



LEGAL ALERT

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PREPARATION—THE KEY TO A SUCCESSFUL ANNUAL MEETING

It is that time of year again. It is your annual Association meeting. The one day of the year where you, as an association board member, have the opportunity to communicate your successes to the rest of the community. It is also often the time where you must deliver difficult news to the community, whether it be an increase in assessments, or the need to impose a special assessment for badly needed repairs. In these hard economic times, these meetings can be contentious and this news is often met by anger and resentment from the community. It may not be possible to remove all of the anxiety from your next annual meeting, but it will be significantly reduced through proper preparation. Depending on your individual documents, here are some general comments.

Review Your Governing Documents

Proper preparation requires a review of your governing documents. Most association annual meetings are governed by their By-laws, Declaration or Code of Regulations. Items to review include the following:

1) Term Limits

Most governing documents set term limits for board members. Most require that the terms be staggered. For example, an association with five (5) board members with three (3) year terms may require that a maximum of two of those five (5) board members be elected on an annual basis. Make sure that you are aware of which board positions are up for reelection. This often becomes confusing when board members resign prior to the end of a term. Failure to properly determine which positions are actually up for reelection may invalidate the vote.

2) Proper Notice Requirement

Most governing documents will describe what notice is necessary to be given to the members prior to an annual meeting. In some cases, an association may be required to provide at least thirty days' notice prior to an annual meeting. This may be a minimum requirement. Some documents may also provide a maximum number of days for notice. Failure to abide by the notice requirements may invalidate an otherwise lawful meeting.

3) Quorum Requirements

Often misunderstood by board members, the quorum requirement is the minimum number of residents who must be present at the meeting in person or by proxy for business to be conducted. Many documents will require "a majority of the voting membership in person or by proxy". The quorum would therefore be fifty-one percent (51%) of the membership. Failure to meet the quorum requirement means that an election cannot be conducted and that new business cannot be voted upon.

4) Nominating Committee Requirements

Many documents have a requirement that a nominating committee be formed to send out a postcard or a last minute reminder of the annual meeting.

THE INFORMATION SET FORTH IN THIS NEWSLETTER IS GENERAL AND SUMMARY IN NATURE AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE APPLICABLE TO YOUR ASSOCIATION. IF YOU HAVE QUESTIONS REGARDING THE CONTENTS OF THIS RELEASE AS IT APPLIES TO YOUR SITUATION, PLEASE CONTACT FOTH & FOTH CO., L.P.A. IN ADDITION, WE WISH TO REAFFIRM THE FACT THAT THE PRINCIPLES OF LAW CITED HEREIN ARE SUBJECT TO CHANGE FROM TIME TO TIME

MARK YOUR CALENDARS

Our next seminar will be held on Saturday, May 30th at the Holiday Inn in Strongsville to discuss Foreclosures and the Mortgage Meltdown.

The committee often acts as a filter for the board prior to the election, determining, for instance, which candidates may not be permitted to run for the board due to delinquent assessments or failure to meet any other document requirements such as occupancy and ownership. A nominating committee may also be useful in locating candidates in a community where volunteers are scarce.

Meeting Agenda

The Board should be considering the next annual meeting agenda at least four (4) to five (5) months in advance of that meeting. Many governing documents will describe for the Board what the agenda should minimally require. The agenda will often require reports from the officers on the Board, which should be developed well in advance of the meeting. These reports are an opportunity for the Board to inform the members of their accomplishments, as well as letting them know what direction the Association is going. The agenda will often include a reading of the minutes of the last annual election. Reading of the minutes may not be required if the Association hands out the minutes to the members prior to the meeting. A motion from the floor to waive the reading of the minutes will suffice in that instance.

The most important item on the agenda will, of course, be the election of new Board members. The election must occur strictly pursuant to the guidelines set forth in your governing documents. It is also recommended that an independent party or body be responsible for counting the ballots. This could be the managing agent or members of the community who are not running for election to the Board and have no familial relation to any Board members. Any appearance of impropriety in the election process could undermine the confidence of the community as a whole.

Venue

Many communities have a clubhouse which serves as a gathering place for their annual meeting. At least three (3)

to four (4) months in advance, an Association should book their meeting location, whether it be at their clubhouse, a local community center, city hall or library. Depending on the time of year of the annual meeting, these locations may book up quickly. Meeting locations which are not conducive for an election (i.e. too hot or too small) may negatively affect participation at the annual meeting. It is beneficial to find a location which is close in proximity to your community.

This is also a good time to ensure that your attorney is available for the scheduled meeting date. This will be of special importance if your Association is facing litigation, or if there is an amendment on the agenda which may require explanation from counsel. Most importantly, the attorney will ensure that the election is properly and legally conducted. Part of your service plan with our firm provides attorney attendance at the annual meeting at no extra cost.

Member Informational Packet

In advance of the election, mail a meeting packet to the members which contains the agenda for the annual meeting, a proxy and/or ballot and a letter explaining the process. You may also want to include a biography of the nominees, as well as a budget summary. Any information sent out in anticipation of the annual meeting should be reviewed by your attorney to ensure its legality.

Final Items of Consideration

Approximately two (2) to three (3) weeks prior to the meeting, Board members should conduct a dry run of the process to ensure all involved are on the same page and that any and all questions have been addressed.

Preparation is the key to eliminating anxiety. The more you are prepared for your next annual meeting, the more confident and successful you will be.

ASK THE ATTORNEY

Q: If a bank forecloses on a property in our Association, what happens to the Association's assessment lien?

A: A foreclosure by a first lien holder (bank) will be superior to the Association's assessment lien. Therefore, an Association will only receive proceeds from the sale of the property if funds remain available after the first lien holder's lien is satisfied. The purchaser at a foreclosure sale will be obligated to pay assessments from and after the title is recorded in the purchaser's name. Any assessments owed prior to this date, will be the obligation of the former delinquent owner. Whether it's economically viable to pursue collection against the former owners is dependent upon the circumstances of that particular case. To pursue collection against the former owner, the Association must file a lawsuit against the former owner for a personal judgment.

INSIDE STORY HEADLINE

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Please contact us if you would like an email version of this newsletter.

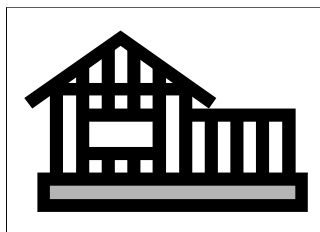
Mark your calendars for May 30th for our next seminar titled Bankruptcy and how it impacts your Association.

“To catch the reader's attention, place an interesting sentence or quote from the story here.”

INSIDE STORY HEADLINE

This story can fit 75-125 words. Selecting pictures or graphics is an important part of adding content to your newsletter. Think about your article and ask yourself if the picture supports or enhances the message you're trying to convey. Avoid selecting images that appear to be out of context. Microsoft Publisher includes

thousands of clip art images from which you can choose and import into your newsletter. There are also several tools you can use to draw shapes and symbols. Once you have chosen an image, place it close to the article. Be sure to



Caption describing picture or graphic.

place the caption of the image near the image.

Primary Business Address
Your Address Line 2
Your Address Line 3
Your Address Line 4

Phone: 555-555-5555
Fax: 555-555-5555
E-mail: someone@example.com



Your business tag line here.



Mai l i n g A d d r e s s L i n e 1
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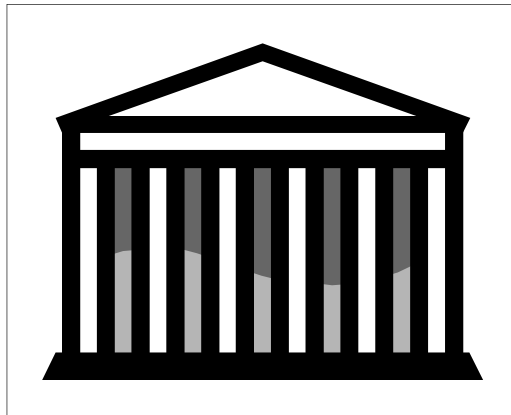
BACK PAGE STORY HEADLINE

This story can fit 175-225 words.

If your newsletter is folded and mailed, this story will appear on the back. So, it's a good idea to make it easy to read at a glance.

A question and answer session is a good way to quickly capture the attention of readers. You can either compile questions that you've received since the last edition or you can summarize some generic questions that are frequently asked about your organization.

A listing of names and titles of managers in your organization is a good way to give your newsletter a personal touch. If your organization is small, you may want to list the names of all employees. If you have any prices of stan-



Caption describing picture or graphic.

such as a breakfast meeting for vendors every third Tuesday of the month, or a biannual charity auction.

If space is available, this is a good place to insert a clip art image or some other graphic.

dard products or services, you can include a listing of those here. You may want to refer your readers to any other forms of communication that you've created for your organization.

You can also use this space to remind readers to mark their calendars for a regular event,