

Unanimous Consent

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Common Interest

Although Executive Boards can't officially act without voting, they can vote without meeting. As long as every member agrees and the decision is memorialized in writing, a decision by "unanimous consent" is every bit as legal and binding as one which is voted on during a live meeting.

For decades, a standard clause used in the bylaws of most condominiums and other communities has read:

Consent to Corporate Action. If all the members of the Executive Board or all members of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, and the number of the members of the Executive Board or committee constitutes a quorum for such action, such action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The Secretary shall file such consents with the minutes of the meetings of the Executive Board.

The 2010 amendments to the Common Interest Ownership Act refined this traditional language as follows:

Instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent.

Both versions mean that an Executive Board can vote on most issues without holding a live meeting if the decision is unanimous and documented in writing. This can be accomplished by having each member sign a document that explains the action to be taken, but in this day and age, a simple e-mail circulated among the Board's members is far more common. The 2010 legislation imposes the additional requirement that the association's secretary issue a written notice of the decision to every unit owner, rather than merely dropping it in the files. Again, this can be done by e-mail for those unit owners who have agreed to receive notices that way, and by mail or hand-delivery for the others.

Not all decisions can take advantage of this shortcut. Obviously, the Board cannot do anything by unanimous consent that it would not have the power to do at a live meeting either, such as amend the declaration, remove a person from the board, or lengthen their own terms of office. Live meetings are generally required before a board's decision to hold a unit owner responsible for a monetary fine or uninsured property damage. Nearly all boards must meet in person at least twice per year. And if even a single board member dissents,

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abstains, or is unable to participate in a decision, then it cannot be said to be unanimous, and a live meeting will be necessary.

The advantage of acting by unanimous consent is that the Board can take care of routine, uncontroversial actions quickly – such as authorizing a small expenditure or scheduling a community event – without waiting until the next regular meeting or having to arrange and publicize a special meeting. Unanimous consent is certainly preferable to defending the questionable validity of an “emergency” meeting held with no notice to the unit owners. Nevertheless, the drawback of acting by unanimous consent is less transparency in governance and the loss of community input. Although the law does not specifically limit the unanimous consent procedure to “minor” matters, major questions are rightly debated and decided at live meetings to maximize the ability of unit owners to feel – and rightly be – as informed and involved as possible.

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