

Colorado Homeowners Association *Law*

BOARD ACTION WITHOUT A MEETING – WHAT’S THE BIG DEAL?

By Mark K. Payne on February 5, 2020

We all know that the primary function of a community association’s Board of Directors is to do the business of the association, right? In fact, significant parts of most declarations and bylaws are devoted to setting out the powers and authority of the Board. If a community was formed on or after July 1, 1992, the Colorado Common Interest Ownership Act (CCIOA) says that, except as expressly stated in a declaration or bylaws or in CCIOA, the Board may act in all instances on behalf of the association.

In the absence of specific provisions of an association’s governing documents, the Board has the authority to determine when, and how often, it will meet to carry out the association’s business. But sometimes, the regular meeting schedule is not frequent enough to get everything done, or matters come up that cannot wait until the next regularly scheduled Board meeting. What’s the Board to do?

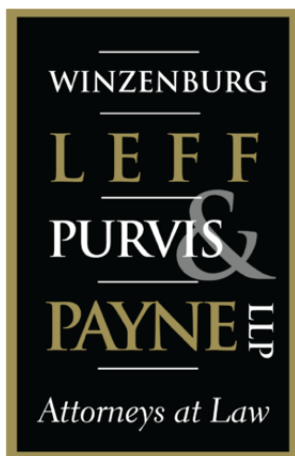
Well, it could change its regular meeting schedule, or it could call a special meeting of the board following the requirements for notice set out in the bylaws or the Colorado Revised Nonprofit Corporation Act. It could also arrange a phone conference by which each director can hear and participate in the meeting. In addition, some Boards elect to take action outside of a meeting as

a convenience to the Board, and as a way of not having to meet. CCIOA contemplates that the Board may take action outside of a meeting, either under the authority of the association's bylaws, or under the authority of the Colorado Revised Nonprofit Corporation Act. The Nonprofit Act sets out a very specific procedure for taking action outside of a meeting if the procedure is not spelled out in the bylaws.

But, here's the catch – CCIOA also says that, at an appropriate time determined by the Board, but before the Board votes on an issue under discussion, owners or their designated representatives must be permitted to speak regarding that issue. If the Board is taking action outside of a meeting (for example, by email), how are owners being allowed to speak to the issue before the Board votes? There may be several options, but here are a couple: (a) send a broadcast email to all owners inviting their input before the board votes; or (b) discuss the matter at an open board meeting (with the item to be considered being included on the agenda) and allow owners to provide input, then the Board can take action afterwards through email.

Whatever direction the Board decides to take, it should be mindful of CCIOA's intention to allow owners the right to participate, and provide for transparency, in the decision-making process.

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