

Handling HOA business by e-mail

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Q: Can the board of an HOA handle any items via e-mail and have those acceptable as legal actions? I am wondering if the approval of meeting minutes can be handled via e-mail rather than waiting for the next meeting. If so, they could then be posted on our Web site and not be held up for the next meeting's action.

If your HOA is organized as a nonprofit corporation as most are, it is governed by the N.C. Non-Profit Corporations Act (Chapter 55A of the N.C. General Statutes). The laws authorize a board to take action by majority vote at a board meeting.

There is no substitute for the open exchange of ideas that occurs at a face-to-face board meeting. However, in recognition of the fact that decisions sometimes need to be made between regular board meetings, the laws also authorize the board to take action without a meeting, provided there is unanimous written consent of the directors.

Arguably, a series of e-mails that clearly indicates the consent of all of the directors to a proposed action satisfies this requirement. If the minutes of your board meeting are circulated among the directors via e-mail, and all of them indicate their approval of the minutes, then that constitutes legitimate board action, and the minutes can then be posted on your HOA's Web site, without having to wait until the next board meeting for the minutes to be approved.

Occasionally a client asks me if it's acceptable for a board to take action without a meeting if there is an emergency that cannot wait until the next regular board meeting.

While the statutes only recognize board action if taken at a meeting, by unanimous written consent, or by conference call, it is probably acceptable if the board approves emergency action without unanimous approval. But, the action taken should absolutely be ratified by majority vote at the next regular board meeting, and the ratification should be noted in the minutes.

Amendments to CCRs

Q. In a recent column, you wrote that an amendment to the covenants, conditions and restrictions must be approved by at least 67 percent of the owners. Is this true for all HOAs or can you change that percentage if the homeowners agree? We are in the midst of updating our CCRs and this is a major issue.

COLUMNISTS »

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Both the N.C. Condominium Act and Planned Community Act require that amendments be approved by a minimum of 67 percent of the votes in the entire association.

There are some exceptions (example: office condominiums), but that is the general rule for communities governed by these laws. Some CCRs actually require a higher percentage.

Bottom line: You cannot amend the CCRs to allow approval of future amendments by a percentage vote lower than 67 percent.

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