



TOWN HALL MEETING

Audience Questions and Panel Responses

In October, 2016, Gassen Company held a Town Hall Meeting for our Board Member clients. This event was our best-attended so far! Read on for audience questions and responses from our panel of experts.

Daniel B. Greenstein Bernick Lifson, P.A.

(Dan Greenstein's legal response to audience questions are below in green.)

Is there a way an association can have any control over who off-site owners rent their properties to?

In a Cooperative, yes. However, in a condominium or a townhome style community the answer is no.

What documentation can you ask for when a resident (renter or owner) say they need a service or companion animal and the property has a "no pets" policy?

You can ask for a letter from their medical provider. It should advise you that the person has a recognized "disability" and that the pet would be beneficial for helping with that particular disability. This is a technical area and we often suggest that you let your counsel assist you.

Our board communicates via email – discussion and decisions. Please clarify what steps we need to follow in order to comply with open meeting requirements.

Technically speaking, you should not generally communicate association business by email. However, most boards now do so. I would suggest that no decision be made by email. That said, if the decision is unanimous (100%) of all board members (not of a quorum) you can combine all emails into one "writing" and it will replace a meeting. This is typically not the normal procedure but one used on occasion.

Short of going through the process of amending our declarations, is there any way to find out how many of our homeowners have HOA insurance?

Yes. If it is required by your declaration, you can pass a rule to allow you to confirm coverage. If it is optional in the declaration, then you can only ask for compliance.

Please address fiduciary duty with respect to implementation and enforcement of the association's rules so as to avoid any appearance of favoritism. Especially in regard to whether to forgive or rescind a fine imposed for a violation.

In general, there should be no policy of allowing the board to forgive or rescind a fine. If the board meets and decides to fine, the homeowner is entitled to a hearing. Once the hearing is held, the board's decision should be final. This gives the board two discussions on the merits of the violation.

What is considered a rental (family vs. non-family) in the recognition policy when discussing percentage of votes? Do they need to have a rental license to be recognized in proportion of owners/rentals?

Always an issue. You can pass a rule that clarifies rental. Once way is a license. Many times I recommend that allowing family to stay in the unit, with or without payment of rent, should be an exception to rentals.

Rental restrictions – no rental limits currently. Must notify board. City requires licensing as rental. Can association require a copy of current license and copy of inspection?

Yes, you can do so in the rules; however, I question to what end? Let the city worry about licenses given that you cannot restrict rentals.

Are proxies legal with board votes?

It depends on your bylaws governing board voting. Most bylaws do not allow a board member to vote by proxy.

For rule changes, where you need majority of board, is it majority of those present or of total number of board members?

Majority of those present, provided you have reached the required quorum for the meeting.

How does the board have discussions with homeowners if limited time at board meetings?

Typically, you call for a special meeting for that purpose.

Do you take minutes during privileged meetings? If so, where do you keep them?

Yes, you are required to take minutes at every meeting. The manager or Secretary keeps them in a file that is treated as confidential.

If the unit is a rental, who is responsible for the HO6 insurance policy? Can we require the owner to verify proper level of insurance?

The unit owner is responsible. His policy would be a rental policy, which is similar to but not identical to an HO-6. If this insurance is mandatory in the declaration or if you have a rule requiring proof of insurance, you can require verification.

How often should governing documents be updated or re-evaluated to make sure they are current? What is the approximate cost of this?

If they were last written after 1994, I would review them every 3-5 years. The approximate cost of the review is \$800-\$1,000 depending on the counsel selected.

How do you know if someone has a rental?

Their mailing address or the tax statement address is generally different than the unit address or someone knows the people living there are not those on title.

What is considered a small unit?

I don't know. I need more context to answer this question. Sorry.

Should board members know if all residents have HO6 insurance and how would you handle if needed?

You need to see if it is optional or mandatory in the declaration. If it is mandatory, I would require proof of coverage every year or two. I would levy a fine for those that don't offer proof (after notices). If it is optional in the declaration, all you can do is strongly suggest it is purchased and explain the reasoning.

How do we obtain 67% or 75% to amend if 30% is rental?

You need to be creative. One way is to grandfather in the current landlord/owners until they sell their units. Another way is to use exceptions to the rental restrictions. For example, if an owner has resided in the unit for 2 years as their primary residence, give them an option to lease for a year or two so they will vote yes.

How to sell to your owners/residents the need to limit rentals within the association (ie: re-sale of their units and their value, problems associated with rentals (parties, excess cars, destruction of property, parking problems). We are currently at 15% and growing. Documents don't have the language for rentals.

That is the magic question. The factual truth is that most lenders will not loan to a prospective buyer if the rentals are too high a percentage at the community. So, besides the problems that you cite, your property will be less marketable if you have more rentals.

Can owners be asked to leave a meeting to have a closed meeting?

Absolutely. The notice of meeting should show a closed meeting on the agenda, without disclosing anything else about the meeting.

Define roof maintenance. Does it include snow and ice dam removal?

NO. However, you can pass a rule or policy explaining the ambiguity in the maintenance provisions of the declaration. If possible, consider re-writing the declaration to spell that out clearly.

Define rain gutter maintenance. Does it include cleaning debris?

Yes, but the board decides how often and the extent to which it is done.

Please explain again about "eligible mortgagees" and renters/rentals. Something about first lenders and sending a letter; if they don't answer, their vote is "yes". Not sure I understood this correctly – how to get to the 67% vote.

Voting on amending declarations. The declarations that have been passed since 1994 state that if a first mortgage holder sends a letter to the association and asks to be able to vote on amendments to the declaration or bylaws, they become an Eligible Mortgagee. They often never respond to correspondence, so the law provides that if they don't respond within 60 days, the association can consider their no response to be a yes vote.

Eric Skarnes, Insurance Warehouse Inc. and Tony Ciro, American Family Insurance

(Eric Skarnes' and Tony Ciro's responses to insurance-related questions are below in green.)

Please explain Director / Officer insurance and the importance of having such insurance.

Director and Officer insurance protects the members of the Board in the event a problem or claim arises because of the Board's actions or decisions. This could be anything from making a poor financial decision, choosing a bad insurance policy or discriminating against a unit owner. Since the Board makes decisions on behalf of all unit owners, D&O protects the Board against potential lawsuits filed by other homeowners.

Insurance for board vehicles – what proof is necessary for a claim?

If a claim occurs, a police report stating the details of the claim is prudent for the claims process. Also providing proof (i.e. receipts, meeting notes, event schedule, etc.) that the vehicle was being driven for association-related business.

We currently have a volunteer policy separate from our workers' comp policy, is this necessary?

Yes, a standard work comp policy excludes volunteers. Unless your work comp policy specifically has the volunteer endorsement, you want to keep a separate volunteer policy. In the past, associations would carry a separate work comp policy and a separate volunteer accident policy if they choose. There are options now that combine both, price it better, and make the volunteer portion primary coverage (pays first dollars) instead of excess coverage (only pays after health insurance if present).

If the association owns a vehicle, who is authorized to drive it? Do they all need to be listed on our auto policy?

Any person who regularly drives the vehicle should be listed on the policy. Occasional drivers are typically covered by most auto policies.