

Questions & Answers

Regarding Membership Meeting Procedures For Community Associations

Should our Association adopt formal parliamentary rules for conducting its membership meetings?

Yes, Civil Code 1363(d) requires it for membership meetings, but not for board or committee meetings. The purpose of having such rules is (1) to provide order so meetings can proceed in a business like manner, and (2) to provide a fair opportunity for everyone to participate. In addition, Civil Code 1363.03 requires associations to adopt written rules governing the Association's Election and Voting Procedures.

Should we always have a written agenda for membership meetings, and what should it contain?

You should provide a written agenda to show the order in which the business of the meeting will be conducted. A typical agenda would include the following items:

- (1) call to Order and verification of a quorum by the Chair;
- (2) introduction of the Chair, board members, inspectors of election, special guests, and speakers, if any;
- (3) election of directors with the counting and tabulation of the secret ballots by the inspectors of election;
- (4) presentation of reports by directors, officers, and committees;
- (5) adoption of any resolutions regarding tax and accounting issues;
- (6) member comments or member forum;
- (7) unfinished business from the previous meeting, if any;
- (8) new business (which must be business members have a right to vote on);
- (9) announcement of election and other voting results;
- (10) adjournment.

In developing a procedure for holding our membership meetings, where should we start?

Start by reviewing your bylaws. Most contain rules on giving notice of meetings, proxies, quorums, voting rights, and electing directors. In some cases, the Corporations Code and the Davis-Stirling Act have rules which supercede your bylaws and in other cases the rules in the law are to be followed when the bylaws are silent. Following the requirements in these documents and the parliamentary rules your association adopts, should enable you to conduct your meetings successfully.

Should the notice of the membership meeting contain anything more than the date, time, and place of the meeting?

Yes. The notice should be in writing, and Civil Code 1363(e) requires it to identify all matters the Board plans to present to the members for a vote. For special meetings, only the business identified in the notice of a special meeting may be brought up at the special meeting for a vote. Always consult your bylaws, the Davis-Stirling Act (Civil Code 1350 et seq.) and the Corporations Code to verify notice requirements.

Must all voting use ballots?

Civil Code 1363.03 requires associations to utilize a secret balloting method defined by the statute for all votes concerning assessments legally requiring a vote, election and removal of members of the Association Board of Directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07. These types of votes must be cast on a totally anonymous ballot inserted into a sealed envelope which is then inserted into another envelope and returned to inspectors of election. Ballots pursuant to Civil Code 1363.03 must be mailed by first-class mail or delivered to the Association members, together with the double envelopes for the members to return their ballot, at least 30 days prior to the deadline for voting. For most other types of votes, ballots are required only if the bylaws make them mandatory.

For more routine matters, other less formal methods are appropriate. These include a voice vote (all say "aye"), a show of hands, a roll call vote (owners names are read from the list of owners), and unanimous consent (if there are no objections, the matter is approved).

We have previously appointed inspectors during our membership meetings to count votes. When is the best time to do this, and how do they know what to do with an improperly marked ballot or proxy?

Inspectors of election have broad powers under Civil Code 1363.03 and Corp. Code 7614, including the power to determine who can vote, whether proxies are valid, and how a particular vote is cast. In addition, inspectors of election are vested with the responsibility to receive and maintain the ballots submitted by the members. Because inspectors must designate the location where the ballots are to be returned and maintained, associations should appoint inspectors prior to mailing a ballot to the owners and well in advance of the meeting or pending vote.

Inspectors of election will use the requirements of Civil

Code 1363.03, other laws, and the association's governing documents in reaching a determination concerning the election. For example, an outer envelope containing a secret ballot may not legibly indicate the required identifying information. Inspectors must decide what to do with such a ballot. Accordingly, it is advisable for the inspectors to consider possible balloting defects prior to receiving the ballots and determine how to treat such deficiencies uniformly, such as: "If it can be reasonably ascertained who the voting member is, then the ballot should be counted even though not all of the identifying information is legible."

All rulings or decisions of the inspectors should be in writing and kept with the voting records, including reasons for invalidating a proxy or ballot.

Some of our members actually go door to door soliciting proxies from other members. Can they do this?

A proxy is a written authorization signed by a member which gives another member the power to vote on behalf of that member. The proxy is not to be used in lieu of a ballot. An Association may accept these proxies if permitted or required by the bylaws of the Association and if the proxies meet the requirements of Civil Code 1363.03, other laws, and the Association's governing documents. However, associations are not required to prepare or distribute proxies pursuant to Civil Code 1363.03. For this reason, the member wishing to authorize a proxy must ensure the proxy complies with all requirements to be valid. The inspectors of election will verify the proxies received by the Association.

How do owners bring matters before the membership for voting or approval?

First, the matter must be one the members are entitled to decide. Then, unless the matter is one which requires the use of a secret ballot pursuant to Civil Code 1363.03, parliamentary procedures provide four basic motions by which a member may bring an issue before the meeting. The first is called a "main motion." It brings new business before the members for discussion and a vote. For example, "I move we adopt the tax resolution to allocate any excess association funds left over at the end of this fiscal year to next year's budget."

The second is a "subsidiary motion" which changes or amends the pending main motion. For example, "I move we amend the motion to return excess association funds to the members." The third is an "incidental motion," one involving a procedural issue that concerns another pending motion or item of business. For example, "Point of Order. Did the notice of this special meeting state that a tax

resolution would be presented for a vote?"

The fourth is a "privileged motion," one not concerning a pending motion but so important that it may interrupt anything else without debate. For example, "I move we recess until the Chair's microphone is repaired."

The election of directors is usually the most important business at our meetings. Are there any special rules regarding elections?

Civil Code 1363.03 requires votes on the election or removal of directors to be conducted using a secret mailed ballot system modeled after the procedures used by California counties for ensuring confidentiality of voter absentee ballots. Most other requirements are found in the bylaws, such as whether to allow nominations from the floor, provide for cumulative voting, allow for proxies, and the like. If cumulative voting applies, you should explain it to avoid member confusion when filling out ballots. Counting of ballots must be conducted by inspectors of election in public at a properly noticed meeting of the members, or open meeting of the directors as permitted in the bylaws. The results of the election are reported to the Board by inspectors of election and then recorded in the minutes of next board meeting. The tabulated results must also be publicized to all members within 15 days of the election.

Our membership meetings are often disrupted by owners who disregard the rules and want to vent their anger at the Board of Directors. How can we stop this behavior?

Associations face this periodically. First, to help alleviate the problem, consider appointing a committee to develop written rules for member behavior. Second, require persons who are going to speak in the homeowners forum to complete a form stating what topic they will address and limit the time each member can speak. Third, develop a written policy for handling disruptive members so the Chair knows exactly what to do. This would include warnings, recesses, speaking to the person in private, and even monetary penalties for disrupting the Association's business. Fourth, consider appointing a sergeant-at-arms if you have a member who has a special talent for dealing with unruly individuals. Fifth, the Chair can always threaten to or actually adjourn with the hope of bringing peer pressure on the disruptive member. Sixth and finally, being courteous, respectful, and professional can often be disarming, and a good method for enlisting the support of other members to assist in dealing with the disruptive individual.