



COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

News and Trends in Community Association Law

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Meeting Minutes are Anything but Minutiae

by | **David C. Boy, IV, Esq.**

Board members can be tempted to treat the taking of meeting minutes as a boring and unimportant task; however these seemingly mundane records play a vital role in creating,

a record of what occurred, and they ensure transparency, accountability, and the smooth functioning of community association operations. The importance of meeting minutes is often overlooked until a board realizes that it needs copies of meeting minutes to document a decision, or to determine what occurred at past meeting.

Why should boards take meeting minutes? First, because doing so is required by law. Section 44-3-106 of the Georgia Condominium Act and Section 44-3-231 of the Georgia Property Owners Association Act both provide that the association "shall keep detailed minutes of all meetings of the members of the association and of the board of directors." Section 14-3-1601 of the Georgia Nonprofit Corporation Code provides that associations "shall keep as permanent records minutes of all meetings of its members and board of directors." Next, most associations' bylaws state that the secretary of the association is required to keep minutes of all meetings of the members and of the board of directors.

In addition to the legal requirements, meeting minutes serve a number of practical purposes. Meeting minutes serve as a record of the board (or homeowner) actions and decisions. Every resolution, motion, vote, and election is documented, providing a comprehensive account of what occurred at the meeting. This documentation not only serves as a historical record but also acts as a reference point for future deliberations and actions.

In the event of disputes or legal challenges, minutes serve as evidence of the board's

adherence to legal or procedural requirements. Whether it is documenting compliance with state law, adherence to governing documents, or adherence to meeting notice requirements, detailed record-keeping can shield the association and directors from potential liability.

For example, occasionally homeowners will question how the directors were elected or appointed to the board. Without annual meeting minutes documenting the election of directors, or board meeting minutes showing the board's decision to appoint directors to fill vacancies, the legitimacy of the board composition can be called into question.

How should meeting minutes be taken? The following are some general guidelines for those taking meeting minutes:

Start preparing before the meeting. The best place to start is with a copy of the agenda for the upcoming meeting. This can act as an outline of what is expected to take place at the meeting, and in what order. Also, review the prior meeting minutes, and have a copy ready for approval at the upcoming meeting.

Capture the essentials. When and where did the meeting take place and who was in attendance? What key discussions, decisions, action items, and resolutions occurred at the meeting?

Be concise. Minutes should document what occurred, not necessarily everything that was said at the meeting. While minutes should provide sufficient detail to convey the substance of discussions and decisions, avoid unnecessary wordiness. Minutes are

brief summaries, not court transcripts.

Include action items and responsibilities.

One purpose of meeting minutes is to document action items and assigned responsibilities. Include any deadlines or timelines for completion determined by the board.

Finalize and distribute for approval.

After the meeting, review and edit the draft minutes promptly while the discussions are still fresh in everyone's minds. (A recording of the meeting can be helpful to refresh the recollection of the person preparing the minutes.) Ensure that the minutes accurately reflect the proceedings. Share the revised draft with other board members for their input and approval promptly; however, official approval of those minutes will actually occur at the next board or membership meeting.

Maintain records of minutes. The secretary should ensure that there is an organized archive of meeting minutes for future reference. Whether it is a physical filing system or a digital repository, ensure that meeting minutes are stored securely and can be easily retrieved when needed. Ensure that executive session board meeting minutes are kept separate from open session board meeting minutes.

Meeting minute preparation is a critical aspect of operating an association and not something that should be taken haphazardly. By following these best practices, boards can ensure that meeting minutes serve as an accurate, reliable, and comprehensive record of board and membership meeting proceedings. ❖

It's the Circle of Lien

by | **Stephen A. Finamore, Esq.**



When a homeowner does not pay assessments when due, the Board of Directors is obligated to take action to compel the owner to pay. Prudent Boards will turn to

their counsel to send an initial letter, record a notice of lien, or work out a reasonable payment plan with the owner. If those minimal efforts do not work, the Board may authorize the more assertive approach of filing of a lawsuit. Most covenants provide that the cost of these legal efforts may be included as part of the claim and recovery from the owner. Accordingly, the lawsuit and request for relief from the court will include the assessments due, other charges such as interest and late fees, and an award for reasonable attorney's fees and costs. If the court agrees with the association's presentation of liability and damages, it will award a judgment in the association's favor against the owner. The association may then enforce its judgment by filing garnishments or even foreclosing its lien. Even if the association's post-judgment efforts are successful and the association collects its judgment in full, that does not usually conclude the collection matter.

Much to the surprise of the homeowner, even though the judgment is satisfied, there will still be amounts owed to the association. This is because the judgment only included the amounts owed at the time the judge reviewed the evidence in the case and signed the judgment. New assessments and late fees continue to fall due after the judgment is entered, and legal fees continue to be incurred while the association is trying to collect the judgment itself. Unlike the judgment, which only includes the amounts due at the time it is entered, the association's lien automatically includes additional amounts as they

become due. Just as the lien secures all amounts due against the property, the obligation of the homeowner to pay these additional amounts endures for so long as the homeowner owns the property. Thus, a judgment award merely represents a "snapshot" of the lien and personal obligation on the date it is signed. Consequently, the homeowner who has just had his or her wages or bank account garnished, or who has scraped together enough to cancel a looming foreclosure sale, lands right back in collections with assessments that became due after the judgment, plus additional legal fees and costs for work done to actually collect upon the judgment.

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Homeowners, judges, and even some Directors are often confused as to why a homeowner who has just paid off a judgment balance, still owes amounts to the association. It is a potentially endless circle of collections. The reality is that it would do an association no good if a judgment is entered that includes amounts owed through a fixed date, but then, for example, two years of assessments and legal expenses accrue until the owner finally pays that judgment, and the owner is

treated as current as of the date the judgment is paid in full. The amounts accrued during those two years since entry of the judgment can sometimes eclipse the amount awarded in the judgment itself. The law affords an association the ability to compel an owner to pay everything he or she owes and to continue such efforts until the account is at a zero balance. To that end, it is essential that settlement discussions include all amounts owed—and potentially could become owed—not just those awarded in the judgment. Unfortunately, if a settlement cannot be reached, the only remaining options are to either pursue collection of the post-judgment amounts owed (i.e., by starting the collection process for those amounts from scratch), do nothing and hope at some point these amounts are paid, or write off these amounts completely.

It is important when dealing with a homeowner who is perpetually in collections to consider and weigh options for resolution or enforcement. Consult with your attorney to come up with the strategy that makes the most sense given the circumstances. ❖



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t: 770.685.7000 f: 770.685.7002

www.luederlaw.com email: newsletter@luederlaw.com

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