

EFFECTIVE ASSOCIATION BOARD MEETINGS

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ABOUT THE AUTHOR

David C. Hartwell is an experienced trial lawyer. He represents both plaintiffs and defendants before the Illinois Circuit Courts, Federal Courts, Appellate Courts, and arbitration associations. His practice is focused on representing condominium associations, homeowner associations and cooperatives in matters including but not limited to corporate governance issues, covenant violations, discrimination claims, developer turnover and construction matters including defective workmanship and defective design cases. Mr. Hartwell received his law degree from DePaul University (1998) where he concentrated in civil litigation. He obtained his undergraduate degree from Lake Forest College, majoring in economics and Russian studies. Prior to forming Penland & Hartwell, LLC, he was an attorney with Zurich Insurance Company in their property liability group and practiced law with a large insurance defense firm in Chicago, litigating complex and class-action cases. For seven years prior to practicing law, Mr. Hartwell was associated with The Prudential Insurance Company in their Chicago and London offices. Mr. Hartwell is an active member of the Chicago Bar Association (CBA), the Community Association Institute (CAI), the Association of Condominiums, Townhouse and Homeowners Association (ACTHA), and the Apartment Buildings and Owners Association (ABOMA). Mr. Hartwell has authored articles for Condominium Lifestyles Magazine and the ACTHA newsletter on various issues including fiduciary duties of board members, drafting board meeting minutes, and the effects of collections. In 2006, he co-authored the chapter entitled “Condominium Documents” for the textbook *Condominium Law*, published by the Illinois Institute for Continuing Legal Education. Mr. Hartwell also lectures at the Latin School in the “Live and Learn” adult education programs on issues of Illinois condominium law.

ABOUT THE FIRM

The law firm of Penland & Hartwell, LLC was formed specifically to meet the unique legal needs of condominium associations, homeowner associations, and cooperatives. Kathleen Penland, David Hartwell and the firm’s other attorneys counsel more than 350 associations on corporate, litigation, and other matters. Penland & Hartwell, LLC works closely with property management as well as other professionals in order to provide solutions and guidance on various issues. The attorneys at Penland & Hartwell, LLC regularly speak at public seminars and for professional organizations as an ongoing effort to educate property managers as well as directors of associations and other lawyers.

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INTRODUCTION

The board of directors administers the overall operation of the association. Like directors in other corporations, it must do so in a businesslike manner, exercising good business judgment and upholding their fiduciary duty. The function of the open meeting is crucial to the successful facilitation of a Board's business insofar as it is the primary forum in which a board may carry out and perform its function. If the meetings are not run efficiently and effectively, it is unlikely a board will be able to successfully carry out its function and competently administer its association.

The purpose of this presentation is to discuss technical requirement and effective strategies for boards to conduct efficient and successful meetings. While this presentation will not address all issues which may arise at board meetings, it is intended to address the basic subjects inherent in all meetings.

A. TECHNICAL REQUIREMENTS FOR MEETINGS

Since a board carries out the business of the association at open board meetings, certain requirements for those meetings must be adhered to in order for the business conducted to be officially authorized and enforceable. If the technicalities, as discussed below, are not strictly adhered to the business believed to have been conducted will be subject to attack and reversal by the membership and may be subject to invalidation by a court or administrative body. Further, a board's failure to follow the requirements of the Illinois Condominium Property Act may be considered an element of a breach of fiduciary duty. Therefore, following the required standard for conducting business at a board meeting is imperative to the successful administration of the association.

FREQUENCY OF MEETINGS

The board must hold a minimum of four meetings each year, though many boards choose to meet monthly. *765 ILCS 605/18(a)(10)* Notice of each meeting must be mailed or delivered to unit owners (at their unit or other address) at least forty-eight (48) hours in advance of the meeting. *765 ILCS 605/18(a)(9)* If delivery of the notice is other than mail, the board should review the declaration for a specified notice requirement or the method must be reasonably calculated to apprise all members. In addition, where there is a common entrance for seven or more units, the board must post notice of the meeting in a conspicuous location at least forty-eight (48) hours prior to the meeting. *765 ILCS 605/18(a)(9)*

ATTENDING MEETINGS OF THE BOARD OF DIRECTORS

The meetings are open to all unit owners (only owners) for the purpose of observing the meeting. 765 ILCS 605/18(a)(9) Although a board may allow a non-owner to attend, such accommodation should be for a specific purpose. Unit owners do not participate in meetings of the board of directors. They may record the proceedings of meetings by tape, film or other means, but the board may prescribe reasonable rules and regulations to govern the right to make such recordings. Though boards are not required to do so, some boards reserve a short period of time prior to or after the meeting for unit owners to voice their concerns or suggestions.

CLOSED PORTIONS OF MEETINGS OF THE BOARD OF DIRECTORS

Specific portions of a meeting may be closed to unit owners for the specific purposes of: (1) discussing pending or probable litigation; (2) considering information regarding appointment, employment or dismissal of an employee; or (3) discussing a unit owner's unpaid assessments or violations of rules and regulations of the association. 765 ILCS 605/18(a)(9) While the board may reach preliminary decisions regarding the aforementioned issues, a board MUST vote on these matters at the portion of a meeting that is open to the unit owners. Further, as discussed below the vote on these matters should either be reflected in the meeting minutes or a separate resolution on the matter should be executed and attached to the minutes.

SPECIAL MEETINGS

In addition to the annual meeting and regularly scheduled open meetings, "special" meetings of the members may be called for certain purposes such as adopting or amending rules, adopting or amending the budget, etc. Special meetings of the members can be called either by the president, the board, or by 20% of the owners. 765 ILCS 605/18(b)(5) Written notice of special meetings must be provided to the owners no less than ten (10) days and no more than thirty (30) days. 765 ILCS 605/18(b)(6) Notices of such meetings must include the time, place and purpose of the meeting. 765 ILCS 605/18(b)(6)

ELECTION OF THE OFFICERS OF THE BOARD OF DIRECTORS

Each association must conduct an "annual meeting" for the purpose of electing new directors. 765 ILCS 605/18(a)(1) For each annual meeting, thirty (30) days notice to each owner is required. 765 ILCS 605/18(a)(6) The bylaws of the declaration will set forth the number of officer to be elected to the board and the interim number of officers who will be up for re-election at subsequent annual meetings.

The members of the board elect officers from among themselves.

VACANCIES ON THE BOARD OF DIRECTORS

The board may fill the vacancy for the unexpired portion of the term by a two-thirds vote of the directors. The newly elected director serves until either the next annual meeting of unit owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by 20% of the total unit ownership requesting a meeting of the unit owners to fill the vacancy for the balance of the term. The board must call the special meeting within thirty (30) days following receipt of a petition. *765 ILCS 605/18(a)(13)*

B. PREPARATION FOR EFFECTIVE MEETINGS

NOTICE OF MEETINGS

The purpose and requirement of open meetings is to allow the membership to observe the board during its decision making process. As such, in an effort to encourage such involvement, notices of the meetings should be placed in conspicuous locations (i.e. lobby, elevator, entrances and exits, etc.) stating the time and location. *765 ILCS 605/18(b)(6)* In addition, the declaration and bylaws may also set forth notice requirements. *765 ILCS 605/18(a)(15)* Further, the agenda for the meeting should be listed on the notice or attached thereto for the purpose of informing the membership of the topics to be discussed.

While associations are required to conduct at least four (4) meetings per year, including the open meeting, the declaration and bylaws may set forth that additional meetings be conducted and the board can determine the frequency (i.e. monthly) of meetings based on the amount and extent of business each association needs to conduct to ensure efficient operation.

EFFECTIVE AGENDA

In order for the board to conduct and complete its meeting in a reasonable amount of time (usually 60-90 minutes), the agenda must also be reasonable. While some associations are busier than others, it is important for all boards to create an agenda of business items which can be discussed within the allotted time periods. Boards should avoid revising their agendas after the meeting has started.

If the board is considering matters which require a review of specific documents, those documents should be delivered to each director prior to the meeting. Typically documents circulated to directors are not circulated to the owners or attached to the meeting notice.

MEETING VENUE

The venue for the meetings is important. It should be a public space (i.e. meeting room, hospitality room, nearby public library or restaurant) which is accessible to all owners and appropriate for the meeting size.

C. CONDUCTING THE MEETING

MEETING PROCEEDINGS

There is no handbook for how to conduct board effective board meetings. However, there are certain requirements which must be met and certain practices which should be utilized. A quorum of the board must be present at the meeting. Typically a quorum is a majority of the board, however the declaration may state a greater number is required for a quorum. 765 ILCS 605/18(a)(14) Each meeting should start promptly, consistent with the time stated in the notice. Typically professionally managed associations request attendance by the property manager, who can assist with efficient administration of the meeting.

ATTENDANCE

Only owners may attend open meetings. 765 ILCS 605/18(a)(9) Other individuals such as tenants, relatives, attorneys, etc. have no right to attend.

AGENDA

The agenda as posted with the notice should be followed. Meeting efficiency can be affected by a disorganized agenda, thus developing an agenda that works best for your specific association is essential. An example of a commonly used format is:

1. Role Call (listing all directors present)
2. Ratification of prior meeting minutes
3. Addressing new business
4. Addressing old business
5. Committee reports
6. Open Forum (not required)

CONDUCTING BUSINESS

While boards may use “working sessions” to address significant issues or projects, or may reach certain preliminary decisions in closed portions of opens meetings, all business must be conducted in an open meeting. While all the particulars of the decision making process need not be discussed or repeated during the open session, the board members should discuss the basis for their decisions for the purpose of allowing the ownership to witness the process and determine if good business decisions are being made.

Typically, boards formalize their decisions by first briefly discussing the issue and then entertaining a motion from a director stating with specificity the decision to be voted on. While the Illinois Condominium Property Act does not specify these procedures, treatises such as *Roberts Rules of Order* are often referred to for an outline of parliamentary procedure. Each director present should vote on the pending motion, and each vote should be noted and recorded in the meeting minutes for each matter. A separate resolution, setting forth the motion and signed by the board members, can also be utilized.

Owners do not participate in the decision making process and do not cast votes on specific items of business. While a board may wish to entertain comments or feedback from its ownership prior to voting on an issue, they are not required to do so. While administering the association per consensus of the ownership is usually very cumbersome and often ineffective; many boards have found it useful to seek owner input on certain issues prior to finalizing its decision.

In certain circumstances, such as rejecting a budget, rejecting new or amended rules, or removal of a director, the owners can, upon obtaining 20% of the owners signature on a petition for a special meeting, have a meeting to vote for the purposes of rejecting certain action taken by a board. 765 ILCS 605/18(b)(5) Notably, this right to vote, is a vote to reject action already taken by a board and is not an opportunity to affirmatively compel new business.

COMMITTEES

Depending upon the size and complexity of certain business, the president of the board may create committees. A committee is only advisory and cannot conduct business. However, committees are especially helpful in spreading the work load to other volunteers with specific interest or experience. Typically boards have several committees (i.e. finance, construction, rules, etc) from time to time to assist with day-to-day administration and special projects. The committees serve the board and can be disbanded at any time. To ensure efficiency and productivity of the committees, typically deadlines are set and reports are required. If reports are generated, they should be saved and attached with the minutes.

D. FIDUCIARY RESPONSIBILITY

The most frequent question asked by new board members is: what is “fiduciary duty” and how do I know if I am following it?

Section 18.4 of the Illinois Condominium Property Act sets forth the powers and duties of board members and states: “[i]n the performance of their duties, the officers and members of the board, whether appointed by the developer or elected by the unit owners, shall exercise the care required of a fiduciary of the unit owners.” However, the Act does not further define precisely what those duties are, and the Illinois Courts do not offer significant additional guidance. In cases where a director or board has been found to be in breach of their fiduciary, it is because the specific acts (or inaction) have been found not to have exercised reasonable in exercising that duty. Unfortunately, this offers little guidance.

In exercising one’s fiduciary duty, a director should exercise reasonable business judgment in carrying out the business of the association, and do so the benefit of all owners. This concept is referred to as the “Business Judgment Rule” and typically the divining principal employed by courts to determine whether or not a board or director has run afoul of their fiduciary obligation. In practical terms, one successfully exercises their fiduciary duty by taking the time to investigate and understand an issue and acting in a reasonable manner which reasonably benefits the unit owners. Examples include: (1) acting consistent with the declaration and bylaws; (2) not engaging in self-dealing on contracts or other work for the association; (3) working with

reputable, licensed contractors which offer a fair price for services; (4) acting uniformly in enforcing the association's bylaws and rules and regulations; and (5) seeking advice and counsel on financial and legal issues.

Exercising one's fiduciary duty is the guiding principal for a board of directors in successfully accomplishing the business of the association at board meetings.

E. CONCLUSION

It has often been said that serving on a board of directors for a condominium association is a "thankless job", however that is often the providence of most volunteer jobs. That being said, a dedicated board of directors is crucial for an association to run efficiently and prosper in the long run. By serving the association effectively, each board member stand to gain by the benefit achieved collectively. Running efficient and effective board meetings is one of the best approaches to achieving the goals of the association and making the experience a positive one.