

MEETING MINUTES ...

DO YOURS PROTECT YOUR ASSOCIATION?

By Sara E. Barry, CMCA PCAM CAM – Licensed Nevada Insurance Producer – Former Mediator for Clark County Court Systems Neighborhood Justice Center – UNLV Certified Paralegal and UNLV Certified Legal Secretary

MINUTES GENERALLY

There appears to be disagreement on who should take the minutes of the Board of Directors meeting in a community Association and what should be in them. Managers feel they should take the minutes as they are looking to protect not only their best interests, but as they normally have more experience, they will try to protect the Board and members as well. They will try to include those important items, which document Board actions and authorizations. In other word, only decisions made vs. all of the many discussions that take place during most meetings of the Board.

As there is some disagreement in the industry on who should take the minutes, most of the "official" industry entities agree that regardless of who takes the minutes, the Secretary (or other officer specified in individual governing documents) *must sign the minutes* to be considered the official minutes of the corporation. If the manager takes the minutes, he or she can sign the minutes as the person who took the minutes, but the Secretary must sign the final *Board approved* document. In Nevada, corporations are required, in their documents approved by the Secretary of the State, to take minutes of the meetings and every corporation is required to have a Secretary (along with a President and Treasurer). NRS 116.3108 and NRS 116.31083 requires notice be given to all owners of their right to have copies of the minutes within 30 days after *any* meeting. Normally this is done with the agenda notice to ensure this happens. It is important to note here that all copies of any minutes which are sent to the Board or given to any resident should be marked "**Draft**" or **Not Yet Approve**" until formal Board action has been taken to have them approved since directors are only required to meet every 100 days, unless their documents state otherwise.

As a note of clarification and interest, Black's Law Dictionary defines a secretary as the following:

“Secretary. In reference to a corporation or association, refers to an officer charged with the direction and management of that part of the business of the company which is concerned with keeping the records, the official correspondence, with giving and receiving notices, countersigning documents, etc. Also known sometimes as clerk of the corporation.”

It makes it clear that the Secretary is responsible to ensure that the corporate records are being maintained in the proper manner. The authority to maintain the records can be delegated to the Management Company, but the Secretary is still ultimately responsible for the records.

EXECUTIVE SESSION MINUTES

The law requires that minutes be kept of all executive session meetings. To eliminate confusion, document rationale for decisions made and protect those Board Members who wish to have their minority vote recorded, we recommend that minutes of all motions be kept along with the rationale behind the decision. 116.31085 states, “An executive board may meet in executive session to: (a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive, (b) Discuss matters relating to personnel; or (c) Discuss a violation of the governing documents of the association alleged to have been committed by a units owner including, without limitation, the failure to pay an assessment, except as otherwise provided in subsection 3.” (The owner has a right to a copy of any portion of the minutes, which are taken, where he/she was the subject of discussion.) The Board should not meet in Executive Session without looking at this legislation to ensure legality before excluding owners.

We recommend that any specific homeowner delinquency issues, which may be discussed by the Board and may require the use of names or addresses, always be done in executive session and the new law provides for the same. With recent case law which includes the community association industry under the Fair Debt Collection Act, the consequences of discussing an owner's financial position in front of his friends and neighbors far out weighs any consequences from allowing for owner privacy on delinquency issues.

The final approved Executive Session minutes **MUST** be kept in a separate binder from the regular minute, signed by the Secretary and have tight controls placed on individuals who may have access. Legal counsel should be contacted before copies of any Executive Session minutes are reproduced other than as mentioned above for any owner who was the subject of discussion. Any part of the minutes that does not apply to that specific owner requesting the minutes should be redacted.

MEETING OF OWNERS MINUTES

The same principles of minute taking that apply to Board of Director's meetings apply to the meeting of the owners. All of the owner conversations do not need to be recorded, just actions taken or commitments made by the Board to the owners. As more buyers are requesting copies of the minutes of all meetings, if the Board has made commitments to owners to take care of visible problems in the community, it may help with resales (and property values) in your community.

We recommend that the Board of Directors review a draft of the minutes at their next meeting after the owner's meeting to ensure that they do not see problems. Normally owners meet once a year, which is a long time to wait to point out any serious problems with the minutes. This is only a preliminary proofing of the minutes. Substantive changes should not be made, however, unless the full Board is in agreement. The Board is not approving the minutes, but ensuring accuracy. The minutes are then made a part of the next meeting of the owners for their final approval.

MAINTENANCE OF MINUTES

Please remember that the minutes must be kept for the life of the association, while all other records must be kept for 10 years. Before anything is destroyed, however, we recommend that the attorney, CPA and Insurance professional be consulted as they want the originals kept for the life of the associations as well, not just digital copies.

Maintenance of the minutes is a responsibility of the Board. Failure to keep adequate minutes not only subjects the board members to liability individually, but for the Association as well. If a meeting goes by without a vote of the Board being taken, it isn't a meeting, but a random group of people that is a waste of time. Minutes should be brief, but cover the important actions taken at a meeting.

An owner should be able to obtain copies of the minutes (or review them) and have a good idea of what actions have been taken, if there is litigation and of the general condition of the Association. It is *not* to be a word for word transcription of the meeting, however.

Below are of a few of the items which should be included in the Board meeting minutes:

1. Show exact corporate name
2. Date
3. Meeting location
4. Board members in attendance
5. Residents' in attendance (a sign-in sheet works) - (Particularly if controversial issues are before the Board)
6. Approval of prior minutes along with date
7. Financial Report – Approval of Financial Statements and Reconciliation's
8. Material discussions held and findings (Includes Committee Reports & Decisions)
9. Resolutions adopted

10. General statement of adjournment to executive session and purpose
11. Date of next meeting
12. Signature of preparer (If someone other than the Secretary)
13. Signature of Secretary after Board approval

During the year, individuals (including your CPA) will be looking for actions on the following (Not all inclusive):

1. Approval of budgets (Reserve & Operating)
2. Authorization for reserve study
3. Authorization for reserve expenditures
4. Approval of CPA to perform audit or review
5. Approval of final draft of annual audit or review
6. Approval of special assessments
7. Regular contracts approved
 - a. Management Company
 - b. Legal Counsel (If contract required)
 - c. Accounting Firm
 - d. Landscaping Contractor
 - e. Pool Services
 - f. Tree Pruning (If major expense)
8. IRS Ruling 70-604 roll-over election by Owners
9. Authorization for new bank accounts
10. Approval of authorized signors on accounts
11. Approval of transfer between accounts
12. Assessment collection policy adoption
13. Authorization given to create liens
14. Authorization to foreclose
15. Approval of quarterly bank reconciliation's and financial statements (Normally done in the form of a treasurer's report.)
16. Assessment of fines
17. Documentation of site inspections
18. Documentation of review of insurance policies
19. Documentation of committee actions
 - a. Architectural review approvals and/or denials (minutes)
 - b. Landscaping improvements
 - c. Rules enforcement
20. Authorization of purchases of major equipment
21. Approval of Treasurer's reports (It is not the Management Company report on finances)
22. Adoption of rules
23. Adoption of policies
24. Election and terms of Officers
25. Resignation of Officers
26. Election of Directors
27. Resignation of Directors
28. Compliance of all legal documents
29. Compliance of N.R.S. 116 provisions
30. Budget distributed on time
31. Proper litigation and/or resale disclosures
32. Attachments Referenced in minutes

(This list is not all-inclusive, but provided to show you the importance of accurate minutes and record keeping.)

It is important that the minutes be kept in a binder on good paper, as they are the sole official reflection of the acts of the Association. Without them, an Association cannot and has not acted. Sloppy minutes, that merely reflect the voices and words of the Board, without putting down the actions, do not support any action.

Each association must look at the continuity of the Board vs. the continuity of management. Many times there is not continuity of either and a safe method and place for maintenance of the records should be established. As an example, an off-site storage site could be rented or a portion of the clubhouse could be secured for this purpose, but in both cases the minutes should be chronologically kept in binders.

Once the place of keeping the records has been selected, it is important that a catalog system be established so that anyone wishing to find a particular item will not have to search through 100 boxes to find minutes for one specific board meeting. We recommend binders for all minutes that list on the jacket which years are contained within chronologically. Many companies are moving to digital, but consult with legal counsel before ever destroying the original copies of the minutes.

KEY COMPONENTS OF MINUTES – Please make sure that your Attorney, CPA and Insurance Agent agree as each Association is different and your documents may require other things as well.

BOARD MEETING MINUTES

1. Name of Association (Exact Name)
2. Type of Meeting (Board, Executive Session, Members, Committee, etc.)
3. Date of Meeting
4. Location of Meeting
5. Board Members in Attendance
6. Guests in Attendance (Sign-in Sheet – Not mandatory, but helpful) – Substantial comments made by each person speaking at the beginning and the end.) – See definition of substantial at the end of this document.
7. Approval of Prior Minutes
8. Financial Report - Approval of Financial Statements & Reconciliation's
9. Committee Reports and Decisions
10. Material Discussions Held and Findings – In Motion Format – No discussion is to be recorded other than actions taken by the board.
11. Resolutions Adopted - Text should be part of the minutes
12. General Statement of Adjournment to executive session or end of meeting.
13. Date of Next Meeting
14. Signature of Preparer (if other than Secretary)
15. Signature of Secretary after Board Approval

EXECUTIVE SESSION BOARD MEETING MINUTES

1. Name of Association (Exact Name)
2. Type of Meeting (Executive Session)
3. Date of Meeting
4. Location of Meeting
5. Board Members in Attendance
6. Purpose of Meeting – Justification According to Uniform Act & NRS 116
7. Approval of Prior Executive Session Minutes (if any)
8. Introduction of owners who may have been called to hearing for potential violation.
9. Material Discussion and Decisions Made – In Motion Format – No discussion only actions taken by a majority of the board.
10. Adjournment of Executive Session Meeting.
11. Signature of Preparer (if other than Secretary)
12. Signature of Secretary after Board Approval

ANNUAL MEETING OF OWNERS MINUTES

1. Name of Association (Exact Name)

2. Type of Meeting (Budget Ratification/Election of Directors, Etc.)
3. Date of Meeting
4. Location of Meeting
5. Board Members in Attendance (Not Necessary, but recommended)
6. Verification of Quorum if required
7. Appointment of Election Inspectors, if election
8. Verification of Proper Notice
9. Approval of Prior Owners Meeting Minutes
10. Record Results of Voting
11. Record Results of IRS Ruling Voting if using IRS Form 1120
12. Material Discussion and Decisions Made – In Motion Format
13. Adjournment of Owners Meeting.
14. Signature of Preparer (if other than Secretary)
15. Signature of Secretary after Owner Approval (Board should review draft at their next meeting for accuracy.)

Definition of Substantial: - (seb stan' shel) adj. 1. Having substance 2. Real' true 3. strong; solid 4. ample, large 5. Important 6. wealthy 7. with regard to essential elements - substantially – adv.