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HOA Board Meeting Notice Requirements: A New Frontier as of 1-1-12

By: Connie N. Heyer, Niemann & Heyer LLP

Effective January 1, 2012, the laws for notice for HOA board meetings have significantly changed. They are much more intricate, and they apply regardless of what an HOA's governing documents require in terms of notice. HOA board members should familiarize themselves with the meeting notice requirements to ensure that no inadvertent violations occur. An HOA's own legal counsel, and in professionally managed communities, an HOA's professional property manager, will be able to assist associations in helping to make sure these notice requirements are met.

These new requirements do NOT apply to condominium communities (unless for some reason your condominium association has voluntarily chosen to, by adopting rules for example, subject the condo association to these or similar standards.)

Summary. For any in-person board meeting at which a vote is taken, 72 hours notice MUST be given to all HOA owners as outlined below.

For any board meeting, in-person or otherwise, at which the following items are even DISCUSSED, regardless of whether a vote is taken, 72 hours notice must be given to all owners as outlined below. Items that may not even be discussed at a Board meeting without 72 hour owner notice are: (1) fines; (2) damage assessments; (3) initiation of foreclosure actions or enforcement actions; (4) increases in assessments; (5) levying special assessments; (6) appeals from denials of architectural control approval; or (7) suspending rights of an owner before the owner has an opportunity to appear before the board. (These are the "magic 7" items that will be referenced further below.)

Form and content of notice. The 72 hour notice of Board meeting must include the "date, hour, place, and general subject" of a regular or special board meeting, and a general description of each item to be brought up in executive session.

*Ideally, include in the notice any specific agenda item that you know of (for example, "a rule amendment will be voted on.")

*In addition to specific known agenda topics, general notice might look like: "Topics may include general association business, including old business and new business, covenant enforcement and budgeting/assessment. Executive session matters may include personnel matters, litigation, contract negotiations, enforcement actions, confidential attorney communications, matters involving the invasion of owners' privacy, or matters involving parties who have requested confidentiality and the board has agreed to honor that request."

Timing and method of notice. Notice of an in-person board meeting at which any votes are taken, or at which any of the "magic 7" items are even discussed, must be either:

(1) mailed to owners at least 10 but no more than 60 days beforehand; OR

(2) provided at least 72 hours before the meeting by:

(a) being posted notice in a conspicuous location on the common area or (with permission) and owner's Lot, OR on an association-maintained website or on "other internet media" – presumably Facebook, etc.); and

(b) being emailed to all owners who have provided their email address to the HOA.

Situations in which open board meetings and 72 hour owner notice ARE required:

(A) ANY time a vote will be taken at an in-person Board meeting; and

(B) ANY time the board will be voting on *or even discussing* any item on the “magic 7” list.

Situations in which open board meetings and 72 hour owner notice are NOT required:

(A) If the meeting is held by telephone or other electronic means. State law now expressly allows board meetings to take place by telephone or other electronic means, with no notice to the owners, if all directors can “hear and be heard.” However in these telephone meetings, the “magic 7” items may not be discussed or voted on.

(B) If the Board acts by unanimous consent in lieu of meeting. Unanimous consent in lieu of meeting is now expressly allowed by state law for “routine or administrative” matters. "Routine or administrative" is not defined in the statute, but presumably these would be matters not involving the "magic 7" topics noted throughout this email.

(C) If the meeting is held to address an urgent or emergency situation that requires immediate action; OR

(D) There is no vote taken at the meeting and no discussion of the "magic 7" items. For example, work sessions at which no formal action/vote is taken and in which none of the "magic 7" topics are discussed do not need to be open or noticed.

Actions taken without noticed meeting must be documented. Actions taken without the 72-hour notice to owners must be summarized orally at, (including any actual or estimated expenditures approved) and documented in the minutes of, the next regular or special board meeting.

Executive session topics. The board has the right to adjourn a board meeting and reconvene in a closed executive session for certain issues, namely, personnel matters, litigation, contract negotiations, enforcement actions, confidential attorney communications, matters involving the invasion of owners’ privacy, or matters involving parties who have requested confidentiality and the board has agreed to honor that request. Decisions made in executive session must be summarized orally in general terms, including any expenditures approved, and recorded in the minutes. This author recommends that boards not make any decisions, or keep any minutes, in executive session. Discuss items as appropriate, then come out of executive session into the “regular” meeting and take the vote, and record the vote in the minutes.

There is no “requirement” that the board go into executive session to discuss certain topics, it is simply an option for the board to use at its discretion.

Minutes. Boards must keep written minutes as record of each regular and special meeting and give owners access to approved minutes.

Recommendation. The “magic 7” items have the potential to make board meetings lengthy and unwieldy, consuming large amounts of volunteer board member time. The potential for this depends obviously on the size of the community and the number of violations that occur. It is recommended that Boards consider speaking with the Association’s legal counsel regarding adopting a standard, standing policy that would eliminate the need to discuss routine “magic 7” items on a case-by-case basis. For example, fines are on the “magic 7” list – the board cannot even *discuss* fines without an open and noticed board meeting. The board could consider adopting a policy of a standard fining schedule, to automatically be followed in the event of a violation, without need for case-by-case discussion of fines unless the board deems it appropriate (in which case the board would reserve discussion on the topic for an open and noticed board meeting.)

Conclusion. These statutory changes represent a significant change in the HOA Board meeting landscape. HOA directors would be well advised to familiarize themselves with these new laws, and consult with the HOA’s attorney and management professional to help ensure compliance.