

RULES FOR MEMBER MEETING AND BOARD MEETING DIFFER

Q. Member's Right at annual meeting.

Will you please answer the question as to whether or not members may make motions and vote at the annual membership meeting?

A. Since it is a member's meeting, the directors have no control or voting right over the members, except to produce the required notices and necessary meeting documents and call the meeting to order. A chairperson should be nominated and someone selected to take the minutes. Directors and officers should not sit at the head table, but they should sit in the audience with the members because they have no more power or rights than other members at such a meeting. An agenda must be produced and a vote taken on only those items on the agenda. The agenda must be produced days if not weeks before the meeting, so any item must be presented to the board in advance to allow it to be included in the agenda. Since the directors serve at the annual meeting only as members, and any motion must be made by a member, a director can make a motion but he/she is then acting as a member and not a director. If a member stands and makes a motion

regarding something that is not on the agenda, that would be an improper motion. Only business published on the agenda is appropriate. Do not confuse a member meeting with a board of directors meeting. Only directors vote at directors meetings.

Q. Dictator President

Our president has taken a position that he is absolute ruler and the final authority. The other directors have taken an opposite position and so instructed the president to not proceed with his action to bind the association in a contract. The president says that he does not need to listen to the board and will obligate the association to the service. What is our next step to stop the president?

- A. Notify the vendor that the president acted without the board of directors' approval and that the association will not honor the contract that was improperly signed by the president. You may want to have the association attorney send the notice. Immediately call a board meeting and elect a new president, at the same time strip all powers from the former president such as signing checks, etc. Notify the bank not to accept his signature. If the president paid funds to the vendor, ask

that the check be returned or the funds be reimbursed to the association. While the board cannot remove a director, the directors can remove an officer and any powers that officer had. To remove him as a director requires a recall by the members. There is an old manager's saying that directors serve from annual meeting to annual meeting. Officers, including the president and the manager, serve from board meeting to board meeting.

Q. President Vote

In the state of Florida is the president of the board of directors of a cooperative required to vote on every issue requiring a vote?

A. This answer applies to all boards and presidents in HOAs, condominium, and cooperatives. There is no document, book, or law that says a president does not vote, make motions, or other required duties of a director in association meetings. It is not part of Roberts Rules or any other parliamentary guide. Normally, the president was first elected as a director by the members and as such as a high responsibility to the members. That includes decision making by voting on motions and resolutions that involve the operations of the association. The president should be elected by the directors and has duties to the directors. The president does not act as a

tie breaker vote but should vote on all matters because he/she is first a director with fiduciary responsibilities to the members.

Q. English Only

Is it legal for a condominium/apartment complex to employ security guards who speak almost no English? In our large development there are many residents who speak only English for whom this communication problem is potentially a genuine hazard, not to mention a routine inconvenience.

A. To my knowledge there is no law that requires English, only or in part, or a specific language to be used in communications. It is a major problem in our country today, and we must recognize it and provide solutions. Those that do not speak English should not be demeaned or put down. However, it should be acknowledged that in certain situations communications can be critical. In the situation of a security guard, a key component is to communicate in event of an emergency. If a person is placed in certain situations that may require emergency communications, it would be advisable to have someone that can speak and understand English or any other language necessary.

Q. Tie Votes

I presently serve as a director for a large condominium. Is there a specified or recommended procedure for handling tie votes on motions made during a board meeting? During the summer months, directors take vacations or travel and it leaves only some of the directors to vote on issues.

- A. Simply put, motions need a majority vote to be approved. A tie vote is not a majority. You need to plan ahead if you expect that some directors will be absent. While directors cannot vote by proxy, the motion can be tabled and voted at the next meeting. The statutes do allow an absent director to be connected by a speaker phone and be counted as present and their vote counted. Some documents allow a 'Joinder' after the meeting. However, that is only a document that an absent director can sign that approves the action taken by the board. It is not a way to break a tie or cast an opposing vote. If you find at a meeting that a motion will not receive the majority approval, table the motion and either wait until the next meeting or call a special board meeting where a speaker phone can be used to allow a majority of the directors to vote on the issue.

Q. Unit Dimensions

I live in a condominium and the board has an interpretation problem with the documents. It says the owner's responsibility is from the ceiling to the floor. Does this mean the ceiling in the unit or the ceiling in the attic?

A. This is a title question and may need an attorney's interpretation. Normally, a unit is defined as the area inside the unfinished walls, the unfinished ceilings, and the unfinished floors. This means that the condominium would have responsibility for the unfinished drywalls and unfinished floors. This would mean that the owner would have responsibility to paint, wallpaper, popcorn or apply other ceilings, carpet, or other decorative coverings. There may be exceptions to these responsibilities that would vary from condominium to condominium as the documents may vary the duties. You need to think inside the box (the unit) and outside the box.

Q. Absent Owner's Rights

Two years back I purchased a condominium in an adult community as a winter home. I received a security pass for my car and an identification card after closing. Now my plans have changed and I rent my unit. I asked for a new security pass for my new car but was refused because my driver license listed a different address. I was told that I cannot now use the club facilities because I do not live in the unit. I do not understand if I pay my fees, why I cannot use the community facilities.

A. All owners have right to use condominium facilities unless you rent your unit. Then the use rights would pass to the tenant. In many associations, there are only so many spaces to use in the common areas and facilities. When you allow others to rent or use you unit, then you pass the rights to the tenant or renter. FS718.106 defines the owner's rights to use the common areas and the requirement to pass those rights to a renter. As to why you still need to pay the fees when you cannot use the common areas, you had the rights but your lease has transferred those use rights to the tenant. The rent you receive should include some portions of the amount you must pay in fees. Regardless of your thinking that you cannot use the facilities, you must pay your fees.

