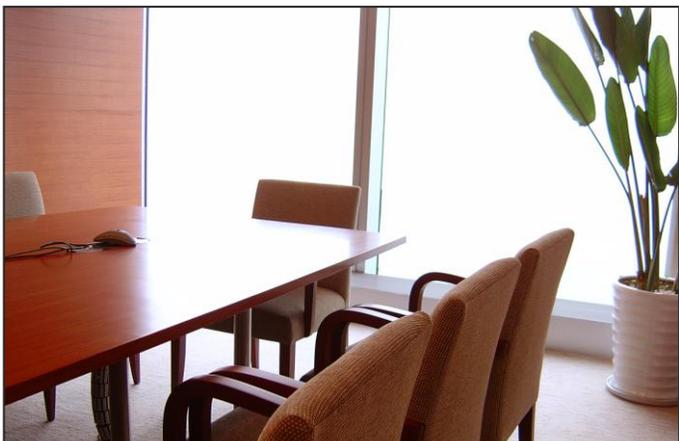




Committees: Delegating Board Authority to Achieve Efficiency

Utilizing Committees to Circumvent Civil Code Constraints on Conducting HOA Business



Introduction

The 2012 amendments to the "Common Interest Development Open Meeting Act" have made it significantly more difficult for Boards to manage the affairs of their HOAs in a quick and efficient manner. Those amendments, as discussed in our previous resource, "Senate Bill 563: Boards and their Business," made significant changes to the Civil Code, including, (1) revisions to the definition of meeting to include executive session meetings, (2) the inclusion of a new "No Action Without a Meeting" rule, (3) the implementation of a rule prohibiting Boards from considering items of business not noticed on a meeting agenda, and (4) a prohibition on meetings conducted or actions taken through email. As any Board Member or Manager knows, these changes have not only deprived Associations of many of the tools previously used to conduct business outside of regularly held Board meetings, but have also obstructed the channels and methods of communication that are necessary to effectively assign responsibilities and make ongoing mid-project decisions. Although HOAs are unfortunately bound to abide by these requirements, there are devices available to the Board that can significantly decrease the burdens these requirements impose. This resource discusses the use of one such device - the committee - and the various ways in which it may be used by Boards to address HOA business within the constraints imposed by the Civil Code.

No Action Without A Meeting & The Authority to Delegate

One of the most onerous requirements with respect to the way in which a Board may conduct its HOA's business is that which precludes the Board from taking action on any "item of business"

outside of a meeting. This requirement substantially restricts a Board's ability to make time-sensitive decisions, such as those which are necessitated by ongoing projects/issues within the community. However, the recent amendments to the Open Meeting Act define "item of business" to exclude "those actions that the Board has validly delegated to any other person or persons, managing agent, officer...or committee of the Board comprising less than a majority of the directors." Accordingly, by validly delegating some of its authority to a committee, a Board provides a mechanism for certain actions to be taken outside of a formal meeting. For example, if a HOA is undergoing a construction project, the Board can get around the prohibition on actions without a meeting by delegating its authority to a "construction committee" empowered to make certain decisions impacting the HOA's ongoing construction efforts. Such a committee could immediately take action to resolve any time-sensitive issues or concerns which may surface during the project.



Committee Members

Subject to the terms of the governing documents, any individual may be appointed to serve as a committee member, including non-members. However, there are some limitations (e.g., a committee may not be comprised of Board members constituting a majority of the Board). Boards may also require individuals to meet specific criteria prior to being appointed to a committee (e.g., be a member in good standing). Often, candidates are chosen based on their familiarity with a particular topic (e.g., an architect or engineer may be placed on the architectural review committee). It should be noted that the Corporations Code imposes special requirements with respect to the composition of "executive committees."

Committee Formation Procedures

Under Corporations Code Section 7212(a)(6), the right to appoint committee members is reserved for the Board of Directors. Such appointments require a majority vote of the Board, unless the controlling documents provide otherwise. Additionally, as committee formation is not an activity authorized for executive session, it must be done in open session. At the time of formation, the Board should also appoint a committee chairman and determine the duties, responsibilities and term of the committee. The committee chairman may only be appointed by the Board, and no reorganization may occur without Board permission. Additionally, unless already spelled out in the governing documents, the Board is also responsible for establishing the duties and responsibilities of the committee. After formation, the Board may remove a committee member, appoint a new committee member, appoint a new chairman, increase or decrease the duties and responsibilities of the committee, or dissolve the committee at their discretion.

Common Committees and their Benefits

Committees may be created for a variety of purposes. Common committees include architectural review committees, litigation committees, repair and maintenance committees, finance committees, and violations committees:

- (a) **Architectural Review Committees (“ARCs”)** are generally governed by terms provided in the governing documents. The establishment of an ARC allows plan submissions, walkthroughs and other necessary actions to occur without full Board involvement.
- (b) **Litigation Committees** are a necessity when an Association is involved in litigation, as the need to make quick decisions, such as those involving time-sensitive settlement offers, is not uncommon. Furthermore, where the litigation directly involves a director or directors, it may be necessary for the remainder of the board to form a litigation committee. It is also important to note that litigation committees may only be composed of directors.
- (c) **Repair and Maintenance Committees, Finance Committees, and Violations Committees** are a useful device for Boards who have difficulty operating within the Civil Code's requirements. Particularly with regard to maintenance and repair projects where decisions are often made on an ongoing basis, it is more efficient to appoint a committee capable of taking action outside of a meeting. This is especially true when dealing with community wide repairs such as re-piping projects.

Establishing Guidelines, Authority and Duties

Upon the creation of a committee, the Board should clearly spell out, in a written document, the responsibilities and duties of the committee and its individual members. Such a document should establish the relationship between the committee and the Board and set forth the limitations on the committee's authority. Common limitations include those that govern the amount of expenditures a committee can approve without Board consent, and those that limit the authority of the committee to take specific actions without Board consent. However, Boards should be cautious not to overly restrict a committee's authority so as to frustrate its ability to efficiently carry out its intended functions.

Summary

Committees are a valuable device for Boards struggling to comply with the constraints imposed by the Civil Code. However, there are various legal issues that attend a Board's decision to delegate some of its authority to a committee. Accordingly, a Board should consult its HOA's legal counsel for review of its current or proposed committee structure, function and authority.

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