

## HOA HOMEFRONT

# WAIT FOR THE BOARD TO ACT

BY KELLY G. RICHARDSON

In community associations, corporate formalities seem to interfere with efficiency. Some argue that if someone is making good decisions, why wait for board meetings and motions that might delay the action? Although most clients view corporate procedures as a bother to be avoided as much as possible, the process is an important protection for volunteers.

A corporation is a legal fiction recognized by law as a "person" with rights to own property, to sue, and to be sued. The requirements of board action and written minutes are evidence that a legal responsibility is the corporation's and not the volunteers'. If these steps are skipped, how does the volunteer prove that the commitment was corporate and not personal action? Failing to follow corporate process could result in an obligation thought to be corporate being imposed upon the volunteer who failed to obtain corporate approval. Obviously, that would be a nightmare for the volunteer, but it can easily be avoided by waiting to sign a contract until the board approves it in a meeting.

Corporations are legal fictions recognized by law as "persons" that act through authorized agents, normally a board of directors. Actions outside the corporate authority are

called "Ultra Vires," a Latin term meaning "outside the powers." In business corporations, officers often act as the primary agents, but in HOAs, the primary decision-maker is the board. If an officer acts outside those powers and without board approval, it is not corporate action.

Proper minutes are a critical part of the corporate process. If the minutes don't record it, then the corporation didn't do it. Minutes document corporate decisions, including any authority given by the board to a director or manager. Managers or officers should insist that authority to act must be recorded in minutes.

Occasions sometimes can arise when there is no time to convene the board and urgency requires a decision to be made immediately — such as calling an emergency contractor, for example. In California, boards may take emergency actions via email, under Civil Code Section 4910(b)(2). It is critical that any director acting for the corporation in an emergency obtain formal corporate approval, called "ratification" of the action taken, which must be documented in minutes.

California's Open Meeting Act (Civil Code §4900-4955) sets forth a variety of mandatory procedures — in addition to the procedures in the association's bylaws. That law bans ac-

tion outside of board meetings, requires advance notice of board meetings, limits the use of executive sessions, and requires prompt availability of draft minutes.

Some boards hold board meetings violating this law using excuses of efficiency or convenience. If an association violates the law and corporate process by deliberating outside of open meetings, are the board's decisions susceptible to challenge as outside the corporate authority? Although the Open Meeting Act does not discuss the consequences of violations, such a result is possible.

Sometimes it is tempting for a director to step outside of their authority in their zeal to "get things done" without waiting for documented board authority. However, what happens if the board later disavows the director's action, leaving the director personally exposed to liability?

Board motions, votes and recorded minutes are proof that the corporation acted and not you. Don't avoid those steps — embrace them.

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