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# Effective Management of Community Associations for HOA Board Members

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## 1. Governing Documents

- A Declaration (of Condominium, or of Covenants, Conditions and Restrictions for single-family subdivisions and townhomes).
- Bylaws (“playbook” for the corporation)
- Articles of Incorporation
- Rules and regulations

## 2. Governing Documents: Review

- Do you have complete, recorded copies of everything?
- Are they outdated or otherwise in need of revision?
- Do you need to update the corporation’s registered agent information with the Secretary of State?

## 3. Annual Meetings, Special Meetings, Budget Ratification Meetings: Common Concerns

- Quorum, proxies and ballots.
- Election and removal of directors and officers.
- Ratification of the budget.

## 4. Annual Meetings: General Information

- Read the bylaws and comply with the notice provisions.
- Pay attention to quorum requirements.
- Recent legislative changes now allow voting and meetings to take place electronically.
- Robert’s Rules of Order applies.
- Voting on a matter by written ballot in lieu of calling a meeting may be an option (see N.C.G.S. 55A-7-08).
- South Carolina distinctions.

## 5. Proxies

- Send this along with the notice of meeting.
- A proxy may be an appointment in the form of an electronic record that bears the members electronic signature that may be reproduced in paper form (i.e., e-mail).
- May also appoint a proxy via telephone without written transmission.
- The appointment is effective when received, and must be signed and dated.
- Directed proxy

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## 6. Elections of Directors & Officers

- Directors are elected by the members at the annual meeting to serve on the board.
- Officers are those appointed among the directors to serve in a designated office (president, vice president, secretary, treasurer, etc.).
- The officers of the association are appointed by the Board at the first board meeting following the election.

## 7. Removal of Directors and Officers

- Removal of directors requires a majority vote of the members, usually at a special meeting called for that purpose (at which a quorum is present). (See 47F-3-103(a) or 47C-3-103(b)).
- Officers may be removed by a vote of the directors.
- Directors may be removed from their office by the remaining board members for missing a certain number of meetings, but only if the bylaws so provide.
- South Carolina distinctions.

## 8. Ratification of the Budget (47F-3-103 and 47C-3-103)

- Applies to all condominiums, pre-1999 planned communities that have adopted the PCA, and all planned communities created in 1999 or thereafter.
- Each year a meeting must be held (with prior written notice to members) for ratification of the budget.
- The sole purpose of the meeting is to allow members to reject the budget.
- Meeting must be held within 30 days of when the budget is adopted by the Board.
- The notice for the meeting must indicate that a quorum is not required.
- The budget is ratified and approved automatically unless a majority of the total members vote to reject it .
- May combine this with the annual meeting if appropriate.
- Anticipated capital expenditures should be included separately from operating income/expenses.
- Include reserves and an allowance for uncollectible assessments (“bad debt”).
- South Carolina distinctions.

## 9. Effective Board Meetings

- Members of the association should be given the opportunity to appear before the board at “regular intervals” to speak.
- Board may place reasonable limitations on the number of people allowed to speak and set time limits.
- Board should give reasonable notification of when and where meetings are to be held.
- Board can conduct meetings via conference call if “all directors participating may simultaneously hear each other during the meeting”.
- Board members can take action without a meeting only if there is unanimous written consent.

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## 10. Meeting Minutes-Confidential Matters: What is Private?

- Board can and should have closed-door meetings to discuss sensitive or confidential issues.
- Communication between board and attorneys should remain confidential.
- Communications between board members are not “privileged” – e-mails would be discoverable by opposing party in litigation.
- Provide the minimum information necessary in minutes: Succinct language.
- Include a description of the action taken and not everything that was said: Action items only.
- Do not include sensitive, personal or private information in the minutes: Use executive session minutes for this purpose, and keep a separate set of minutes.

## 11. Attorney Client Privilege

Sharing communications between the Board and the Association’s attorney with others can sever the attorney client privilege and make those communications discoverable in a lawsuit.

## 12. Association Records

- Financial records must be kept (income statement and balance sheet).
- Within 75 days after the close of the fiscal year, an income statement and balance sheet must be made available to members at no charge.
- Homeowners are entitled to inspect some records but not all.

## 13. Member Inspection of Records

- There are certain records a member is entitled to inspect if they meet certain requirements and they give written notice at least 5 days prior to the date they wish to inspect the records.
- Member’s demand must be made in good faith and for a particular purpose.
- Member must describe with reasonable particularity the purpose and records they want to inspect.
- The records must be directly connected with the purpose.

## 14. Email Communications

- Has many benefits but use it with caution.
- Be cautious about forwarding emails.
- Once you send it you cannot get it back.
- Don’t reply to all unless you intend to.
- Delete doesn’t necessarily delete forever.
- Keep emails professional.
- If you don’t want a judge/jury to see it, then don’t send it!

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## 15. Association Communications: Guidelines

- Keep meetings open as much as possible.
- Secrecy breeds suspicion and contempt.
- Boards may certainly communicate directly with the attorney or vendors but keep the property manager in the loop.
- Don't let owners with a grudge or personal agenda hijack meetings.

## 16. Violation & Delinquency Policies

- Make sure owners know and understand the ramifications of not paying dues and/or violating restrictive covenants.
- Adopt written violation and delinquency policies.
- Enforce the policies consistently and uniformly in order to avoid claims of arbitrary and capricious enforcement.

## 17. Delinquencies

- Enforce written policies, including foreclosure, if necessary.
- Don't play favorites.
- Be compassionate in hardship situations, and be agreeable to reasonable repayment plans.
- It's best for board members not to communicate directly with owners who are in collections.

## 18. Collections

- Filing lien
- Filing foreclosure (must be specifically authorized by HOA Board resolution)
- Foreclosure hearing
- Foreclosure sale
- Deed to high bidder

## 19. Good Advice

- Get a copy of Robert's Rules of Order and bring it to meetings.
- If you don't know the answer to something....ask!
- Be careful giving "off the cuff" advice or opinions to owners. What you say to an owner might be interpreted by the owner as being official board action.
- Communication is crucial.

## About Kirk Palmer & Thigpen

For more than 30 years, Kirk Palmer & Thigpen has consistently served its clients with commitment and legal proficiency among diverse practices throughout the metropolitan Charlotte area and beyond.

While representing more than 700 community associations throughout the Carolinas, the KPT Community Association lawyers are uniquely positioned to provide guidance to our HOA clients, covering the entire spectrum of condominium and community association law.