

## ***Ask the HOA Expert - August 2020***

### ***BOARD MEETING PROCEDURES***

**Q:** We have a president who solicits co-owner involvement when the board is discussing business at a board meeting. Should co-owners be allowed to participate in board discussions as if they were a board member? Should a board meeting be conducted like a town hall meeting where everyone can speak? It is my contention that a board meeting is for the board to conduct its business without co-owner input.

**A:** Your interpretation is correct. Board meetings are designed for the directors to discuss and make decisions about HOA business. There are occasions when co-owner input is appropriate but not as a general rule. A member forum should be held prior to the start of the board meeting to allow input and questions. But once the board meeting is called to order, guests are there to listen, not participate.

### ***FINES***

**Q:** I need information on HOA policies and procedures with regards to fining. Can you help me?

**A:** Generally, the board has the authority to enact reasonable rules and enforcement procedures. They should include: 1. Clear definition of the issue (parking, pets, failure to pay HOA fees) 2. Consequences for failing to obey like fines or curtailing use of amenities 3. Appeal process Fines need to be reasonable. Any rule or resolution that is contemplated by the board should be reviewed by an attorney that specializes in HOA law in your state for compliance with your governing documents, state, and federal law.

### ***BOARD MINUTES***

**Q:** Our board likes to do a lot of business by email so now revising minutes is being done by email. By the time the minutes get back to me (board secretary) they have been rewritten by various board members to change wording or to add items not discussed. The president is the worst offender. My understanding is that minutes are taken and prepared by the secretary. Then, corrections and additions are to happen at the next board meeting. Is this correct?

**A:** Minutes should be revised only at a board meeting, not by way of an email circuit. Of course, as secretary, you need to make sure you are taking complete and accurate minutes. There are some things that belong and others that don't. Minutes should record board actions not discussions.

### ***DELINQUENCY***

**Q:** Our board has taken to publishing names of delinquent members in the HOA newsletter and board meeting minutes. Is this advisable?

**A:** There are many reasons why members don't pay their fees and the solution varies: Millie is on disability, Joe's Social Security is inadequate, Mary just lost her job, Bill declared bankruptcy, Gertrude has been trying to sell her condo for two years and Arnold is withholding payment until repairs get done on his unit. What happens if the collection information the board posts is not correct? This kind of misinformation libels someone who may sue for defamation of character. Your board is ill advised to pursue this collection tactic. It is totally unnecessary and mean spirited. With a properly designed and enforced Collection Policy, there are effective ways for the HOA to get the job done without humiliation.

## ***RESERVE STUDY***

**Q:** We recently got a professional reserve study done. Our Budget Committee took the information and plugged it into a spreadsheet that will allow us to postpone the need for a professional study revision. The substitute study changes some of the assumptions, like reducing the recommended reserve contribution and the inflation rate. By doing this, we can lower our annual contributions significantly. Our reserve study provider has recommended annual updates. What are the pros and cons of updating the reserve study? How would we update our substitute study and how long could we use it and still be confident that it was fairly accurate?

**A:** Artificially manipulating the reserve study numbers to reduce contributions for current members is a violation of the fiduciary duty the board has to all members, current and future. When it comes to paying for major repairs and replacements (the main purpose of a reserve study), there is no free lunch. Shorting reserves today will require making up the shortfall later, usually by special assessment. Special assessments are always unfair to some because they are being required to pay for something that should have been paid for by owners that sold and are long gone. The other mistake frequently made with reserves is failing to fund each component fully. An example of full funding is a \$10,000 component with a 10-year useful life should have \$1000 per year reserved to be fully funded. Reserving less than \$1000 a year will create a shortfall which must be made up later. But since reserves often include money for long life components like roofing, there is an illusion that there is more money than needed to pay for things in the short term. Boards that fall into the trap convince themselves that reducing reserves by a third, or a half, or two thirds is just as good as full funding. New math? In fairness to all members, current and future, and to eliminate special assessments which are unfair to those that must pay them, full funding of reserves is the only reasonable approach. Annual updates are critical to keeping a reserve study accurate. The cost of an annual no site inspection update is usually nominal. A site inspection update is highly recommended at least every three years to verify component condition and useful life. You should stay out of manipulating the reserve study yourselves. It has obviously been a self-serving exercise so far that is bound to result in a significant short fall. You paid for an objective and professional reserve study and you should follow these recommendations.

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