

“Pandemic Has Changed How Boards Do Business,” News-Press

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Q: Our condominium association board held online/telephone monthly meetings during the pandemic enabling owners to listen and ask questions. Normally, our board holds meetings where owners may attend in person. When the Florida Governor implemented Phase 2, the board went back to in person attendance meetings with social distancing. Is the condominium association required to make the board meetings available via telephone/video to all of owners? (M.D., via e mail)

A: No. Section 718.112(2)(c) of the Florida Condominium Act provides that board meetings must be open to all unit owners, unless the meeting concerns legal advice or personnel matters in which case the meeting would be a closed meeting.

This law presumes that board meetings will be held at a physical location and as such, unit owners have the right to attend the meeting in person. While directors are permitted by law to participate remotely in board meetings, the statute does not require associations to make board meetings available for audio or video observation by unit owners.

If your board held meetings where in person attendance was discouraged as a result of the pandemic, then in my opinion the board would have to make remote participation available for unit owners to “attend” the meeting. The recent boom in video conferencing popularity makes it possible for boards to encourage remote attendance by unit owners, but, as long as the owners have the right to attend the meeting in person, there is no legal obligation to allow remote attendance.

Q: Is an association required to provide owners with access to accounting records on a special assessment? (E.S., via e-mail)

A: Yes. Section 718.111(12) of the Florida Condominium Act and Section 720.3030(4) of the Florida Homeowners’ Association Act require that certain information be kept as part of the “official records” of the association. Included with the official records required to be maintained by the association are its financial and accounting records for a period of at least seven (7) years. The required financial and accounting records must include a separate ledger for each owner which shows the amount of each assessment or other charges and the payment status of the account. Any owner is entitled, upon written request, to

inspect and copy the official records of the association within 10 working days of the association receiving a written request.

Q: I live in a condominium association that is a “55 and over” community. We want to update our condominium documents to limit the amount of time that guests can stay in a unit. We have been told that you cannot limit the amount of time family members can visit the unit. Is this correct? (A.O, via e-mail)

A: No. If the condominium association is seeking to amend the condominium declaration, restrictions on unit use can be imposed, including limitations on guest occupancy. For example, it is not uncommon when I write condominium documents, to put limits on the number of times a unit can be occupied by a guest when the unit owner is absent. Additionally, it is not uncommon for condominium associations to limit the length of time a guest can occupy a unit before they are considered a resident whose occupancy may be subject to approval by the association.

Florida case law has found that declaration amendments, which typically must be approved by a vote of the unit owners, can even be “unreasonable,” so long as they are not arbitrary, capricious, or against public policy. Conversely, rules adopted by the board must be reasonable, as well as consistent with the condominium declaration.

In my opinion, properly adopted declaration amendments regulating guest use would be legally enforceable. A board made rule may or may not be sufficient, depending on the language in the declaration and the scope of the proposed rule.