

apm NEWS

NEWS, ISSUES & INFORMATION FOR COMMUNITY ASSOCIATIONS - FALL

DUTIES OF THE BOARD OF DIRECTORS FOR COMMUNITY ASSOCIATIONS



By John R. Math, LCAM

Community Associations are operated by a Board of Directors. The Members of the Association elect the Board of Directors. The Board Members then elect or appoint the Officers of the Association. The Officers carry out the policies of the Board of Directors, perform the duties of the Bylaws and fulfill the responsibilities as set forth by the Board of Directors, for the general good and welfare of the association.

The association has the responsibility of maintaining operating and managing the association's property and assets in accordance with the standards set forth in the governing documents. It is the Board of Directors who carries out these responsibilities and the Bylaws of the association set forth how the Board of Directors will accomplish this.

This article will provide an overview of the function of a Board. The next newsletter will detail each Officers duties and how each position will function together in order to create an effective Board of Directors.

As previously stated, the Bylaws will provide the guidelines for the Board of Directors to operate. The Bylaws will state the number of Directors required for the Board to operate. It will also state each Officers duties and responsibilities in carrying out their positions. And finally, it will provide for the structure and means by which the Board will conduct its business (through meetings).

Meetings of the Board will include a quorum of the Directors for the purpose of conducting association business. A majority of the Board is a quorum, unless the Bylaws require a higher number. In many instances, Board Members can participate in the meeting by speakerphone, though they are not physically present.

Notice of Meetings must be sent or delivered to the Board Members at least two days in advance of the

meeting, unless the Bylaws require a longer number of days. The general membership will also be told about the meeting by posting the notice and agenda at a central location at least 48 hours in advance of the meeting. Emergency meetings are handled differently and state statutes waive most notice requirements.

Most Bylaws will provide a set agenda for the Board to follow in order to conduct their meetings. In some cases, the Bylaws will refer you to the latest edition of **Robert's Rules of Order** for the procedure to follow in conducting meetings. Parliamentary rules of procedure should be followed throughout the conduct of the meeting along with the recording of the minutes of the meeting. Most agendas will include the following items;

- Roll Call & Est. of a Quorum
- Reading the Minutes of the Previous Meeting
- Treasurer's Report
- Reports of Officers
- Reports of Committees
- Manager's Report
- Unfinished Business*

- New Business*
- Adjournment

*** Condominiums & Cooperatives require specific details on these items.**

All motions, seconds to the motion and recording of each member's vote should be included in the minutes. The only time any Board Members can abstain from a vote is when there is a conflict of interest in that matter. The minutes of meetings must be maintained for 7 years and open to all unit owners for inspection.

The Board should make reasonable rules for unit owner participation. Participation constitutes the right to speak on agenda items and to tape or record the meeting. The Board can adopt rules on the frequency, duration and manner of statements at a Board Meeting. By allowing the membership to be apart of the meeting, the Board is fostering an atmosphere of cooperation in all its dealings with the owners. In addition, in the future, this will eventually help in attracting new members to run for the Board of Directors.

Successful Boards will utilize the resources available to them, such as the property manager, committee heads, experts in

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Ask The Attorney

by Keith F. Backer, Esq.

Q. Our documents state that there is one vote per unit. There is a husband and wife who both serve on the Board together and they both vote on various issues. How can they do this?

A. *It is likely that the language in your documents that provides for one vote per lot is meant to apply only to instances where lot owners are asked to vote on various matters. A vote cast by a member of the board of directors is not likely the "vote" that the referenced section of your documents was meant to address. Each member of a board of directors is obligated to cast a vote on all matters that come before the board even where lot or unit is owned jointly with another member of the board of directors.*

Q. Our condominium wants to amend the documents. Is there a procedure under Florida law that we must follow?

A. *Most declarations of condominium, bylaws and articles of incorporation contain clauses that describe the procedure to be followed to amend the language of each of those documents. In the event that any of the Condominium Documents fail to provide for the procedures or the requirements for amendment of the declaration, Section 718.110 provides that it may be amended if the proposed amendment is approved by the owners of not less than two-thirds of the units. Section 718.112 (2) (h) provides that, in the absence of amendment provisions in the bylaws, the bylaws may be amended with the approval of not less than two-thirds of the voting interest.*

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Q. Our homeowner's association board of directors has been holding secret meetings with the association's attorney and not allowing unit owners to attend. Is this legal?

A. *All meetings of the board of directors of a homeowners association must be open to all property owners. A board meeting is deemed to take place whenever a quorum of the board meets to conduct association business. Meetings among board members and the association's legal counsel concerning pending or potential litigation issues do not need to be open if the matters to be discussed would be attorney-client privileged. In most cases, conversations between the board of directors and the attorney concerning pending or potential litigation would be privileged and property owners*

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REMINDERS !

1. Financial reporting requirements must be waived by Chapter 718 and 719 association members prior to January 2000.
2. Any waiver of reserves for Chapter 718 and 719 association members must be voted on and waived prior to the beginning of the new fiscal year.
3. If the documents so require, the amount of Directors for the coming year must be determined according to the by-laws prior to the first notice of meeting.
4. Any proposed amendments must be drafted, reviewed and proposed by the Board of

Condominium Association Insurance, three words that can create anxiety and sometimes fear in members of a condo's Board of Directors. Since the demise of the habitation market place after Hurricane Andrew, shock waves have been felt by Condo Boards due to both availability of product, and increasing prices. Approximately three-fourths of all condominiums in the state are located within the tri-county area (Dade, Broward, and Palm Beach). This abundance of property exposure places a great burden on insurance carriers in trying to balance their spread of risk. This continual act of juggling stresses the market place and can wreak havoc on the consumer.

Due to a variety of reasons such as; aggregate exposure, financial assessability, and reinsurance requirements the habitational market place has become dominated by non-admitted carriers. This is especially true in joisted masonry type risks (those with wood roof trusses). Although the business is standard in nature, it has become quite common place to insure condominium communities with surplus lines carriers (non-admitted) due to the unavailability (unwillingness) of the standard market carriers (admitted) to take on these additional risks. Sometimes carriers just don't want the concentrated property exposure in a condensed area.

There are arguments against utilizing non-admitted carriers, however if you use one with a sound rating and financial base there should be no problems. The bottom line is they (non-admitted carriers) may be your best, or only alternative, as a lot of times there is no interest from the admitted marketplace.

Companies control their flow of business either through pricing or limitations on their writings, together with terms and conditions. Carriers dictate how much value they are willing to insure, whether they are willing to cover the entire risk or participate with other carriers, as well as what type of deductibles they will impose.

Since most companies do not want to take on what they consider excessive property exposure, they have come to share the risk with other carriers. It has become common practice in today's market to find multiple insurers combining on the same risk. This is especially true on values in excess of \$5,000,000 and almost inevitable on all condominiums over \$10,000,000. The already limited market is further constricted when dealing with joisted masonry type construction (those with wood roof trusses). Insurers are more apt to be interested, and also have larger capacities available, when dealing with the fire resistive risks. Some of these market problems shrink as the locations of the buildings or complexes become further inland.

The market has been further clouded by the advent of the windpool areas in Palm Beach County. While there once was a mixed bag from insurers in dealing

with risks east of I-95, some willing to offer wind and others not, today a greater segment of those carriers writing condominium risks are leaning more and more toward writing such coverage with wind.

There are currently three different types of deductible on windstorm being utilized: Wind and Hail, meaning any wind (hurricane related or not); Named Storm, meaning wind associated with a tropical depression; Hurricane, winds sustaining hurricane force. This expanding approach has certainly helped the consumer as it has gotten things back to the original purpose and intent, which is concern over hurricane type disasters, not just any type of storm.

Because of the complexities and the nature of the ever-changing marketplace, condominium communities should deal with someone that specializes in Association type risks. While all Directors, Officers, and association members have their own agents who may be very good; most are probably not as well versed in the nuances of habitational carriers and therefore not as effective as the condominium expert!

With the relatively small number of carriers willing to offer coverage for this market segment, obtaining multiple bids has become difficult. One approach to solicit several different quotes from different agents is to utilize "market selection" whereby selected agents are given access to a certain number of carriers of their choosing. This prevents clogging or blocking of viable markets by agents who have absolutely no intention of quoting them, but simply want to prevent the competition from utilizing a facility. This poor practice solidifies their own ability to write that business.

One area of insuring condominiums that can be a major concern is obtaining sufficient and correct information from the Board to enable proper provision of coverage, especially in the area of values. Often the information is lacking as to the building sizes and other pertinent underwriting information. This is created by a general lack of continuity in the Associations due to their volunteer nature. Appointing someone in the community as a liaison to the Board for insurance purposes could help eliminate a lot of confusion.

The previously mentioned problem of valuation can be significant, especially in older communities and ones with numerous buildings. If each building within a 20 building complex is underinsured (incorrectly valued) by \$250,000, then you are underinsured by \$5 million dollars in the event of a catastrophic loss!

Prudent risks today are going more and more for an insurance replacement cost appraisal. They are not overly expensive and once the initial product is rendered it can be updated every several years at a

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minimal charge. This will help keep your coverage at a proper amount, eliminate surprises and problems at the time of loss, and also keep the Board in compliance with typical By-law requirements that require insurance to be at replacement cost.

While the recent market has been somewhat "soft" and prices have generally fallen, indications appear that pricing is stabilizing currently. This "hardening" of the marketplace is due in part to factors previously mentioned, and is largely influenced by diminishing capacity from those carriers writing this property line. As the supply side dwindles, premiums become static or trend upward, along with the tightening of coverage conditions.

Recent changes in Bonding requirements indicate the need to check on current coverage and your association's compliance. Maybe it's time you had an insurance check-up on your condo associations program by a true habitational expert!

Raymond W. Allen, Jr. is a Commercial Insurance Agent who specializes in habitational coverages. He is Vice-President of B.D. Cole, Inc., an 80 year old insurance agency in West Palm Beach, Florida.

LANDSCAPING & WEATHER NOTES

Over the next few weeks you will begin to see a tapering off of our seasonal rains. It is suggested that you fertilize shrubs, lawns and palms for the winter. Low nitrogen fertilizer is suggested for shrubs and trees. Grasses can use nutritional help too, as you may begin to see yellow & green streaks in the lawn. Slow release nitrogen & potassium fertilizer is recommended for palms and a 4-6-8 fertilizer for citrus. New mulch is recommended too. It is a good time to begin planting annuals for colors. Stay alert to early freezes. arly morning watering is recommended. Otherwise, water plants and lawns at least two times a week in the dry season. 1/2 to 1 inch of water is required to penetrate at least 12 inches below the surface. Roots at this point are in the 12 to 18 inch deep range. Light watering only encourages roots to stay near the surface and will cause more problems during the dry season.