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## *Community Associations Newsletter*

### **ACTION OUTSIDE BOARD MEETINGS – MORE TROUBLE THAN IT IS WORTH?**

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A common question that we receive from our community association clients is whether the Board can take action outside of a meeting. In many instances, the question that our clients pose is whether email exchanges between the Board and Management are sufficiently formal to be considered an action of the Board. Frequently, when urgent issues arise Board members may consider taking an action outside of a meeting via email due to time constraints in scheduling a special or regular meeting of the Board. While action outside of a meeting is possible in many of the jurisdictions in our area, there are constraints that Board members and Managers must keep in mind.

If your community association is incorporated as a non-stock corporation, then Virginia and Maryland laws both allow for the Board to take action outside of a meeting. To do so, the directors must unanimously consent to the proposed action item in writing. In Maryland, the consent of each director must be filed with the Board meeting minutes, while in Virginia, the written consent simply needs to be filed with the Association – typically via management.

However, if an association's documents state that a specific action must be taken at a Board or membership meeting, such as a vote to approve a capital expenditure above a fixed sum (as stipulated in the documents), then the condominium instruments or other recorded governing documents will control as to that action, and the Board may not act on that matter outside of a meeting.

For unincorporated community associations in both Maryland and Virginia (as is typical for many Virginia condominiums), the only way that a Board has the authority to take action outside of a meeting is if the governing documents explicitly permit an action of the Board to be taken outside of a Board meeting. In our experience, many of the governing documents for unincorporated community associations require the action to be unanimously approved by all directors and the documents are also explicit about how the vote taken outside of a meeting is reflected in the Association's records. Boards must be careful to follow all of these requirements precisely. It is also generally recommended that actions taken outside of a meeting are always ratified at

the next regular or special meeting of the Board of Directors.

In D.C., the Board of Directors for a condominium created under the D.C. Condominium Act may take action without a meeting by resolution issued with the unanimous written consent of the members of the Board. Further, the D.C. Condominium Act requires a copy of the resolution to be attached to the minutes of the Board meeting that is convened following its adoption.

So, once a Board has confirmed that they have the ability to take action outside of a meeting, the Board should carefully consider whether or not it is wise for them to act between meetings. Generally, taking a vote outside of a meeting should be reserved for time sensitive matters or to address an emergent situation. Also, as a practice Board decisions that are controversial, wide sweeping or require a great deal of deliberation and discussion by a Board should always be taken at a meeting.

You can also look for ways to reduce the number of actions that a Board may need to take in between meetings. First, the Board can approve items on a contingent basis at Board meetings. For instance, the Board may have a question regarding a proposed contract and based on the answer to that question, the Board will select one contractor over another. At the meeting, the Board could vote to approve that contract contingent upon the answer from that

contractor. That way, no additional vote would need to be taken outside of a meeting.

Finally, if the Board has a lot of items that will need decisions in the near future, the Board can set some additional Board meetings for those items. That way, Board members can prepare for those meetings and the meetings may be very short to consider only one or two items, as opposed to a full agenda.

Should you need assistance in evaluating whether a particular action may or may not be voted upon by the Board outside of a Board meeting, please consult with any of our experienced community association attorneys.