

Minutes – What Minutes? And, Why?

COUNSELS' CORNER

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WHITE PLAINS—Board members frequently ask about keeping minutes.

The questions range from “do we have to?” to “what has to go in the minutes?” to “can we change the minutes?” All of these are important questions and it is necessary to understand the requirements for keeping minutes, as well as the intended purposes.

The first question as to the requirement for keeping minutes is easy to answer. Yes, the cooperative must keep minutes as required under the Business Corporation Law of New York State (BCL). Recognizing this requirement is useful in reminding the board and the shareholders that a cooperative corporation is a business and, as such, there needs to be a record of the business it conducts.

The BCL requires that the minutes of board meetings and shareholder meetings be kept in written form or “any other form capable of being converted into written form within a reasonable time.” This, presumably, is a recognition of tape-recording and other technological advances, but the simplest and easiest way to meet the requirements is to have them type-written and kept in a “minutes book” which, under the current state of technology, could be stored

on a computer and reprinted as necessary.

It is usually the function of the secretary to take and record the minutes, but that is not a requirement. Another board member or the managing agent could be charged with that responsibility. As will be discussed later, whether minutes are taken by the secretary or another designated party, the minutes should be subscribed to by that party and therefore must be an officer (either the secretary or assistant secretary).

Content

What should the minutes contain? It is easier, at first, to describe what minutes should not include. They should not detail the entire discussion of an issue or refer to specific comments by specific individuals. Minutes should be a summary of a discussion that accurately reflects the decisions that were made at the meeting.

Where there are legal issues discussed with counsel, those matters should be referred to as an “executive session” and only specific action that the board is taking should be referenced in the minutes.

The Need to Be Clear

For a variety of reasons, not the least of which is to permit the board to take action even

at a later date based on a prior decision, the minutes should be very clear. Board members cannot always remember the exact language of prior decisions and shareholders, as well, need clarity in order to rely on board decisions. It is also significant and important that minutes be distributed to board members for review and adoption at the next meeting. In that way any corrections can be made prior to their adoption.

In addition to the fact that the minutes provide the board and the shareholders with a record of the board’s action which is valuable to them, minutes are significant as evidentiary proof of the facts for a plaintiff in any litigation. This is a matter of case law and statute. The plaintiff could be either the cooperative or a litigant suing the cooperative.

An example of the type of issue that might involve the validity of the minutes is the adoption by the board of a By-Laws change and whether it was validly adopted. For this reason, it is important to remember that circulating the draft of the minutes and having them adopted after a review (and corrections, etc.) is essential if they are to be conclusive evidence.

If the minutes are properly recorded, subscribed to, and adopted by the board then the

party objecting to the evidence must produce other competent proof to show that there are issues of fact despite the minutes.

It is important to remember that, at any meeting, if the per-

son recording the minutes of that session has a conflict of interest in regard to any item to be discussed, that individual should not take the minutes as that could taint them and they would lose their status as evidence in any litigation.

ing normal business hours. The board can also require the submission of an affidavit that states that the purpose is not for a business or purpose which is the interest or business other than the corporation’s

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Who Can Review The Summaries?

There is one other issue regarding minutes that seems to be a perpetual and recurring problem. That is, who can examine the minutes and when and how this is to be accomplished. The BCL covers this as well. It provides that upon giving five days’ written notice, a shareholder of record has the right to examine in person, or by an agent or attorney, dur-

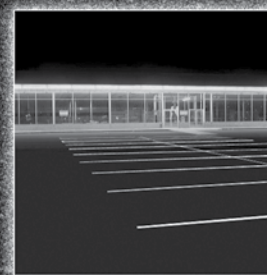
and that he has not offered for sale any list of shareholders of a corporation. There are conflicting cases as to whether the shareholder can copy the minutes or just take notes.

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Editor’s Note: The authors are attorneys with Finger and Finger, a Professional Corporation. Although not covered by the BCL, the basics of this article still apply to condos.

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