**WHAT TO DO WHEN THE BOARD IGNORES AN OWNER**

**BY: WILLIAM G. MORRIS, ESQ.**

Condominium living means living in close proximity and with a board of directors charged with managing the community. Sometimes the board, or maybe just the president, seems out of step with owners and things go in the wrong direction. What’s an owner to do when the board ignores the owner?

One important right of a condominium owner is the right to inspect the Association’s records. The Association must make records available for an owner to review within 10 business days after receipt of an owner’s written request. A prudent owner will deliver the request in a manner that provides proof of delivery. The owner can request copies of records the owner reviews and the Association can charge reasonable cost of providing the copies. Owners do not have the right to demand copies of Association records without going through the review process.

The board of directors can adopt reasonable rules concerning frequency, time, location, notice and manner of record inspections and copying, but it cannot simply refuse a request. If the Association fails to provide the records within ten (10) business days of receiving the written request, a rebuttable presumption arises that the Association willfully failed to comply with Florida law and the owner is entitled to minimum damages of $50 per calendar day for up to ten (10) days beginning on the 11th working day after receipt of the written request. The Association’s response to a written request to inspect records must include a checklist of the records to be made available for inspection and copying and identify any records that were not made available.

Records that might not be made available are those which are confidential under the Florida Condominium Act . Those include records protected by attorney-client privilege, information obtained by the Association in connection with approval of a sale or lease or transfer, personnel records of the Association, medical records of unit owners, social security numbers, driver’s license numbers, credit card numbers and email addresses and telephone numbers of owners (unless the owners have agreed to allow that information be made available).

An owner can ask the board questions. If the owner wants to ensure a response, the owner must ask the question by certified mail. The board must respond to a certified mail question within thirty (30) days after receipt. The response must either be substantive or explain a legal opinion from counsel or advice from the Division of Florida Condominiums, Timeshares and Mobile Homes has been requested. If the board asked counsel for advice, the board has sixty (60) days from receipt of the inquiry to provide a substantive response. If the Board asks the Division for advice, it is to provide a substantive response within ten (10) days after receipt of the Division’s response.

The board can adopt reasonable rules concerning frequency and manner of responding to unit owner inquiries, one of which may be that the Association is only obligated to respond to one written inquiry in any given thirty (30) day period.

All board and owner meetings must be noticed, including posting notice on the property and publication on the website if applicable. The notice must include an agenda. Owners have a right to speak at all board and owner meetings on matters which are included on the agenda. The Association can adopt reasonable rules regulating the time and manner of speaking, but cannot bar an owner from participation.

Sometimes the board does not want to address an owner’s concern. Maybe the board just does not meet. Under recent amendment to the Florida Condominium Act, boards in residential associations of more than ten (10) units must meet at least once each quarter. At least four (4) times a year, the meeting agenda must include opportunity for members to ask questions of the board.

The board might choose to do nothing about an issue, and that might make someone unhappy. Sometimes the issue is bigger. If at least twenty percent (20%) of the voting owner interests petition the board to address an item of business, the board must place it on the agenda for its next regular board meeting or at a special meeting called for that purpose within sixty (60) days after receipt of the petition.

Sometimes the board is a minority traveling a road that makes most owners unhappy. If things are really bad, owners can recall board members. A special meeting of unit owners to recall a member or members of the Board may be called by ten percent (10%) of the voting interests giving notice of the meeting as required for unit owners meeting. If recall is approved by a majority of all voting interests at that meeting, the recall is effective.

A majority of all voting interests can alternatively enter a written agreement recalling a member or members of the Board. The written agreement must be served on the Association by certified mail or personal service. If the written agreement is facially valid, the board member or members are recalled immediately.

The board must hold a board meeting within 5 business days after receiving a written agreement or the unit owner recall meeting. If it fails to do so, the recall is deemed effective. The board may refuse the recall if it determines there is a deficiency in the process or that the recall is not effective. Owners may then petition the Division an appeal. The board member who has been recalled may also petition the Division. The Division expedites consideration of such petitions.

Owners can also file petitions with the Division to force a board to act properly and in certain cases can go directly to court seeking injunctive relief. However, courts are reluctant to reverse a board’s decision giving great deference to what is known as the business judgment rule. Under the business judgment rule, a board’s action is generally allowed unless no reasonable person could agree with it.

A condominium board is supposed to manage the condominium in best interest of the owners. When it goes awry, owners have authority to force the Board back on track.

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