Nordberg, Andrews & Whitney, in Rancho Santa Margarita, California.

Family Law

Q Can an HOA enforce its declaration provision that owners of homes who lease their property may only lease to either a single person or a single family? “Family” is not defined in the declaration or resolution. The Fair Housing Act prohibits discrimination in leasing based on familial status. We are owners of a house in this HOA and

would like to lease our entire house to four roommates who are unrelated. —*Littleton, Colorado*

A As in all cases involving interpretation of declaration provisions, it is imperative to have the exact wording and to read it within the context of the entire declaration. Having said that, and assuming there are no other restrictions contained within the declaration that would affect your situation, the key question is, what is a “single family”? Even though the term is not defined in the declaration, the association could adopt a reasonable definition. If there is not a reasonable, association-adopted definition, then courts typically will impose a generally accepted meaning, which can come from the dictionary, case law, or past practice.

There have been numerous cases throughout the country addressing the definition of “single family” within the context of building restrictions, group homes, rehabilitation homes, and so on. Key legal decisions have held that unrelated residents can constitute a “family” for purposes of restrictions. Multiple courts have held that the controlling factor is whether the residents have the “generic character of a relatively permanent functioning family unit.” In Colorado, there is a reasonable likelihood that a court would find that four unrelated roommates would meet this criterion.

The federal Fair Housing Act does prohibit discrimination based on familial status. However, familial status means the presence of children under the age of 18 and would not be applicable in your situation. You should also be aware that there may be local ordinances that further restrict occupancy of your home. **»»** Loura K. Sanchez is a partner in the law firm of HindmanSanchez, in Arvada, Colorado.

GOT A QUESTION? WRITE TO “ASK THE EXPERTS,” *COMMON GROUND*, 225 REINEKERS LANE, SUITE 300, ALEXANDRIA, VA 22314. FAX: (703) 684-1581. E-MAIL: COMMONGROUND@CAIONLINE.ORG. DUE TO THE VOLUME OF QUESTIONS WE RECEIVE, WE REGRET THAT WE CANNOT REPLY TO EACH QUESTION INDIVIDUALLY.

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