

BY GURDON BUCK, ESQ.

# Make Meeting Minutes Matter

Meeting minutes are an association's only official record of board decisions and actions. Therefore, it's imperative that these records are taken properly and contain the necessary elements.

The worst basis for a set of good minutes is a bad meeting. If the president or chair fails to follow parliamentary procedure or understand the fundamentals of running a meeting, the resulting minutes will reflect the inevitable chaos.

Meeting minutes reflect what the board decides, not what its members say. If a meeting goes by without a vote or official action being taken, it isn't a meeting, but rather a random gathering of people. Minutes of such a gathering should merely reflect the calling of the opening of the meeting and its adjournment.

The board should have rules of order. They should be included in the association bylaws, or the board can adopt the rules of order at the beginning of each meeting. *Robert's Rules of Order* serves as the standard guide to parliamentary procedure. *The A-B-C's of Parliamentary Procedure* is a simplified version of the information provided in *Robert's Rules of Order*.

## **The Nature of Minutes**

As the name implies, minutes should be brief. Brevity, however, often requires more effort and thought than long-windedness.

It isn't necessary for the secretary to be a member of the board. Some boards hire a professional secretary, an assistant secretary, or a clerk to take the minutes. If the secretary is a director, hiring a minute recorder enables the board secretary to participate in the debate. At a minimum, meeting minutes should contain the following elements:

### *Type of Meeting*

Board meetings are usually described in minutes as regular, special, adjourned regular, or adjourned special meetings.

### *Association Name*

The exact corporate name of the association, and the words "Minutes of the meeting of (name of body)" should be recorded.

### *Event Information*

Specify the meeting date, time, and location.

### *Attendees' Names*

List the names of directors present, the name of the presiding officer, and secretary or substitute minute recorder. For open meetings, the nonvoting audience need not be included. However, if the meeting is a membership meeting, a roll should be taken, and the number of persons or votes present—or at least a quorum—should be announced and entered into the minutes. The roll can be taken at the door by using a name checklist.

### *Approval of Previous Minutes*

Unless the board waives the reading of the minutes, they should be read and approved or corrected. If corrections are necessary, the board should approve the minutes as corrected. Previous meeting minutes are not approved at a special meeting—the minutes should be approved at the next regular meeting. If regular meetings are held less than quarterly, a special committee or the executive committee can be appointed to approve the minutes.

### *Officer and Committee Reports*

Reports made by board and committee members often precede the business of the meeting. Such reports are usually for information only, and if in writing, can be appended to the minutes with board approval. If not in writing, only the fact that the report was made needs to be stated in the minutes. If they contain recommendations for board action, motions to adopt or implement the recommendations should be made by a member other than the reporting officer and acted upon by the board. The board's disposal of the motion may appear in the minutes.

### *The Business of the Meeting*

The minutes should follow the agenda, unless the board agrees to take a matter out of order. The resolutions, exactly as finally made, seconded, and passed, should be grouped according to subject matter. There is no reason to include the summary of

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**Taking minutes is not equivalent to taking dictation.**

debates, discussions, drafts, and revisions of the motions. None of this constitutes official action of the board. The resolution appearing in the minutes should be as voted upon and passed. Reports should be appended to the minutes. The minutes should show each motion as voted upon and whether it was passed, defeated, tabled, returned to committee, etc. In addition, the minutes should include points of order, appeals—whether sustained or lost—and the chair's reason for the ruling.

The resolution should contain a description—including a background statement and introduction—of the matter before the board for discussion and approval. The board will vote on the language of the background statement and resolution. Again, the remarks of individual board members should not be included in the minutes. Members' remarks do not constitute actions of the board, and can lead to future misinterpretations of the board's actions.

In a well-run meeting, the text of the motion will be presented in writing before it is brought to action. If it is included on the meeting agenda, appears in the conclusion of a committee report, or is presented as a written recommendation by the manager, it is more likely that the board will make a sound decision based on revisions and narrowly discussed amendments.

In light of the above reasoning, the motion should be made before the topic is discussed. No motion, no discussion. A discussion without a motion is not only officially out of order, but also creates chaos. A committee report can be made, ending in a motion, if action is required.

Minutes must reflect correct parliamentary procedure. The board should not discuss anything that is not presented in the form of a motion that the board can act upon, or a request for a ruling that the chair can act upon. The only exception to this rule may be a guest speaker. Because the board only recognized the speaker, his or her speech is not the action of the board. In such an instance, only the speaker's name and general topic of the speech should be indicated in the minutes, unless the board moves that the speech be attached to the minutes.

The worst examples of minute taking contain extraneous material. Taking minutes is not equivalent to taking

dictation. The secretary's notes should be used as a reference to ensure that motions are worded exactly as passed. If the secretary, or any member of the board, is uncertain about the wording of a motion, it should be reread before final passage.

In a fast-moving meeting, it may be worthwhile to tape the board's actions to ensure that the secretary accurately records the motions. Tape recordings and secretary notes are not official records of the board's actions. Therefore, neither should be available for inspection nor be included in association records. I recommend boards destroy meeting tapes and notes when the minutes are adopted.

A motion is the agreed upon solution to a problem. The actual direction for action by a board should begin with the word "resolved." A motion passed by the board is properly described as a "resolution." The resolution of the problem may have been stated in the background statement and discussed during the debate.

#### *The Vote*

If the vote is without objection, the fastest method of passing routine motions, it should be so stated in the minutes. If the vote is by voice, only the chair's ruling needs to be noted by stating "the motion passed." If a board member successfully moves to divide the board by standing, a show of hands, or a paper ballot, the count should be recorded. For small boards, it is proper to show the names of those voting in favor, abstaining, and in opposition to a resolution. Because of a board's fiduciary duty, it is advisable to list those voting with respect to all substantive action motions. It is especially important to list those dissenting, so they are not held responsible for the consequences of an action with which they disagree.

#### *Adjournment*

The last paragraph should state the time of adjournment.

#### *Secretary's Signature*

The signature of the secretary, preceded by the word "submitted" must be included at the end of the minutes.

#### *Approval at a Subsequent Meeting*

The minutes are not official until the board approves them at a subsequent meeting. However, if the subsequent meeting is too far in the future, a committee should be appointed to approve the minutes.

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**Board meeting minutes are the sole, official reflection of the association's actions. Without them, an association has not acted.**

Once approved, they are the official action of the board, regardless of what actually occurred. Thus, by approving the minutes with a differing statement of a resolution, a board can effectively change a passed motion. Minutes can be corrected even after they are approved by a motion to amend (a passed motion) adopted, which requires a two-thirds vote, a majority vote with notice, or a majority of the association members if that is more practical. Minutes cannot be changed to reconsider something that has already been done as a result of the board action, such as issuing a payment or signing a contract agreement.

### *Inclusion in the Corporate Record Book*

The secretary's primary responsibility is maintaining the association's official records. The minute book is the association's principal record. The records should be printed on quality paper, in an official notebook, which should be turned over to the succeeding secretary upon appointment or election to office.

### *Publication*

While publication of minutes is not required, it is recommended for community associations. Minutes should be available for examination by any member upon request.

Board meeting minutes are the sole, official reflection of the association's actions. Without them, an association has not acted. Minutes that reflect board members' remarks and not the board's actions are useless. By including the proper elements in meeting minutes and following parliamentary procedure, association boards will be able to conduct business in an effective and productive manner. ■

## **Sample Board Meeting Minutes**

By Gurdon Buck, ESQ.

### **Stonemason Village Condominium Association, Inc. Minutes of the Meeting of the Executive Board**

The regular monthly meeting of the Executive Board of Stonemason Village Condominium Association, Inc. was held on Tuesday, January 19, 2006 at 8:30 p.m. at the clubhouse. The president chaired the meeting and the secretary was present. All members of the board were present. Mr. Hugh L. Dewey, counsel to the association, and Mr. John Handy, association manager, were also present.

The minutes of the last meeting were read and approved as corrected.

The treasurer reported the receipt of an unbudgeted bill from the Acme View Plumbing Company for the water leak on December 15 in the amount of \$975.00. It was:

RESOLVED: That the bill from the Acme Plumbing Company be paid.

Following debate, it was:

RESOLVED: That the contract with the vending machine company for the candy machine in the clubhouse lobby be continued, and the president is authorized to execute the contract. A copy of the contract is to be appended to the minutes.

The social committee report was received and placed on file without objection.

Ms. Smith, chair of a special committee to investigate and report on additional handicapped parking facilities near the clubhouse, presented the committee's report. After debate and amendments, a resolution was adopted as follows:

BACKGROUND: The building official of the Town of Saltonstall, following a complaint from Mrs. Jones of Unit 2B, who has a handicapped son visiting her, checked the parking layout of that cluster and pointed out that the Fair Housing Act and state law require the installation of three additional handicapped parking spaces in that lot, reasonably convenient to the main entrance of the building. The manager submitted a plan showing the conversion of five regular spaces to handicapped spaces at the entrance, and the construction of three new spaces at the south end of the parking lot.

RESOLVED: That the manager contract for the construction of the three additional spaces and the striping and signage of handicapped parking spaces in accordance

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with the standards for such spaces required by the Town of Saltonstall and the plan. The manager should obtain three bids for the work, and submit the lowest responsible bidder's construction contract to the board for approval at the next meeting.

The resolution relating to the use of the game room by nonmembers for parties that was postponed from the last meeting was then taken up. The chair then announced that the invited speaker, Hugh L. Dewey, esq. (counsel to the association), would require an earlier departure and should be taken out of order.

Without objection, the motion and appending amendment were laid on the table.

Without objection the agenda was modified to allow Mr. Dewey to speak out of order.

The president then introduced Mr. Hugh Dewey, who spoke about assessment collection and rule enforcement.

Without objection, the resolution relating to the use of the game room by nonmembers was taken from the table. After amendment and further debate the motion was made as follows:

RESOLVED: That the manager would prepare and present to the board at its next meeting a draft contract for the rental of the game room to nonmembers for parties and functions. The manager would present a schedule of charges and extra services that would be provided. The association accountant would be asked to comment and advise the association on the accounting for the income.

Mr. Smith asked for a division of the board by a show of hands. The motion passed by a vote of 5 to 2.

Upon motion made by Mr. Smith it was:

RESOLVED: That the association establish a summer program for teenagers on its lake-front property. Ms. Thomas moved to amend the motion by inserting the words "pre-teens and" before "teenagers." The amendment passed. The motion to establish the program, with the appending amendment, was referred to a committee of three to be appointed by the chair with instructions to report program details at the next meeting. The chair appointed Mr. Smith, Mr. Dorsey, and Ms. Thomas to the committee.

The meeting adjourned at 10:05 p.m.

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Marge Scrivener, Secretary

BY RICHARD LIEVENS, ESQ.

# Minutes and Resolutions: The Legal Perspective

**T**oo often, community managers and directors regard board meeting minutes and resolutions as ministerial rather than integral to an association's operation and longevity. These duties must never be taken lightly because maintaining accurate meeting minutes and resolutions has legal significance.

## **Recording Corporate Acts**

The basic purpose of maintaining a minute book is to have a record of corporate acts. Under appropriate circumstances, these records will prove invaluable in upholding a corporate act, evidencing authority, rebutting a presumption of authority, or defending directors.

When an adversary attacks or challenges the validity of a given corporate act, properly kept minutes and resolutions authorizing the act will help verify its validity. Clearly, minutes or resolutions do not, and cannot, create authority where there is none. That is, the applicable statutes, the articles of incorporation, or association bylaws must create the authority; but the minutes and resolutions provide evidence of how the authority was exercised. If no authority exists, no such authority can be exercised.

Minutes and resolutions can also be used to rebut the presumption of authority. For example, it is presumed that the president of a corporation has the authority to perform certain acts. Through proper resolutions recorded in the minutes, other board members may deny such authority—and thus are able to prove, if necessary, that no such authority existed on the president's behalf.

Directors should take great care in ensuring that minutes and resolutions properly reflect voting, abstentions, and objections. This documentation will protect them if a claim of a breach of fiduciary duty is made against them. The minutes can also reflect an individual director's intentions, acts, and omissions, through evidence of voting or dissent. Therefore, it's important for a disagree-



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ing board member to ensure that his or her dissention is properly recorded in the minutes.

When a board takes an action outside of the regular course of business, there should be a memorandum or record in the minutes reflecting the board's decision to take the action or refusal to take the action. Again, the purpose is to provide evidence of corporate authority and to defend the board in the event that its action is challenged.

While certain actions, such as decisions to sue and approval of collection procedures, should always be recorded in the minutes, actions that are covered by routine, previously-approved guidelines need not be so specifically stated in the minutes.

It is worth emphasizing that recording a corporate act in the minutes will not validate the act if the board had no such authority. Likewise, failing to record a valid act in the minutes will not necessarily render the act invalid. For example, a resolution duly voted on and properly reflected in the minutes for an association to purchase real estate does not make the purchase a valid act if the board lacked such authority. Conversely, if a board exercises its authority to purchase real estate, but through error or omission fails to record the action in the minutes, the corporate act is not necessarily void. It is, however, voidable if the events of the meeting cannot be substantiated in any other way.<sup>1</sup>

### **Statutory Foundation**

Most state laws governing corporations contain specific provisions about taking minutes. Corporations are subject to the applicable Business Corporation Act or Non-Profit Corporation Act of the controlling jurisdiction. Most such laws require corporations to keep minutes of shareholder and director meeting proceedings.<sup>2</sup> Therefore, association boards should analyze applicable statutes to determine minimum minute taking requirements.

Failure to keep contemporaneous minutes as mandated by statute will not necessarily void the corporate act. For example, if the minutes are amended after the fact, this may be sufficient to satisfy statutory requirements.<sup>3</sup> However, if an association refused to repay a loan based on the argument that the promissory note was unenforce-

able because authorization to obtain the loan was not recorded in the minutes, such an argument would probably fail. A court would likely find that regardless of the statutory obligation to take minutes, if the association received the benefit of the loan, it could not defeat the creditor's claim by merely showing that the transaction was not recorded in the minutes.<sup>4</sup>

In addition to the minimum statutory requirements to keep minutes, the Rules of Evidence (for use in litigation) in most jurisdictions provide that a corporation's records must only be attested by the president and secretary's signature. These documents, accompanied with a corporate seal or certificate, constitute competent evidence in any action or proceeding in which the corporation is involved. Evidence statutes provide associations with an invaluable advantage. When an association is involved in a lawsuit, its minutes or resolutions may, under proper circumstances, be introduced into evidence. Generally, it would not be necessary for witnesses to testify about what happened at the meeting or event.

Under limited circumstances, the court may prohibit witnesses from presenting testimony that would impeach or contradict the minutes.<sup>5</sup> Furthermore, excerpts from corporation minutes, which are maintained according to applicable law and identified by the corporation secretary who recorded the minutes and maintained the minute book, can be admissible as evidence in most jurisdictions. Some courts have emphasized that minutes of a corporation board meeting are *prima facie* evidence of the facts.<sup>6</sup> The minutes will speak for themselves without the need for witnesses or other evidence to prove the acts. This is particularly advantageous for associations if an excessive amount of time has elapsed between the board meeting and court proceeding.

The statutory application of minute taking imposed on profit and nonprofit corporations is the same. Case law decisions from jurisdictions nationwide, however, have differentiated these minute taking standards from those of closely held corporations—corporations that offer no shares for sale and are owned by only a few shareholders who actively conduct the business. Under proper circumstances, the closely held association directors' actions need not be proven by the minutes,<sup>7</sup> but can be proven by oral testimony.<sup>8</sup>

### Drafting Meeting Minutes

Meeting minutes should always be drafted during the event and approved by the board within a reasonable time. Occasionally,

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however, minutes are neither drafted nor approved until weeks or months after the meeting. Although this is not advisable, at least one court has held that it is acceptable, noting that subsequent approval of director meeting minutes is a common practice in corporate offices.<sup>9</sup>

Other courts have extended this concept further but have warned against the fabrication of minutes.<sup>10</sup> In the event that mistakes yield incorrect minutes, courts will probably be liberal in allowing the minutes to be corrected in accordance with the truth.<sup>11</sup>

Minutes and resolutions serve definite legal purposes. Meeting minutes protect board members, uphold and defend corporate acts, evidence authority, and serve as evidence in court cases. Community associations, typically organized as nonprofit corporations, are subject to minute taking statutes and requirements. Properly executed minutes and resolutions benefit every corporate entity. Minute taking statutes and requirements serve a protective—not a burdensome—purpose. ■

### References

1. *Cameron and Willacy Counties Community Projects, Inc. et al v. Gonzales*, 614 S.W.2d 585 (Tex. Civ. App. Corpus Christi, reh. den. 1981).
2. *Cameron*, Id.
3. *Cameron*, Id.
4. *Scott v. Potter Plumbing* 596 S.W.2d 492 (MO Ct. App. So. Dist. 1980).
5. *Emergency Patient Services, Inc. v. Crisp*, 602 S.W.2d 26 (MO. Ct. App. Western Dist. 1980).
6. *Acmer v. State Transport*, 549 P.2d 1114 no writ.
7. *Kann v. Keystone Resources, Inc.*, 575 F. Supp. 1084 (1983).
8. *In re Eastern Erectors, Inc.* 346 F. Supp. 293.
9. *Whitley v. Pacific Industries, Inc.*, 239 N.E.2d 207.
10. *National Surety Corporation v. Crystal Springs Fishing Village*, 326 F. Supp. 1171 (1971).
11. *Hallindale v. State*, 326 So.2d 202.

