



## Governing Documents Should Answer Question

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Today's column resumes our standard question and answer format. The previous ten editions of the column discussed the changes to the condominium, cooperative and homeowners' association statutes enacted by Senate Bill 1196, which became effective July 1, 2010. Past editions of the column, including the entire series on SB 1196, can be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).

In the way of errata, the August 1, 2010 column dealing with homeowners' associations stated that SB 1196 changed the law so that the governing documents could permit absentee voting in both elections and matters other than the election of directors. As the referees in pro football say when they goof up, after further review, that statement does not appear to be accurate. Rather, the new language in SB 1196, which is now part of Section 720.306(8) of the Florida Homeowners' Association Act, limits the reach of the new law to the election of directors only, and not voting on other issues.

**Q:** Do residents in Florida's homeowners' associations have the right to vote on all issues appearing before the board? We are being told that we only get to vote once a year, to elect new board members. Our board recently adopted a rule to require all vehicles to be parked in the garage overnight, but the homeowners never voted on it. The board also changed another rule to say that all

exterior plantings are our personal responsibility, even though the association took care of all exterior landscaping previously. **G.K. (via e-mail)**

**A:** The answer to your question will depend upon how your governing documents are set up. In most homeowners' associations, the members (also known as parcel owners) typically only have the right to vote on certain items, although these are important items. The governing documents for most homeowners' associations state that all of the powers and duties of the HOA are vested in the board of directors, except when a vote of parcel owners is specifically required by law or another provision of the governing documents.

By law, parcel owners are entitled to vote to elect the board of directors, and also to recall the board. Parcel owners also have certain other voting rights conferred by statute, including voting to waive or reduce minimum financial standards as applied to certain types of reserve funds, and year-end financial reports.

Most governing documents also require parcel owner approval, usually a super-majority, for amendments of the governing documents themselves. The prime document in the hierarchy of governing documents is your property covenants, sometimes called a declaration of covenants, or covenants, conditions, and

restrictions (CC&R's), or deed of restrictions. Typically, parking regulations and the allocation of landscape responsibilities are addressed in the covenants, and any change regarding those items would require a vote of the membership, not just the board.

However, the governing documents may confer authority on the board to make rules and regulations. Board-made rules and regulations fall into two categories, those which pertain to the common areas, and those which pertain to the parcels (lots and homes). Most governing documents confer rulemaking authority on the board for common areas. A board's common area rule will typically be upheld unless it is in conflict with the covenants or is unreasonable.

Some HOA governing documents also grant the board rulemaking authority over the privately owned property, known as the parcel (your lot and the home which sits on the lot). If the governing documents grant the board rulemaking authority as to parcels, such rules will be valid provided that they do not conflict with the covenants or any provision which is inferable from the covenants. The rules must also be reasonable. Further, board-made rules regarding the use of parcels are subject to heightened public advertisement requirements, typically fourteen days' mailed and posted notice to each member of the association prior to the board's adoption of such a rule.

**Q:** I am one of five board members in a homeowners' association. I have been told that any time three or more members meet, we have to

post notice of a board meeting. For example, does this mean that if three members of our board want to meet with our management company, landscaper, or a vendor for informational purposes only, that we cannot do this? We would not be voting on any issues, just gathering information. This seems cumbersome. What is the law on this issue? **T.M. (via e-mail)**

**A:** Section 720.303(2)(a) of the Florida Homeowners' Association Act states that a "meeting" of the HOA board "occurs whenever a quorum of the board gathers to conduct association business."

In your situation, three board members is a quorum. If they "gather" (in person or telephonically), a "meeting" occurs if association business is "being conducted."

While there are no reported appeals court cases interpreting this law, by analogy to cases applicable to public officials, nearly all attorneys will opine that votes need not be taken in order for business to be "conducted." While I have heard it argued that gatherings of a quorum of the board which are simply for fact gathering purposes do not constitute "meetings", I believe that the law would be construed in favor of homeowners' "sunshine" rights. Accordingly, it is my belief that the types of gatherings you describe should be open to the membership and preceded by at least forty-eight hours posted notice if a quorum of the board will be there.

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*