



HOA Brief Newsletter

What Makes for a Good Set of Meeting Minutes?

By Robert M. DeNichilo, Esq., CCAL

Of all the various issues boards deal with, one of the issues that comes up time and again are meeting minutes. What are they? What should be in them?

Incorrectly kept minutes can get a board in trouble. They can invalidate proper board actions, lead to claims for defamation or support claims for breach of fiduciary duty. So how should minutes be taken? What should go into the minutes and what should you leave out?

First of all, it is important to understand the purpose of meeting minutes. Minutes are meant to be an outline of what happened in a meeting. They serve to ensure that the decisions and actions resulting from a meeting are not lost or forgotten. They should include not only reference to motions that passed, but also to motions that were proposed even if they were not ultimately adopted by the board.

Once you understand that minutes serve as a record of ACTION taken, it should become clear that minutes are not a verbatim transcript of what was said in a meeting. Minutes should be as concise as possible. What the board did should be included, such as it reviewed a report and then made a decision, but not the discussion that or debate that led to the decision. Keep in mind that the minutes can often be used as a tool against the board and association in litigation. Keep the minutes short and to the point.

What should you include in the minutes?

- As minutes should include what was done at the meeting, not what was said, record the details of what action was taken. Remember to keep it short and simple, but include information to support the fact that the board performed their due diligence. For example, include the fact that the board considered an expert report, or considered alternatives for important decisions. This shows that Board performed its due diligence and took reasonable care in making the decision.
- Details of the meeting. These include the date, time and place of the meeting, the names of people in attendance, whether quorum was reached, directors who were absent, and motions that were proposed.
- Recusals from discussions and abstentions from voting.
- As to matters discussed in executive session, the Davis-Stirling Act requires that such matters be “generally noted” in the minutes of the immediately following meeting that is open to the entire membership. Any decision made or actions taken in executive session should be noted in the executive session minutes, which are not generally available to the membership.

What should NOT go in the minutes?

- Privileged conversations. This is an easy one. Placing privileged communications in the minutes can destroy the association's right to confidentiality regarding the privileged information. These conversations should occur in executive session, and at most the minutes should only reference the topics discussed, not the substance of any privileged conversation.
- Opinions. Remember, minutes should reflect actions taken, not what was discussed or debated. Including opinions expressed by a board member, especially one who is not an expert on the topic being discussed, potentially opens the association to possible liability.
- Inflammatory or personal observations. Such statements do not serve to record what occurred in a meeting, and can lead to liability for the association. They serve no place in meeting minutes and should be avoided.
- Names, except for motions or seconds. Again, minutes are not about who said what, they are about what action the board took at the meeting. It is not necessary to show the names of those voting in favor, abstaining or in opposition to a motion. However, you may sometimes identify those who dissent, especially in order to limit personal liability for consequences of an action with which they disagreed.
- Owner comments. It can't be said enough – minutes are not a record of who said what, they are a record of action taken. Including owner comments creates claims of liability

for breach of fiduciary duty and even possible claims of defamation if the minutes become evidence for other claims against the board and the association. In addition, such comments can dissuade potential purchasers and lenders who may believe that a negative issue is much more serious than it really is.

Once the minutes have been approved by the board they should be signed by the secretary confirming that the minutes constitute the official record and minutes of the meeting.

When in doubt, have the association's attorney review the minutes before they are finalized and adopted. An attorney can review the minutes, spot any troubling language and either reword the minutes in a way that reflects the action taken by the board, or remove language which might expose the association and the board to liability.

Nordberg | DeNichilo, LLP
ATTORNEYS AT LAW



Ph: (949) 654-1510

Robert M. DeNichilo, Esq., CCAL

Email: robert@NDHOALaw.com

Website: NDHOALaw.com

Blog: HOABrief.com

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