

MINUTES: HOW MUCH IS TOO MUCH?

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The importance of minutes is often underestimated. As a record of the business that is conducted at a meeting, they provide proof that decisions were made and properly approved. When the board makes a decision and does not record that action in the minutes, the validity of the transaction and the authority of the directors who are involved in the transaction are questionable. For example, problems arise when the action is challenged, the validity of a rule or fine is in question, a director's action is challenged as a breach of fiduciary duty or an *ultra vires* act (i.e. an act that is beyond his authority as a director) or when an issue is litigated. Actions of a board or management that are not reflected in the minutes are rarely enforceable. Minutes should not, however, be lengthy.

Contents of the Minutes of the Board of Directors

The secretary of an association is responsible for preparation of the minutes. Though certain formalities must be addressed in the minutes of each meeting, it is inappropriate to include the details of discussion, opinions of the secretary or other persons and any other form of narrative. The following list includes the information that must be included and discusses the information that is often inappropriately included in the minutes.

1. Date and Time. The date of the meeting and the time that it was called to order must be included in the minutes.

2. Names of Persons Who Were Present at the Meeting. The names of the directors, management personnel and guests (e.g. contractors or consultants) that were present at the meeting must be listed. Though it is not necessary to include a list of the

owners who were present, a sign-in sheet is often given to members and is retained as part of the association records.

3. Quorum. The minutes must include a statement that a quorum was present. The meeting cannot be conducted and business cannot be transacted if a quorum is not present.

4. Secretary's Report/Minutes. Minutes of the prior meeting must be prepared by the secretary and approved by the board. Minutes must not include editorial comments or opinions of the secretary.

5. Treasurer's Report. The treasurer's report must be approved by the board. The minutes should include a statement of the balances in the operating and reserve accounts, not a discussion of the report.

6. Other Reports. Reports that are presented and the name of the presenter must be identified in the minutes (e.g. management report, committee reports). It is important to note that the treasurer's report and other reports can be attached to the minutes as an exhibit.

7. Motions. All motions and their disposition must be included. Minutes must not include the comments of directors. Additionally, the minutes must not contain a record of a discussion that was held in a closed portion of a meeting. If a motion is made to vote on a matter that was discussed in a closed portion of the meeting, the motion must be made and the vote must be taken at portion of a meeting that is open to owners and the disposition of that motion must be recorded in the minutes.

Although a director may request that the minutes reflect how he voted, unless they request otherwise, the names of the directors and how they voted are not included in the minutes. Unit owners do not participate in meetings of the board. Accordingly, they do not vote on motions that are made and do not have a right to comment on association matters during the meeting.

8. Time of Adjournment. The time of adjournment must be included in the minutes.

Minutes of Meetings of the Owners

The guidelines set forth in the preceding paragraphs apply to the preparation of minutes for meetings of the owners with some exceptions. Unlike the meetings of the board of directors, owners participate in membership meetings and vote to approve the minutes and motions that are made regarding other association business. The quorum requirement is based on the number of owners who attend in person or by proxy, not the number of directors who are present.

Maintaining Association Minutes

Sections 18.5 and 19 of the Illinois Condominium Property Act require associations to make the minutes of the association and the board available for not less than seven (7) years. As a practical matter, the minutes should be maintained perpetually. It is not unusual for a board or its counsel to seek information that was or should have been included in the minutes of meetings that occurred many years ago. Without the minutes, the association will be unable to prove, for example, that an action was properly taken by or a rule was approved by the board.

Conclusion

The minutes of an association meeting or a meeting of its board of directors must be clear, concise and approved in a timely manner. They must contain a record of the business that was conducted. The contents of association minutes are as important as those of bank records, contracts and other documents that are maintained by an association. Comments and opinions of the secretary or other participants must not be reflected in the minutes.