

**Condominium
& Homeowner
Association
Board Member
Handbook**

A Guide for Association Leaders



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Condominium & Homeowner Association Board Member Handbook

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Kovitz Shifrin Nesbit is "The Condo Law Firm". Since our inception in 1983, we have focused our practice on condominium law, Common Interest Community Associations, landlord/tenant law, and the cooperative form of ownership. Additionally, we represent clients in business matters including real estate transactions, tax appeals, and estate planning. We have four office locations, serving hundreds of clients and thousands of associations throughout Illinois and Wisconsin. Our attorneys are also licensed in Arizona, Florida, Missouri, and Wisconsin.



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INTRODUCTION

According to a 2017 statistical review by the Community Associations Institute, 23% of the U.S population lives in community associations.

The same study found that there are between 346,000 to 348,000 community associations in the U.S. consisting of 2.3 million board/committee members performing over 80.5 million hours of service.

One of the biggest decisions a person can make is to purchase a new home. A close second is to purchase a home in a community association, governed by various rules and regulations that can affect varying degrees of your lifestyle, including: the type of pet you can own, how you can plant flowers, where you can park your boat trailer, or if you can lease your unit.

One way to make association living more rewarding is to get involved by volunteering for a committee, running for the board, or attending a board meeting.

Owner involvement is good for the community association, contributes towards enhanced property values, and can provide an overall positive ownership experience.

This booklet was designed to provide initial guidance regarding a number of community association topics, including: board member positions, qualifications, meetings, governing documents, and more.

TABLE OF CONTENTS

Before There is a Board.....	1
Types of Association.....	1
Primary Statutes Concerning Associations.....	2
Purchasing a Home in an Association.....	2
The Period of Developer Control and Turnover	4
First Annual Meeting of Members.....	7
The First Year.....	8
Qualifications to be on the Board.....	9
Adopting Rules and Regulations.....	12
Initial Drafting.....	13
Adoption.....	14
Operation.....	14
Enforcement.....	15
Periodic Review and Update.....	16
Architectural Control.....	16
Recommended Procedure for Keeping Minutes.....	19
Using Committees.....	22
Efficient Board Meetings.....	25
Association Responsibility for Maintenance of the Common Elements	26
What Makes a Good Board Member?	29

Types of Associations

Condominium Associations

- Owning a condominium gives you an undivided interest in property held in common with other owners (common elements) plus a separate interest in a “dwelling unit”.

Cooperatives

- A cooperative is a corporation or trust that is set up to manage property, typically an apartment building.
- Each purchaser is a shareholder, certificate holder, or beneficiary of the cooperative.
- A proprietary lease that grants rights of occupancy to an apartment is executed and each member is subject to the by-laws and house rules.
- Cooperatives usually maintain control over who may purchase and/or live on the property.

Homeowners’ Associations

- Homeowners’ or townhome associations are communities consisting of attached or detached housing in which individual owners of units or lots are subject to recorded covenants which may include the right to use the common areas.
- These associations are also known as “common interest community associations”.

Master Associations

- A master association (also known as an umbrella association; “homeowners’ association” may sometimes actually refer to a master association) creates an association with designated powers over one or more separate residential associations, usually to administer recreational facilities and other common areas.
- It is often set up to jointly control shared facilities.

Primary Statutes Concerning Associations

- Illinois Condominium Property Act [765 ILCS 605/1 et seq.] (the “Act”), applies to condominium and master associations.
- Common Interest Community Association Act [765 ILCS 160/1-1 et seq.] (“CICA”), applies to common interest associations.
- Illinois General Non-For-Profit Corporation Act [805 ILCS 105], applies to common interest associations.

Purchasing a Home in an Association

Purchasing a condominium or townhome may be the most significant financial decision a home-buyer makes. While the location, building design and amenities are important, there are also several financial and legal aspects to consider before making the commitment. In association living, that commitment includes not only the purchase of property, but also automatic membership into an association.

The information you gather before the purchase will help you have a complete picture of how the association operates. You should become familiar with some of these nuances and learn what makes this transaction different from the purchase of a single-family home in a subdivision or renting an apartment.

Several key issues can be addressed through the written offer you will present to the seller. The contract should either include a clause or be attached to a separate document, called a Rider, that asks the seller for certain documents. Through these documents you can learn about the association’s financial picture, whether any legal action is pending against the association, and whether the association bylaws prohibit certain types of pets or leasing, for example.

Illinois law permits the buyer of a condominium or common interest association to ask the seller to produce the following documents:

- Copies of the association declaration, bylaws and rules and regulations
- A list of any liens placed against the unit

- A statement of the account that details the amount of unpaid assessments and charges owed to the association
- Capital expenditures expected by the association within the current or succeeding two fiscal years
- The status and amount of reserves, both for replacement and for specific projects
- Statements of the association's financial condition for the last fiscal year
- Status of suits or judgments in which the association is a party
- Details on the insurance coverage provided
- Improvements or alterations made by prior unit owners to the unit or limited common elements, which are in good faith believed to be in compliance with the condominium rules and regulations

(Please note this law only applies to condominium and common interest associations. For master associations and cooperatives, you must rely upon "common law" disclosures.)

These documents will create a picture of how the association is managed and how owners' monthly assessments are being spent. Does the association have adequate insurance to cover replacing the condominium building in the event of fire, theft or other damage? Given the age of the property, have reserves been accumulating to cover routine maintenance projects, as well as more significant planned improvements? If the answers to these questions are no, it could be an additional financial liability to an owner.

The association's declaration, bylaws and rules and regulations will help you understand what types of activities are permitted in the complex. Are unit owners allowed to leave trailer trucks or motorcycles parked in the lot? Are pets allowed and, if so, are there weight restrictions? If you have a 75-pound dog or want to buy the unit as an investment to rent out, these documents could dramatically change plans.

The most important advice we can give you is to pay a lawyer to review these documents before you close. That does not mean simply

hiring a lawyer to do a closing. Rather, you are paying them for their legal analysis of these important documents and reports.

By doing research before you purchase, you can save yourself from surprises and focus instead on living your new life as part of a condominium association. After all, association membership is not a privilege; it comes with ownership.

The Period of Developer Control and Turnover

What happens between the time that you move into your new home and when you finally vote to elect owners to take over control of the board? Who gets to make decisions about a wide range of topics that may have a direct impact on your life? The answer is the developer.

There are urban myths galore that haunt new associations. The most common myth is that the association does not exist until an owner-controlled board is elected.

The process of building and developing a new community can sometimes be viewed as a creative process that begins long before your neighbor is elected as the first board president. There is a distinction between condominium and other types of associations but ultimately the end result is the same. The association often exists and operates long before the first owner board is elected.

A condominium is created when a declaration of condominium ownership with plats of survey and floor plans are recorded in the county where the property is located. The recording of the declaration is often held up until the last minute by the developer because Section 9 of the Act requires the developer to pay assessments on units he owns so the finished units are submitted to the Act as late as possible. That would apply to all additional units added in with each amendment to the declaration as well.

Homeowner association declarations are often recorded as part of a Planned Unit Development or when local government approves the plan. Thus, the legal entity called the “association” comes into existence when the declaration is recorded.

Every association in Illinois must be turned over to the owners within three years of recording of the declaration or upon sale of

75% of the units, whichever is sooner. Although the statutes merely address the issue of control, the association exists long before this. As soon as one unit is closed, the “association” must begin to provide services, collect assessments, pay bills, etc. and someone has to make the decisions.

As a result, the developer controls, or in fact is, the board of directors. This imposes certain duties upon the developer, including that infamous “fiduciary duty”. When you are controlling and managing other peoples’ money, you are deemed to be a fiduciary and subject to the highest level of trust defined by law.

Illinois law has gone so far as to say that a developer-controlled association must not only prepare a budget, they must also contemplate the need to make future capital repairs and actually calculate and collect reserves. The failure to do so is considered a breach of fiduciary duty and an owner-controlled association can recover damages long after the developer relinquishes control.

During the period where the developer and the “board” are still synonymous, the developer also acts as an arbiter of architectural control decisions. New owners desirous of installing decks, patios, antennas, awnings, etc. usually go to the developer, get verbal permission without much else in the way of documentation and proceed with their plans.

However, the owner-controlled board may want to be a “fenceless” community and now must solve the problem of the two fences installed two years before with alleged board/developer approval.

The developer-controlled association sets the level of assessments based upon (1) expenses and (2) marketability, two mutually exclusive objectives.

Therefore, there are certain conditions one can expect to see in many new developments:

1. The association is born when a declaration is recorded and/or when the not-for-profit corporation is registered with the office of the Secretary of State.
2. Even though the association technically exists, it will not operate in a conventional fashion until the first owner-board is elected.
3. There may not be any board meetings to attend until turnover. The developer or one of his employees may make “board-like” decisions and run the property or give direction to a property manager.
4. There may be owners’ meetings from time to time. If they turn into a complaining session, the developer is less likely to hold another meeting.
5. Sometimes, a conscientious developer will encourage owner involvement prior to turnover by the creation of a transition committee. This is actually a smart move because it deflects some of the anger from the developer and gives the owners an ombudsman to work out disputes. From the perspective of the owners who volunteer, this might be unpleasant because if a developer is merely providing lip service, the committee will bear the brunt of the owners’ anger.
6. Oftentimes, budgets created by the developer will be low, resulting in the first board of owners having to raise assessments.

The most important task for the new owner-elected board of directors is to review the financial records to make sure enough money is being collected to pay current and future bills.

First Annual Meeting of Members

Contrary to popular notion, the first annual meeting of members called by the developer does not “create” the association. As previously stated, the association is already in existence even if it is passively administered.

The election of the initial board of any association must take place no later than 60 days after the sale of 75% of the units, or three years after recording the declaration, whichever is earlier (Section 18.2(b) and 18.5(f)(2) of the Act; section 1-50(b) of CICA). Some homeowner association declarations require 100% of the developer-owner units to be sold, with no time restrictions.

Once the deadline for turnover is triggered, the developer must send out notice to hold a meeting of members to elect a board. The Act and CICA contains penalties for failure to do so, and a court order should be sought if a developer refuses to hold the election.

In order to convene an annual meeting, notice must be sent out announcing the time and place of the meeting not less than 10 days nor more than 30 days in advance. Generally, proxies and other materials are sent out at this time as well.

Usually there is a small group of active owners who have been involved with the association prior to this time that form a core to elect to the board. At the meeting, a board is elected and the transfer of power “symbolically” takes place. The books, records and monies are transferred over although not necessarily at the meeting itself. The officers are elected by the board members (not the owners) at a subsequent board meeting (sometimes held the same evening after the owners meeting). If the developer has worked with a transition group, the turnover should be very smooth. As with all owner meetings, minutes must be kept of the proceedings.

Once the board is elected, they will need to have several organizational meetings to set up procedures and rules within a short time.

The First Year

The first year is critical in the planning and operation of an association. The following are steps that must be taken immediately to assure a successful start:

1. The board of directors convenes and elects officers.
2. The board selects or works with the existing management company. Whether it is the board itself, an individual or a professional company, financial management must commence immediately. Even if a board is self-managed, independent financial consultation must be sought to guarantee establishing proper procedures and to make sure enough money is being collected to pay the bills.
3. Selection of legal counsel. A qualified and experienced attorney must be selected. A board has a dual role of operating a business funded by other peoples' money and running a government (passing and administering laws) and must have competent advice when questions arise. Because board members have potential exposure for personal liability, they should seek an attorney experienced in dealing with associations to get the right answers.
4. Selection of an accountant. A prompt independent review of all financial records is a must at the initial stage. A qualified, experienced accountant can determine whether the developer has paid his fair share and that all monies are properly accounted for. Recent Illinois decisions have required developers to turn over associations with adequate reserves.
5. Establishment of committees. Standing committees (if permitted by the governing documents) and/or advisory commissions to the board will make the board's job much easier. Buildings, grounds, finance, recreation, rules and regulations are some areas well suited to committee formation. The committees are also the logical training ground for future board members.
6. Additional tasks. In addition, the new board should be looking to implement the following:

- Adopt rules and regulations
- Inspect the property, compile list of defects in common properties, review working drawings and punch lists for unremedied builder defects and warranty claims and make appropriate demands of the developer.
- Review all existing contracts to assure that they are up to date and performed satisfactorily
- Engage an architectural/engineering firm to inspect the buildings and common areas and assist in preparing a reserve study
- Review all insurance coverage with the insurance company's representative
- Establish strict policies on the frequency and conduct of board meetings
- Confirm developer paid assessments on developer-owned units.

Once all of the foregoing areas are addressed and procedures are in place for a smooth and efficiently operating association, the board will be able to fulfill its primary objectives to (1) preserve, protect and enhance property values and (2) maintain the quality of life for its members and (3) act on their behalf to promote the safety and welfare of the property.

Qualifications to be on the Board

One of the frequent issues faced by associations is the ability to entice owners to run for a seat on the board. While many find it to be a rewarding experience, the time commitment is not insignificant and the pay is non-existent.

When someone “volunteers” to have his or her name put on the ballot, it is easy to just accept the name without thinking and move forward through the election process. Some veteran board members advise that they spend anywhere from 20 to 25 hours per month on association business. Therefore, a good candidate for the board must first be willing to make the time commitment.

From time to time a board will receive a candidacy application from someone whose ownership credentials are called into question. Or

perhaps their “standing” in the community is suspect, let alone whether they are willing to put in the time for the good of the community. Sometimes, people will submit their name for office and they are not even owners. The board should confirm candidates are owners.

Three questions that members of associations must deal with when considering the filling of board positions are (1) who can legally serve on the board of directors, (2) what happens if someone who is not legally qualified to serve gets elected or (3) what if someone is not properly elected or appointed and they do something questionable while serving?

The Act and CICA require that all members of the board of directors of an association be owners of units within the association. In the event the unit is owned by more than one person, the owners must select one candidate from within their group. Under this rule, for example, a husband and wife can serve on the same board only if they own multiple units.

In situations where units are held in trust or owned by some type of business entity, the board must look to the declaration and bylaws for guidance. Many documents will allow a legal entity like a trust, partnership, or corporation to select one representative who does not even have to be an owner or even a resident.

We are often asked whether or not a renter can serve on the board. Theoretically, if a unit was owned by a corporation and the appropriate language was in the declaration, a renter could serve on the board – provided they have the necessary documentation. That is the key. Whenever anyone’s credentials are called into question, the board can request proof of authorization or ownership to qualify any candidate.

Frequently a director’s ownership is called into question and upon verification we find that the spouse owns the unit. This director would either have to resign or have an interest in the unit conveyed to them.

Along those same lines, a frequent question is whether directors must reside at the property, if such a requirement is imposed by the declaration. In other words, for example, if a unit is owned for rental purposes and the owner resides elsewhere, can the owner serve on the board? Such a residency restriction may pass scrutiny in a common interest community association. However, a board member residency requirement in a condominium declaration may violate the Illinois Condominium Property Act because it does not permit board members to be elected at large, but rather limits the pool of candidates/board members to residents. The residency requirement may also violate the Condominium Property Act because it would create two classes of owners (prohibited under the Condominium Property Act)-- resident owners who could be elected to the board and non-resident owners who could not be elected to the board.

Another question is whether a member has to be current in the payment of their assessments to run for and to serve on the board? A restriction in the governing documents for a common interest community association that imposes a "good standing" requirement to serve on the board may pass judicial scrutiny. However, for similar reasons discussed above regarding a board member residency requirement, a restriction in a condominium that requires a candidate to be current in payment of assessments to be eligible to run for and to serve on the board is not likely permitted. In a condominium, ownership of a unit is the only clear qualification to be elected to the board.

Of course, in dealing with cooperatives, townhome associations and homeowner associations, the declaration and bylaws will always determine board qualifications. In some of these types of entities, ownership is not a requirement to serve on the board.

Finally, the question may be asked as to what happens when a current board member is in violation of association rules (perhaps they become delinquent in assessments), or what happens if a board member sues the association?

The credibility of the individual and the entire elected board comes into serious question when a board member who was elected to enforce and enact rules for the benefit of the members of the association is doing something that is detrimental to that same

association. Because of this, it may be appropriate that board members who violate the rules and regulations be requested to submit their resignation. If they do not, measures can be taken to remove them from the board. Certainly they should be excluded from any discussion of matters, and/or should abstain from voting, related to any issue where they have a personal interest in the outcome.

Whether dealing with issues related to the collection of delinquent assessments, the ability of owners to rent their units or the qualifications needed to run for and serve on an association's board of directors, having the proper rules in place are essential. These rules must follow the bylaws and the local law, and they must be known to all members of the association. This way no one can ever claim that the rules were adopted after the fact or that they had no knowledge of their existence. Although some associations are desperate to fill board seats, it is more important that all sitting directors are legally qualified to do so.

Adopting Rules and Regulations

The typical declaration and bylaws for most associations are generally deficient in providing specific information about the requirements of day-to-day living at the property. Further, since the declaration and bylaws usually require a 2/3 or 3/4 majority to approve any amendments, it is not practical to incorporate laundry room hours, garbage pickups, pool rules, etc., when modifications are so difficult and cumbersome to achieve and may change frequently.

Therefore, most governing documents (and, in some instances, statutory authority (e.g., Section 18.4 of the Act)) authorize a board of directors to adopt reasonable rules and regulations.

The rules and regulations are a significant source of authority for the board because they are the "living and breathing" document that governs the day-to-day operations of any association. The rules and regulations should implement and may be able to squeeze between the lines of the declaration and bylaws.

Although a developer may use an identical set of declarations and bylaws for more than one property, this cannot be said for rules and regulations, since no two developments are alike in the way they are administered. More and more courts are giving greater credibility to the specificity of the rules as opposed to the overbroad, generic provisions of declarations and bylaws.

Initial Drafting

Once a board is controlled by the membership, one of its very first tasks should be the adoption of the initial set of rules and regulations.

First, the board should create a special commission composed of one board member and several interested owners. The commission's sole purpose should be to create an initial draft for full board review.

Second, it is a good idea to obtain sample copies of rules and regulations from other similarly situated associations to use as examples. Then, specific guidelines can be established which are peculiar to particular needs, but at least there is a framework to follow without “re-inventing the wheel”.

Third, all categories and specific rules should be numbered for future reference.

Finally, once an acceptable draft is agreed upon by the commission, it should be submitted to the association's legal counsel for a legal review. This will allow the attorney the opportunity to make sure that the proposed rules and regulations: (1) conform to the governing documents and statutes and (2) contain no illegal provisions. Remember, rules are not a re-cap of declaration language; they go where the declaration has not and implement the declaration and by-laws.

Thereafter, the preliminary draft is submitted to the board of directors for its review and the preparation of a final draft.

Adoption

The final draft should then be sent to all members of the association in conjunction with a notice of a special meeting of the association to discuss the rules and regulations (for condominiums in Illinois, this is mandatory under Section 18.4 of the Act).

This special meeting should be called so owners can give their input and ask questions. However, the ultimate authority to adopt the rules and regulations lies exclusively with the board, as the elected representatives of the association.

The final draft which becomes the official operating document should then be ratified at the next regular or special meeting of the board of directors.

Operation

The rules and regulations of an association are only as good as the efforts of the Board to enforce them. This requires the education of all present and future residents as to their contents, as well as educating residents about the procedures for enforcement, such as fines and legal action. Copies should be made readily available at a nominal charge and all new residents, whether tenants or owners, must receive a current copy and should acknowledge receipt in writing to be kept on file by the association.

Pertinent sections can be reproduced and posted at the appropriate places on the property (pool rules at the pool, laundry rules in the laundry rooms, etc.).

Finally, the members of an association must be made aware that the elected board of directors and the manager are not the local police department and cannot be expected to witness all violations and solve all disputes between residents. The members of the association must be willing to come forward and notify the board or file complaints when rule violations occur. They must also be willing to give testimony to prove the accusations in order for the board to utilize prescribed enforcement procedures.

Violations of the law, however, must be reported to the police and, as a practical matter, the association should refrain from getting involved in simple “neighbor” disputes that do not affect the common areas or the health, safety and welfare of the members of the association.

Enforcement

The association must have a specific, detailed procedure for enforcing punishment of rule infractions. Whether it is arbitration proceedings, denial of privileges, fines, etc., they must be set forth in precise detail. Paramount to imposition of any punishment is “Notice” and an “opportunity to be heard” (Section 18.4(e) of the Act; and Section 1-30(g) of CICA). The Board may levy a fine only after providing written notice of a violation and an opportunity for a hearing. By affording all accused rule violators of an opportunity for a fair and impartial hearing, an association can avoid being accused of being “arbitrary and capricious”.

After notice is sent and a hearing is held (with or without the accused being present), the Board should then deliberate in private. The Board votes at the next open meeting. Thereafter, a written finding should be sent to the accused.

The enforcement procedure should also specify a schedule of fines, suspension of privileges (if applicable), legal remedies and other details including an admonishment that the guilty party will be responsible for the association's costs and legal fees in the event legal proceedings are warranted.

Periodic Review and Update

In order for rules and regulations to be truly effective, they must be kept up to date. It is our recommendation that each year the Rules Commission be reconvened periodically to review the existing documents, copies of minutes of the previous year's board meetings, copies of all amendments, resolutions, motions and changes in the law.

Any changes or additions should be incorporated in order to update the rules and regulations on an on-going and regularly scheduled basis.

It is further recommended that an association forego expensive printing and utilize a flexible and economic method of reproducing the rules so that an annual revision or re-duplication is not a major financial burden.

Complete copies of the revised rules and regulations should be given to all new and existing residents upon request, and the board can charge a reasonable fee (Section 19 of the Act; Sections 1-30(i) and 1-35(d) of CICA).

By establishing a tradition of having an annual review, the rules and regulations will not get stale and the association can avoid having a rule struck down by a court for arbitrary enforcement of rules governing inapplicable situations. It is also our opinion that by implementing a policy of annual review, the board of directors would be satisfying some potential concerns of its Errors and Omissions insurance carrier.

Architectural Control

One of the main reasons people consider whether to live in a community administered by an association is the concept of "uniform appearance". While some may find the sameness of color and style monotonous, many association dwellers like the fact that everything looks exactly the same.

One of the most important committees for a townhome or single family home association declaration to provide for is its

Architectural Control Committee. These are the people who are going to review everything from fences to actual dwelling plans and recommend a finding to the board of directors.

Association law being a relative newcomer to our legal system (the general rules of real estate date back to William the Conqueror) produces more legal decisions on the issue of architectural control than all of the others combined. These are some of the issues associations routinely deal with:

- The developer approved a modification while controlling the board and there is no documentation.
- The declaration requires the association to file suit within 30 days of completion to stop a non-conforming addition and it is not even discovered until after 30 days has expired.
- There are no rules for a specific change and the board wants to deny it.
- Four years after installation the board decides they no longer want to permit it.
- The owner received a building permit from the City so they believe they can do whatever they wish.
- The owner does whatever they want and thumbs their nose at the rules.

Confronted with these and innumerable other scenarios, the board has few choices; leave it be, levy a fine or go to court to obtain an order for removal. Each one of these alternatives comes with its own set of problems:

- By ignoring it, it does not go away...it can spawn an epidemic of more of the same. Also, by trying to stop something else, the board is not accused of discrimination.
- By levying a fine, there is a punishment, but the object of offensiveness is still there.
- By filing suit, you will spend thousands of dollars, plus 1 to 3 years in court and even if the declaration requires the owner to pay legal fees, the odds are better than 50/50 the court will not award the full amount.

Therefore, starting with the initial adoption of policies and procedures, a pro-active board can minimize the aggravation factor with the following steps:

- Adopt comprehensive and detailed architectural control guidelines within the framework established by the declaration. Most improvements such as screen doors, patios, decks, fences, etc. can be addressed, but there has to be a general provision prohibiting any exterior modification without the written consent of the board. Owners are very creative and will often test the limits of the board's rules with something no one else has previously thought of.
- Make sure the guidelines are easy to read, reasonable and easily enforceable. If you make them too lengthy or burdensome, they may be difficult to enforce. When you discuss an area that may be controversial, it may be wise to submit it to the membership in the form of a non-binding advisory referendum to get some input before going forward.
- Establish a small committee to review requests. Soliciting qualified or experienced people helps, but the personalities should be diversified if they are not experienced. If an association is required to review plans for new dwellings, it should retain the services of an architect to do the review and advise the committee. The cost of the review can be passed on to the owner making the request.
- If the declaration has a prohibitive deadline like 30 days, have the committee or the property manager walk the property once a month to identify non-conforming changes. Although a board or its committee(s) should not be acting as policemen, unfortunately declarations sometimes imply that requirement, particularly if community members do not self-police.
- Set reasonable deadlines for submission of plans, review and approval/rejection. Most owners are anxious to get started and sometimes construction costs or interest rates are locked in for a limited period of time. Provide specifications, application forms and guidelines promptly to avoid unnecessary animosity.
- Send periodic reminders about the rules governing architectural changes so no one can claim that they did not know about the policy.

These are recommendations that can be implemented to avoid future problems, but what about the ones that currently exist that have not been acted upon?

Try inviting the owner to a meeting and see if you can reach a compromise on some type of modification; allow the owner to keep the amenity until they sell and then the property must be restored; grandfather the structural change but establish a policy that no new ones will be permitted; or allow it to stay until it has to be repaired or replaced.

If these are not successful strategies a board may have no choice but to file suit. Failure to do so may result in the board being sued for failure to enforce the rules. In any event, the board must take some action to preserve the architectural integrity of the community.

Recommended Procedure for Keeping Minutes

In every instance, an association is required to keep minutes of its regular and special board of director's meetings, as well as owners' meetings. The law considers a gathering a "meeting" when the board is conducting association business. All board votes must therefore be included in the minutes of board meetings. A frequent area of discussion is how much information should be included in the minutes, whether the minutes contain sufficient detail and whether the recording secretary should note every item of business discussed at the meeting.

The purpose of keeping good minutes is to preserve a permanent summary of all of the action(s) taken at the meetings of the directors and/or the members. The association speaks through its records, and the minutes are a definitive part of that record.

The secretary or recorder of the proceedings should take careful notes of all discussions that take place and all action taken, so that the minutes will ultimately constitute an accurate and full report of the proceedings. Notes should be recorded in clear and concise language and should be complete and accurate. All matters of importance should be noted, simply and unambiguously. Later, the

notes will be shortened and transcribed into a brief summary of the proceedings for actual minutes themselves.

The following guidelines illustrate what should be included in the minutes:

1. The president should prepare a written agenda for the meeting. This allows everyone in attendance to follow the matters at hand and also allows the recording secretary to note in advance each item of business to be discussed. Each discussion should then be summarized, illustrating the key points. (Note: Minutes are not a verbatim transcript.) Occasionally a comment may be inserted which may explain a statement made or a decision arrived at, but it should be short and to the point.
2. Arguments on particular questions and discussions that take place should not be included in the minutes.
3. Sometimes written resolutions should be drafted in advance by legal counsel in order to clarify complex subjects or where they involve legal technicalities.
4. It is not necessary that the names of those voting for or against a routine proposition be recorded unless a request is made to record the names of the dissenting voters. The names of the proposers and seconders of the motion should be recorded. A “roll call” is not necessary unless a motion is made and passed for such a vote.
5. It is also important to note any director who is personally or financially interested in a particular transaction and did not vote as a result of a conflict of interest or is not present.

Finally, with regard to approval of the minutes, a “Draft” copy should be sent to each director in advance of the following meeting in order that they may be reviewed before the meeting. It is recommended that a motion be made to waive the reading of the minutes and that any corrections or additions be made of record followed by the preparation of a statement of corrections to be incorporated into the corporate records of the association. Any director who has dissented on any item of business from a prior

meeting should carefully examine the minutes in order to note that his dissent was noted. Otherwise, a mere summary of the business and transactions of the association should be adequate for reflecting the board's business. A motion should then be adopted to approve the minutes as corrected (if applicable) or approved as read, and the minutes should then be adopted.

A common question is whether minutes should be taken of closed sessions. On June 15, 2018, the Illinois Appellate Court published their decision in the case of *Boucher v. 111 East Chestnut Condominium Association*. This case has implications for condominium Association Boards executive sessions regarding meeting minutes.

First the Appellate Court held that the hearing conducted by the Board with Mr. Boucher constituted a meeting of the Board, and even though it was a closed session, the Board still had a duty to maintain its own minutes of the meeting pursuant to Section 19 of the Illinois Condominium Property Act ("Act"). The Court then opined that despite the fact that the Act specifically authorizes the Board to handle hearings and other violation matters in closed session, they needed to produce copies of the minutes to any owner that requested them pursuant to Section 19 of the Act.

As a result of this decision in the case, it is our recommendation that the minutes of the Board meeting should reflect the votes to go in and out of executive session, and can generally describe the reason for the executive session, which can simply refer to one of the six exceptions noted under the Act for executive session (i.e. interview of potential contractor; meeting with Association counsel; violation hearing, etc.) No further details should be included in the Minutes with respect to the discussion in the executive session. Further, the executive session should not generally be recorded on audio/video.

By following this procedure, the board can (1) reduce the length of its meetings, (2) limit its liability, and (3) maintain a permanent record of proceedings to guide future boards.

Using Committees

The Illinois General Not-For-Profit Corporation Act (Ch. 32, Ill. Rev'd. Stat.) and most governing documents for associations provide for the use of committees in order to assist the board of directors in the administration and operation of the association. However, based on recent case law, the Board can only establish committees if provided for in the declaration or bylaws.

By not utilizing committees in delegating the workload, a board is probably looking at a very high “burnout” rate for its directors. Therefore, a board should make every effort to implement an effective committee system. Use of committees serves a number of purposes in the efficient operation of an association:

- It is an effective method of involving a multitude of people in the association
- It is a good training experience to groom future board members
- It is a means of utilizing the special talents of board members and other members of the community; i.e., finance committee, maintenance committee, etc.
- It is an efficient means of getting a commitment from interested and active members who do not desire nor have the necessary time to commit to board obligations
- It is the best way to delegate and spread some of the workload so that a board is not overwhelmed

The board can appoint a committee chairperson and should select the members of the committee from a pool of interested members.

Illinois law provides for two different types of committees. First, the “full authority” type of committee that must (a) consist of a majority of directors; (b) is selected by the majority of the board; and (c) must have at least two directors on the committee, as it is defined. This type of committee has full authority to bind the Association to policies, contracts, etc. This format is rarely used, because the board as a whole usually wishes to be in control of making Association policy.

Second, is the “limited authority” committee or commission, which has no authority to bind the Association and is merely a recommending body. These types of committees function under the direction of the board and do not require directors as members of the committee. These are the most common types of committees in use and because of the liability and control issues; this is the best way for a board to structure committees. Although in a strict statutory sense they are designated “commissions”, they are most often called committees (and we shall refer to them as such here).

Whether “full authority” or “commissions”, these bodies are divided into three classes – standing committees, special committees and subcommittees.

A standing committee operates from year-to-year and is designated specific tasks at the direction of the board. They generally have a full agenda of activities that extend from year-to-year. Typically, standing committees include:

- Finance – which prepares the budgets and advises the board on special assessments and capital expenditures
- Maintenance – which reviews contract specifications, screens contractor bids, acts as a liaison between the contractor(s) and the board, etc.
- Building and Grounds – which walks the property periodically and prepares punch lists of maintenance items and works with the landscaper and snow removal contractors
- Judiciary – which hears the rule infraction complaints and conducts informal hearings
- Social – which plans social events when appropriate
- Newsletter – which prepares periodic communications with the community

If provided for in the Declaration, special committees are appointed for limited and specific purposes and serve until they complete their designated tasks. Usually a board will appoint a Rules Committee to prepare recommended rules and regulations, a Nominating Committee to screen and select candidates for the board and supervise elections, a Pool Committee to supervise lifeguards and pool maintenance operations, Insurance Committee to review insurance requirements and specifications and various search

committees to screen and hire professionals. Consider establishing commissions if committees are not provided for in the Declaration.

Obviously, the more people involved in the committee process, the more the work is spread out, which should result in efficient board operations. It is critical under this scenario that the size of committees should be restricted, the limits of authority are clearly defined and a chain of command is established so an association is not victimized by a vocal minority. This should all be set in a charter approved at a Board meeting.

All committees should ultimately be accountable to the board of directors by providing an item on the board meeting agenda entitled "Committee Reports". A board should always give clear cut direction as to the committee's scope of responsibility. Members should be appointed to committees/commissions at Board meetings.

Each year after the new board is elected, committees must be reappointed. Ideally, a committee should have a chairperson and vice-chairperson. Each chairperson should serve for two years and then be succeeded by the vice-chairperson. This allows for an orderly transition, continuity of leadership, knowledge and experience and avoids "burnout" and creation of "kingdoms".

When a committee is not operating properly, it is either not being supervised by the board or it has become a maverick. In either instance, the chairperson should be required to attend a meeting and either account for deficient performance or be replaced. Allowing the situation to go on too long will ultimately result in either a non-functioning committee or resentment among the members.

By following set guidelines and using good organizational skills, a board can recruit and maintain board members and not "bored" members.

Efficient Board Meetings

Every association conducts business and operates through its monthly or quarterly board meetings.

Here are some suggestions on how to have productive and efficient directors' meetings:

- Limit owners' questions and comments to a set amount of time prior to the meeting commencing. The owners' forum is not the place to report maintenance requests unless the owner is having a problem receiving service. 15 to 30 minutes should be sufficient time to answer questions, but owner interchange should not be part of the board business meeting. All questions should be directed to the chairman. If there are significant owner issues, a special meeting of members should be scheduled. (See also Section 1-40(b)(6) of CICA that requires a portion of every board members to be reserved for owner comments.)
- Start every meeting on time. Even if a quorum is not present, the owner's forum, announcements and other items can be handled until it is necessary to vote.
- Schedule meetings when your directors are most readily available. If the meeting begins too late in the evening or run too long, thinking gets muddled and the irritability factor increases.
- Prepare an agenda and have it available for all attendees. "Front load" the most important issues so they can be addressed while everyone is still fresh. The management report and minutes do not have to be read verbatim. Copies should be given to directors in advance and owners who attend. The treasurer's report is not an action item and does not require a vote. Announcements, committee reports, president's report, etc. can be saved to the end of the meeting. Better yet, all of these items could be posted on an association website to avoid the "paper chase".
- Alternate speakers of opposing points of view to avoid redundancy and limit the amount of time for discussion.
- Set time limits for discussion in advance. This will create an expectation and encourage speakers to get to the point.

Sometimes the president has to ask if anyone has something new to add and then move toward a vote.

- Consider scheduling significant issues requiring more lengthy discussions for more than one meeting.
- The president needs to sense when discussion is either becoming repetitive or everyone is in agreement and calls for a vote.
- Do not meet just for the sake of meeting. Condominiums and most other types of associations are only required to meet four times per year. Expenditures already allocated in the budget do not have to be voted on again. If you feel that you must meet monthly, consider canceling the December meeting and maybe one or two during the summer. Better yet, consider meeting every other month, or even quarterly.
- Develop a rhythm. Meetings should follow the same organizational structure month in and month out.

If the purpose of a meeting is merely to inform, the board should send out a newsletter. If actual business is going to be transacted, then the meeting will be productive and more swiftly with the help of a good facilitator.

Association Responsibility for Maintenance of the Common Elements

Since the inception of condominiums in Illinois in 1963, it has been a basic principle that the unit owners are responsible for the interior and contents of their units while the association is responsible for maintaining the common elements in condominiums.

Subject to the Act, each condominium board was permitted a certain degree of latitude in resolving maintenance issues based upon the specific wording of their declaration and bylaws. Some areas of maintenance that were clear have been made a little “fuzzy” because of changes to the wording of the statute.

For example, in the ‘70s and early ‘80s, it was always assumed that the association was responsible for drywall. The boundaries of a unit were defined as the four dimensions enclosing height, width, breadth and depth of the unit (air space), the drywall being considered

common elements. Since the drywall on the exterior walls of the unit defined the unit boundaries, everything from the paint-in was unit; everything from the drywall-out was association. Pipes, wires and conduits were simple. If it serviced more than one unit, no matter if it was inside a unit, it was still common elements. Conversely, if it serviced only one unit and it was outside the walls, it was the unit owner's responsibility. The statutory language was consistent and declarations mirrored the language of the statute.

All of this began to change in the early '80s with substantive changes to the Act and as new standard provisions began appearing in the new declarations. Section 4.1 of the Act defines common and limited common elements. It has been amended several times. The statute establishes maintenance responsibility for units and common elements. It distinguishes limited common elements. Currently it defines the differences between the two, however, it does say "(a) except to the extent otherwise provided by the declaration or other condominium instruments..."

What this means in effect is that no matter what the succeeding sections state, they can be contradicted by an association's declaration. A specific example would be Section 4.1(a)(3) which says: "if any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements."

That seems pretty clear and consistent with conventional thinking going all the way back to the '60s. However, because of the preamble to this section allowing for exceptions, this can be contradicted by the declaration.

The rule then, for simplicity of interpretation, is that if a pipe services a single unit exclusively and is in the unit, it might be the maintenance responsibility of that owner. The exception is, unless it says otherwise in the declaration. Therefore, there is no absolute rule in place without consulting the declaration for each association and then establishing a policy to put in the rules.

Next, is the issue of determining the maintenance responsibility for limited common elements. Section 4.1 of the Act defines them; the most common being balconies and patios. Section 9(e) of the Act states that repairs and maintenance of limited common elements can be charged back to the owner, if it is provided for in the condominium instruments. Again, we must look to the declaration for guidance before we can solely rely upon statutory authority.

The other area of concern is when it goes beyond routine maintenance and a loss becomes a claim large enough to warrant an insurance claim. Under those circumstances there are some basic rules:

- Additions and improvements are not covered by the association under any circumstances unless the owner requests the association to obtain such coverage for them at the owner's expense
- Typically, one unit owner is prohibited from suing another unit owner for damages incurred to the interior of their unit. That is why they have unit owner's insurance (or should have, but that is another discussion)
- Limited common elements are covered by the association's insurance

In 2002, Section 12 of the Act governing insurance was completely rewritten. The intent of the statutory amendments was to simplify claims practices and disputes.

Frequently in the past, when one owner caused damage to another unit and the common elements, there was always a battle over primary insurance coverage. Since 2002, the Act was changed to provide that the association's property insurance policy is primary for a covered loss.

Out of this new law come the following rules:

- The unit damaged will be restored to the condition it was in when delivered to the first owner by the builder, including the replacement of all original (only) fixtures, but not additions or improvements made by the current or previous owner(s)

- The association can compel all owners to have owner's insurance (to cover everything else)
- The association can charge back a deductible for a claim if the damage was caused by a unit owner, subject to notice and a hearing

With respect to homeowner associations, each owner is responsible for their own dwelling and liability insurance, unless, again, the declaration says otherwise. (Some homeowners associations have bulk insurance similar to a condominium.)

In conclusion, if the issue is routine maintenance (repair, restoration, replacement) of any amenity, including limited common elements, the declaration must be consulted to see if there are permitted exceptions to the Act. If the issue is damages covered by insurance, it should be submitted to the association's carrier and periodically the declaration and bylaws should be reviewed, updated and amended so they are consistent with and not contradictory to the Act. For non-condominiums, these issues are dictated by the association's governing documents.

What Makes a Good Board Member?

For the owners who take the time and trouble to get elected to the board of directors of an association, like any other job, it does require education and training. Unfortunately, too many people take on this responsibility without learning what the job entails.

People who serve as directors may get on the board with certain expectations and goals they would like to accomplish, but it is important to do the necessary homework to become a competent and contributing member. Sometimes it is better to keep a seat vacant than to appoint or elect someone who does not even do the bare minimum, such as become acquainted with the legal documents governing the association and the responsibilities of the board. Far too many associations are run by people whose motives are honorable, but because of the lack of knowledge, experience and training, their meetings and sometimes their entire administration, is a disaster.

Here is a basic primer to becoming a contributing member of the board:

- First, become familiar with the operating documents. Very few owners ever look at the declaration or bylaws, let alone the rules. However, in order to be a competent director, this is the route the association must follow and each director should have a “map” of the basic knowledge of what the trip entails. That is not to say that a director should be able to interpret complex issues such as the nuances of insurance coverage, however, each director should be familiar with what the owners get to vote on, the essentials of association maintenance responsibility, open meetings requirements and so on.
- The declaration generally contains all of the covenants binding the property such as restrictions on use, financial obligations and remedies for owners who fail to follow the rules. Granted, many declarations are written in legalese and often are loaded with developer references, but a careful skimming can lead to an understanding of the basic duties and responsibilities. The gaps can be filled in by legal counsel. A good board member can identify when the documents seem to be out of date or need to be amended.
- The bylaws are generally easier to read and spell out the duties and responsibilities of the board and its members. These provisions should be more familiar to each director. Although the declaration has more authority, it is usually written in a more generalized fashion and the bylaws often address issues ignored by the declaration.
- More important than understanding all of the nuances of the declaration and bylaws, each director should have a working knowledge of the contents of the rules. Since these are approved by the board itself and are subject to change from time to time, this is the document which has the most relevancy to each owner and director.
- Each owner should be responsible for identifying and reporting violations when they see them. Although the members of the board are not policemen, they should be able to recognize violations and respond to questions from the owners. So long as the rules have been reviewed by legal counsel and periodically updated, they should be enforceable and be readily available for any director to review.

- Directors should have some familiarity with State (and federal) law. There are many laws applicable to an association that are not discussed in the association's governing documents. Each board should have a periodic legal checkup or at least information from their lawyer as to important new cases or changes in the law, i.e., the new insurance law requirements and restrictions on charging late fees. Each director of an association should have an updated version of the state's association statutes (the Condominium Property Act and CICA), as well as a copy of the Illinois General Not-For-Profit Corporation Act.
- Learn how to read financial statements. Everyone knows an accountant or bookkeeper or if you have an experienced manager, ask them to go over the form so you understand what the numbers mean. Likewise, a budget and a balance sheet.
- National organizations such as the Community Associations Institute (CAI) and Institute of Real Estate Management (IREM), and local organizations such as the Association of Condominium and Townhome Associations (ACTHA) have newsletters and helpful books and pamphlets on numerous topics to orient a board to its duties. A conscientious board member should not only be up to date on significant changes in the law and the basics of the legal documents, but also the practice and theories of running an efficient association.
- A good way to keep up on changes in the law, efficient techniques and exchanging ideas is to attend some of the many seminars and programs offered throughout the area on selected association topics. Kovitz Shifrin Nesbit, CAI and ACTHA all offer numerous seminars on specific topics as well as full day programs at their trade shows. Even if a board does not belong to the organization, many programs are promoted in the newspapers and are available to non-members.
- Have an orientation and goal setting session for new directors. Many people, not just new boards, have a need for an overview plus a discussion of risks and liabilities for board members. After each election, the new directors, in addition to being advised to read and go to seminars, should also be force-fed the "do's and don'ts". Legal counsel, in conjunction with the property manager, should be familiar

with the particulars of the property itself as well as the governing documents, so as to provide useful information at the first meeting of a new board.

- Maintaining the correct temperament is the key to being effective. A good board member does not personalize every issue, is prepared when they come to the meeting, speaks only when they have something relevant to say, listens and does what they promise to do.

Membership on a board of directors is a serious responsibility and should not be taken lightly. New directors should learn that they need to attend all meetings, review the materials in advance, pay attention to what is going on around them, ask questions and work through established procedures to efficiently operate the association and effect change where needed. They should also know that they are not the chosen representative of a faction or single issue focus group and their duty and allegiance is to the entire association.

By fulfilling these obligations, meetings can run smoothly and efficiently and thus will make serving on the board a more rewarding experience, as well as provide the association with the guidance and leadership it needs.



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