



Orten
Cavanagh
Richmond &
Holmes LLC

A t t o r n e y s a t L a w

EFFECTIVE GOVERNANCE OF COLORADO OWNER ASSOCIATIONS

October 6, 2011

Orten Cavanagh Richmond & Holmes, LLC
Community Association Attorneys

Denver • Phone 720.221.9780

Colorado Springs • Phone 719.457.8420 •

Toll Free 888.841.5149

Email: info@ocrhlaw.com • Web: www.ocrhlaw.com

TABLE OF CONTENTS

THE SOURCE OF LAW ON GOVERNANCE: TWO STATUTES AND THE GOVERNING DOCUMENTS1

 THE TWO COLORADO STATUTES 1

 Colorado Common Interest Ownership Act 1

 Colorado Revised Nonprofit Corporation Act..... 1

 The Governing Documents 1

BASIC NONPROFIT GOVERNANCE – THE AUTHORITY OF THE BOARD AS REPRESENTATIVES OF OWNERS..... 1

HOW TO EFFECT CHANGE IN AN ASSOCIATION?2

RESPONSIBLE GOVERNANCE BEGINS WITH THE DEVELOPER, THE GOVERNING DOCUMENTS AND THE INITIAL DEVELOPER-CONTROLLED BOARD2

 DECLARANT CONTROL OF THE BOARD OF THE ASSOCIATION 2

 ACTIONS OF THE DEVELOPER-CONTROLLED BOARD 2

RESPONSIBLE OWNER-CONTROLLED BOARDS.....3

 RESPONSIBLE BOARDS UNDERSTAND THEIR PRIMARY DUTY UNDER CRNCA 3

 The Duty of Care..... 3

 INDICATORS OR INDICIA OF RESPONSIBLE BOARDS 3

 INDICATORS OR INDICIA OF GREAT BOARDS 3

THE 9 REQUIRED POLICIES AND PROCEDURES OF COLORADO OWNER ASSOCIATIONS UNDER SB 05-100 AND SB 06-89, HB 1359 AND HB 11-1124.....4

 THE LAW UNDER THE SENATE BILLS 4

 APPLICATION 4

 HOW TO COMPLY 5

PRACTICE POINTERS ON THE DRAFTING AND REVISION OF POLICIES AND RULES AND REGULATIONS.....5

 CASE LAW LIMITATIONS/CRITERIA FOR VALID AND ENFORCEABLE POLICIES/RULES 5

 STEPS IN DEVELOPING REASONABLE POLICIES/RULES 5

OWNER RIGHTS TO PARTICIPATE AT BOARD MEETINGS7

 APPLICATION 7

 THE LAW UNDER THE SENATE BILLS 7

 HOW TO COMPLY? 7

NOTICE REQUIREMENTS FOR AMENDMENTS OR REMOVAL AND MEMBER MEETINGS7

 APPLICATION 7

 THE LAW UNDER THE SENATE BILLS 7

 HOW TO COMPLY? 7

RESPONSIBLE GOVERNANCE AND MEETINGS.....8

MAILING OF NOTICES, POSTING FOR OWNER MEETINGS, WEBSITE POSTINGS AND NOTICES TO OWNERS BY EMAIL.....8

MAILING REQUIREMENT	8
THE LAW UNDER THE SENATE BILLS	8
APPLICATION	8
HOW TO COMPLY?	8
REQUIRED OWNER EDUCATION/ORIENTATION BY ASSOCIATIONS – KNOWLEDGEABLE OWNERS AS AN ASPECT OF RESPONSIBLE ASSOCIATION GOVERNANCE	9
THE LAW UNDER THE SENATE BILLS	9
Once a Year Owner Education/Orientation.....	9
No Additional Cost.....	9
Content of the Education.....	9
Discretion	9
APPLICATION	9
HOW TO COMPLY?	9
OPEN MEETINGS OF THE BOARD/COMMITTEES	9
ATTENDANCE ALLOWED	9
APPLICATION OF OPEN MEETINGS LAW	9
APPLICATION TO REGULAR AND SPECIAL BOARD MEETINGS	10
COPIES OF AGENDAS OF BOARD MEETINGS	10
EXECUTIVE OR CLOSED SESSIONS OF THE BOARD OR COMMITTEES	10
PERMISSIBLE FOR CERTAIN ITEMS	10
ACTION PROHIBITED IN CLOSED SESSIONS	10
REASONS FOR A CLOSED OR EXECUTIVE SESSION	10
MINUTES OF CLOSED OR EXECUTIVE SESSIONS	10
MINUTES FROM CLOSED OR EXECUTIVE SESSIONS ARE NOT CONFIDENTIAL.....	11
GENERAL RECOMMENDATIONS	11
NOTICE OF BOARD MEETINGS	11
NOTICE TO BOARD MEMBERS.....	11
NOTICE NOT REQUIRED TO OWNERS	11
PREFERRED PRACTICE	11
ACTION OF THE BOARD WITH OR WITHOUT A MEETING.....	11
ELECTIONS OF BOARD MEMBERS	12
SECRET BALLOTS.....	12
SUSPENSION OF MEMBER VOTING RIGHTS	12
PROXIES OF OWNERS	12
PERSONS WHO CAN HOLD A PROXY.....	12
PROXY ASSIGNMENTS.....	12
PROXIES OF BOARD MEMBERS.....	12
WORK OR STUDY SESSIONS OF THE BOARD	12
PERMISSIVE	12
DOCUMENTS OF THE COMMUNITY	12
PERSONS ALLOWED TO ATTEND.....	12

Effective Governance of Colorado Owner Associations

❖ **THE SOURCE OF LAW ON GOVERNANCE: TWO STATUTES AND THE GOVERNING DOCUMENTS.**

If the Colorado Common Interest Ownership Act (CCIOA) applies (if the community is subject to mandatory assessments of an owners association) and if the Colorado Revised Nonprofit Corporation Act (CRNCA) applies (if the Association is incorporated), governance issues are addressed in these two statutes and in the Governing Documents for the community (the Declaration, Articles of Incorporation, Bylaws, Rules, Regulations, Policies and Procedures of the Association).

- **The Two Colorado Statutes.** As nonprofit corporations, Colorado owner associations are primarily subject to two different state statutes (in addition to the State and Federal Constitutions and other laws):
 - **Colorado Common Interest Ownership Act.** This state statute, referred to and known by its acronym, CCIOA, is not the focus of this outline.
 - **Colorado Revised Nonprofit Corporation Act.** This statute, or CRNCA, covers many areas dealing with Colorado nonprofit corporations.
 - **The Governing Documents.** The developer (or declarant) had the initial governing documents for the community drafted. The association may have had the governing documents amended, or, amended and restated. Typically, the governing documents can be characterized as follows:
 - Good – these documents should be workable in the short term, with amendments to be made as needed.
 - Bad – these documents, if politically viable, should be considered for amendment.
 - Ugly – these documents should be amended and outreach to the owners to build consensus should be utilized to start the amendment process.

❖ **BASIC NONPROFIT GOVERNANCE – THE AUTHORITY OF THE BOARD AS REPRESENTATIVES OF OWNERS.**

- Board members are representatives of all of the owners.
- At all times the executive board elects the officers.

- The association, through the board and/or officers, contracts with the association's managing agent, the association's attorney and other vendors, subject to rights reserved to the members in the governing documents and state statutes.
- The board sets policy and makes major decisions for the Association.
- Management implements the policies and decisions of the Board.

❖ **HOW TO EFFECT CHANGE IN AN ASSOCIATION?**

Become a member of the board.

❖ **RESPONSIBLE GOVERNANCE BEGINS WITH THE DEVELOPER, THE GOVERNING DOCUMENTS AND THE INITIAL DEVELOPER-CONTROLLED BOARD**

- **Declarant Control of the Board of the Association.** CCIOA, if it applies, and the governing documents, allow for an initial period of declarant control of the board of an owner association. CCIOA requires the declarant to turn over control of the board to the association as units are sold or time expires. How did the developer-controlled board do at establishing initial governance and operation of the association? And, the transition to owner control of the Board?
- **Actions of the Developer-Controlled Board.** The actions of or the failures of the Board to act set the initial tone for governance of the community and the association. The following are the key areas where action by the developer-controlled board will assist in achieving current responsible governance and aid in future responsible governance once the owners control the board:
 - Selection/retention of a "professional" managing agent
 - Establishing and maintaining a budget that achieves adequate funding of association services
 - Using the budget process of CCIOA to educate the owners/members on the costs of services and operations of the association.
 - See section 303(4) of CCIOA
 - Selection/ retention of knowledgeable vendors to the association (landscape maintenance, snow clearing, exterior building maintenance, roofing contractors, an association attorney, an association accountant, insurance agent, reserve specialists, etc.)
 - Collection of assessments
 - Enforcement of covenants and rules
 - The conduct or character of the annual meeting
 - The conduct or character of board meetings

❖ **Responsible Owner-Controlled Boards.**

➤ **Responsible Boards understand their primary duty under CRNCA: the duty of care (or the standard of conduct).**

- **The Duty of Care.** Under CRNCA, directors must discharge a duty of care or act with a standard of conduct that includes three elements:
 - Act in good faith
 - Act with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - Act in a manner the director reasonably believes to be in the best interests of the association

➤ **Indicators of Responsible Boards**

A board is “good” when the following are obtained:

- Engage and maintain “professional” management
- Serve the owners and the community
- Seek unanimity on actions of the board
- Educate owners, while building consensus for decisions of the board
- Make decisions and act in a time efficient manner
- Inquire vs. demand
- Listen carefully and be aware of the concerns of owners, residents and occupants

➤ **Indicators or Indicia of Great Boards.** A good board becomes great when it or the members of the board:

- are informed and knowledgeable about CIC’s and HOA’s and their community and documents, in particular
- exercise independent judgment
- obtain independent advice
- select and support good, professional management
- dedicate the time required
- attend and participate in board meetings
- are alert to changes
- focus on the community
- connect with the community
- organize or sponsor social events for the community
- recognize and value owners, community volunteers, task forces and committees
- apply the vision/basis of the community when making decisions;
- focus on policy
- allow/require management to implement policy

- know their duties, their documents, and honor both
- are thoughtful and careful
- budget adequately and expend member monies prudently
- apply risk management practices
- are adequately insured, without gaps in coverage and consistent with CCIOA and the governing documents
- guide management
- avoid special treatment
- facilitate process (lead the owners/members to consensus)
- emphasize reasonableness
- solve problems
- survey the owners
- measure the success of the community
- support final decisions of the board
- critique in private
- reach out to the owners/members
- lead to or create a new vision for the community
- engage knowledge and competent vendors
- have a plan for the community
- set and follow policies and procedures

❖ **THE 9 REQUIRED POLICIES AND PROCEDURES OF COLORADO OWNER ASSOCIATIONS UNDER SB 05-100, SB 06-89, HB 1359 AND HB 11-1124**

- **The Law Under the Senate Bills:** Colorado owner associations are required to have nine written responsible governance policies and procedures on the following topics, as of the dates indicated:
 1. Collections (1-1-06) [Source: SB 05-100]
 2. Conflicts of Interest (1-1-06) [Source: SB 05-100 and HB 11-1124]
 3. Conduct of Meetings (1-1-06) [Source: SB 05-100]
 4. Enforcement of Covenants and Rules (1-1-06) [Source: SB 05-100]
 5. Records, Inspection and Copying (1-1-06) [Source: SB 05-100]
 6. Investment of Reserves (1-1-06) [Source: SB 05-100]
 7. Adoption of Policies (1-1-06) [Source: SB 05-100]
 8. Disputes between the Association and Unit Owners. A copy of this policy must be made available to an owner on request. (1-1-07) [Source: SB 06-89]
 9. Reserve Studies and Reserve Funding (8-5-09/7-1-10) [Source: HB 09-1359]
- **Application:** Applies to all common interest communities and Colorado owner associations subject to CCIOA, including timeshare owner associations and club associations.

- **How to Comply** Adopt and maintain the required policies. Update, revise and simplify these policies as needed, and as the governing documents are amended by the members and/or the board.

❖ **PRACTICE POINTERS ON THE DRAFTING AND REVISION OF POLICIES, RULES AND REGULATIONS**

- **Case Law Limitations/Criteria for Valid and Enforceable Policies/Rules.** In general, the courts recognize the following as characteristics of a valid rule or policy. Owners, residents and occupants are more likely to accept and cooperate with policies with these characteristics.
 - The policy or rule must not violate a fundamental constitutional right (e.g., freedom of speech)
 - The policy or rule must be consistent with applicable federal, state and local statutes
 - iii) The policy or rule must be consistent with the association's governing documents (i.e., a policy or rule cannot prohibit what the Declaration or covenants permit and vice versa)
 - The policy or rule must reasonably relate to the operation and purpose of the association
 - The policy or rule must be reasonable
 - A reasonable policy or rule is just, sensible and not excessive (i.e., a policy or rule should be necessary and not more punitive than necessary)
 - Reasonable policies or rules promote legitimate goals
 - Unreasonable policies or rules promote illegitimate goals
 - Unreasonable policies or rules are illogical or unfair, too broad or too severe
 - The policy or rule must be fair. It should not create a separate class or group of owners, residents or occupants
 - The policy or rule should be clear and unambiguous
 - The policy or rule must be uniformly enforced – this means there must be no selective enforcement or exceptions (i.e., a policy or rule must be enforced against all owners, not just owners who are delinquent in payment of assessments)
- **Steps in Developing Reasonable Policies/Rules**
 - Determine the need for the policy or rule in the specific area
 - Answer the question, “Why?”
 - Also, ask whether the policy or rule is designed to meet the purposes of the association/community (to maintain, preserve, enhance and protect the property value of the community, promote harmonious community living and preserve the common scheme and harmonious design of the community)

- Determine whether the problem identified is of sufficient consequence to justify creating a policy or rule – what are the trade offs?
 - Check to be sure that the existing policies, rules and governing documents are inadequate to address the issue.
 - Consider both the immediate impact of a policy or rule and its long term implications
- How is the policy or rule likely to be received? Will the policy or rule meet the requirements of Senate Bills 05-100 and 06-89 or solve a current problem while creating future problems for the community?
 - Identify the source(s) of authority for the policy or rule.
 - Review the governing documents and CCIOA
 - CCIOA and/or the governing documents may provide authority for policies/rules
 - CCIOA and/or the governing documents will allow for a determination on whether the proposed policy or rule must be an amendment to the governing documents or can simply be a new board adopted policy/rule
 - Define the scope of the Policy/rule. Specify "who" and "what" will be covered by the rule.

Check the proposed policy/rule against the criteria of a valid and enforceable policy/rule listed above.

- Use clear, concise and unambiguous language.
- The proposed policy or rule should be drafted in such a manner as to be concise and simple, yet clear and understandable. Avoid words or phrases that are vague or ambiguous. Have the draft policy or rule reviewed or prepared by the association's attorney.
- Before adopted, consider giving notice of the proposed policy or rule to the owners.
 - With notice of the proposed action, the association can build consensus and support for the policies/rules before they are adopted, and will gain acceptance and compliance.
 - Invite written comments.
 - Consider a hearing on the proposed policy/rule if there are significant concerns within the community.
 - Consensus and compliance is possible when policies/rules are viewed as fair and reasonable by owners, residents and occupants.

- Once adopted, notify owners, residents and occupants of the new policies/rules.
- Once adopted, act on and use the policies/rules.

❖ **OWNER RIGHTS TO PARTICIPATE AT BOARD MEETINGS**

- **Application:** Applies to all common interest communities and Colorado owner associations subject to CCIOA, except those associations/communities that include timeshare units.
- **The Law under the Senate Bills:** Owners continue to have the right to speak at board meetings before the board takes formal action on any item under discussion, and conflicting provisions that appeared to require approval from a majority of the board have been eliminated. Owners are allowed to attend any committee meetings, including meetings of the Architectural Review Committee, Nominating Committee, Budget Committee, etc.). If more than one person desires to speak, and there are opposing views, the board is to allow a reasonable number of persons to speak on each side of the issue. Prior to formal action being taken by the Board, on any item under discussion, the Board must allow a reasonable number of Owners to speak for or against an action item. These participation rights are in addition to any other speaking opportunities the Board allows during a Board meeting (e.g., Owner forums). [Sources: SB 05-100 and SB 06-89]
- **How to Comply?** Adopt and maintain an owner participation or conduct of meetings policy that defines the owner's right to participate in board and member meetings. The policy should cover when owners may speak and what procedures need to be followed to participate in board and member meetings.

❖ **NOTICE REQUIREMENTS FOR AMENDMENTS OR REMOVAL AND MEMBER MEETINGS**

- **Application:** Applies to all common interest communities and Colorado owner associations subject to CCIOA, including timeshares and club associations.
- **The Law under the Senate Bills:** Notices of member meetings must include the following:
 - the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and
 - any proposal to remove an officer or member of the executive board, if to be discussed at that meeting. [SB -5-100].
- **How to comply?** If action is to be taken by the members on any one of the following items:

- proposed amendment to the declaration or bylaws
- proposed budget change, or
- proposed removal of a board member or officer
- the notice of the meeting must disclose that proposal (either in the notice, or in the attached agenda, or by other means).

❖ **RESPONSIBLE GOVERNANCE AND MEETINGS.**

Requirements for meetings, elections and proxies are found in the governing documents, the Colorado Common Interest Ownership Act, the Colorado Revised Nonprofit Corporation Act and policies adopted by the Association. Check the governing documents and policies of the Association carefully, as the points covered in this article can be different under those documents.

❖ **MAILING OF NOTICES, POSTING OF OWNER MEETINGS, WEBSITE POSTINGS AND NOTICES TO OWNERS BY EMAIL**

- **Mailing Requirement.** The Association must give notice of annual and special meetings of the Members as required under the Bylaws. Typically, Bylaws require notice by mail or delivery.
- **The Law Under The Senate Bills:** A Colorado owner association must physically post the notice of any unit owner meeting – annual or special – if feasible and practicable, and must also post the notice on its website (if any) or send out an email to all unit owners if the association has the capacity to send email. [Source: SB 05-100]. This email notice must be provided as soon as possible and at least 24 hours prior to the meeting. SB 06-89 clarified that this requirement only applies to member meetings and does not apply to board meetings. [Source: SB 06-89]
- **Application:** These requirements became effective January 1, 2006 and apply to all common interest communities and Colorado owner associations subject to CCIOA, including timeshare owner associations and club associations. The requirement to send email notices of member meetings does not extend to associations or communities that include timeshare units.
- **How to comply?** Associations should adopt and maintain policies, guidelines or rules that specify where physical postings are to occur, if feasible and practicable. Then policies should also identify whether the association maintains a website, and if it does, how posting of member meetings is to occur on the website. Associations should also address in the policies, guidelines or rules, whether the association has the capacity to send email notices to members.

❖ **REQUIRED OWNER EDUCATION/ORIENTATION BY ASSOCIATIONS – KNOWLEDGEABLE OWNERS AS AN ASPECT OF RESPONSIBLE ASSOCIATION GOVERNANCE**

➤ **The Law Under the Senate Bills:**

- **Once a Year Owner Education/Orientation.** At least once a year, and at no individual cost to unit owners, Colorado owner associations must provide education to their owners. [Source: SB 05-100]
- **No Additional Cost.** Any cost associated with providing this education must be accounted for as a common expense. [Source: SB 05-100]
- **Content of the Education.** The content of the provided education must relate to the general operations of the association and the rights and responsibilities of owners, the association and its board members. [Source: SB 05-100]
- **Discretion.** An association's board has the discretion to determine how to comply with this provision. [Source: SB 05-100]

➤ **Application:** Applies to all common interest communities and Colorado owner associations subject to CCIOA, except those associations/communities that include timeshare units.

➤ **How to Comply?** The board must decide how and when it wishes to comply with the requirement that its owners have an opportunity, annually, to receive education on association-related topics. This may include presentations at the annual owners meeting, educational articles in the association newsletter or other flyers, offering a class, having a new homeowner orientation program, posting information on the association website, etc. The association should adopt and maintain an education policy that covers when and how education will be offered to owners. While associations must offer owner education, there is no liability to the association if the owners do not choose to take advantage of the education offered.

❖ **OPEN MEETINGS OF THE BOARD/COMMITTEES**

➤ **Attendance Allowed.** Owners are allowed to attend meetings of the Board of Directors or any committee, except for closed or executive session as allowed by state statute (see below).

➤ **Application of Open Meetings Law.** The open meetings statute applies to all associations subject to CCIOA, regardless of when the community was formed.

- **Application to Regular and Special Board/Committee Meetings.** The open meetings statute applies to all board or committee meetings, whether regular or special.

❖ **COPIES OF AGENDAS OF BOARD MEETINGS**

The open meeting statute requires agendas of board meetings be made reasonably available to members or their representative and encourages associations to provide agendas in electronic form, by posting on a website or otherwise, in addition to printed form. There is no requirement that an agenda be prepared. If one is prepared, the agenda must be made reasonably available at each meeting.

❖ **EXECUTIVE OR CLOSED SESSIONS OF THE BOARD OR COMMITTEES**

- **Permissible for Certain Items:** Board Members or committees may go into executive (closed) session only for the following:
 - Matters pertaining to employees of the Association
 - Matters pertaining to the managing agent's contract
 - Matters pertaining to or involving the employment, promotion, discipline or dismissal of an officer, agent or employee of the association
 - Review of or discussion relating to any written or oral communication from legal counsel
 - Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings
 - Consultation with legal counsel on matters that are privileged or confidential between attorney and the Association
 - Investigative proceedings concerning possible or actual criminal misconduct
 - Matters subject to specific constitutional, statutory or judicially imposed requirements protecting particular proceedings or matters from public disclosure
 - Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy
- **Action Prohibited in Closed Sessions.** The open meetings statute prohibits the adoption of rules or regulations in executive session.
- **Reasons for a Closed or Executive Session.** The open meetings statute requires that the general matter to be discussed or reason for a closed or executive session be announced prior to the board (or committee) going into executive session.
- **Minutes of the Closed or Executive Sessions.** The open meetings statute does not require minutes be kept of an executive session, but requires minutes be kept indicating an executive session was held and the general subject matter of the executive session.

- **Minutes from Closed or Executive Sessions Are Not Confidential.** The open meetings statute does not protect from disclosure, minutes taken in executive session. Minutes taken in executive session are treated the same as minutes taken in open session, and are subject to inspection by owners.
- **General Recommendations.** We recommend that boards and committees discuss and act on the business of the association in open meetings, with infrequent or no use of closed or executive sessions.

❖ **NOTICE OF BOARD MEETINGS**

- **Notice to Board Members.** The Association is required to give notice to Board Members of all Board meetings, as required in the Bylaws.
- **Notice Not Required to Owners.** Notice to Members (of Board meetings) is not required. Some owners believe notice is required, since they have a right of participation. Yet, by state statute, notice to owners is not required.
- **Preferred Practices.** Since Members have a right to attend and participate in Board meetings, Board meetings should be scheduled and held as scheduled, with rescheduling and special meetings minimized. While notice to Members is not required, Members expect to be notified.

❖ **ACTION OF THE BOARD WITH OR WITHOUT A MEETING**

- The Board may take action without a meeting, if allowed in the Bylaws, provided each and every director:
 - signs a consent;
 - votes in favor of the action; or
 - votes against the action or abstains; AND
 - Waives the right to demand that a meeting be held.

OR

- If the Bylaws do not require a written consent of each Board Member (most Bylaws have this requirement), another means to take action without a Board meeting is as follows:
 - A written notice is sent to all Board Members of the action proposed to be taken.
 - The notice states the time by which a director must respond.
 - Each Board Member votes, in writing, ‘for’ or ‘against’ or ‘abstains’ OR fails to respond.
 - No Board Member demands a meeting for the proposed action.

❖ **ELECTIONS OF BOARD MEMBERS**

- **Secret Ballots.** Election of directors by secret written ballot is required only in contested elections (where more candidates are running than there are positions up for election).
- **Suspension of Member Voting Rights.** The Association may suspend the voting rights of an Owner if the Owner is delinquent in his or her assessments; or in violation of the covenants or rules and regulations, if the authority to do so is set forth in the governing documents. In such cases, it is important to have current assessment and/or covenant violation information at the meeting.

❖ **PROXIES RIGHTS OF OWNERS**

- **Persons Who Can Hold a Proxy.** Proxies may be given by Owners to anyone with legal capacity.
- **Proxy Assignments.** The proxy holder may assign the proxy to another person, unless the proxy expressly precludes assignment/transfer.

❖ **PROXIES OF BOARD MEMBERS**

- Directors may vote by directed proxy (the proxy given must direct the proxy holder to vote a specific way on a specific matter, rather than giving the proxy holder the right to vote however he/she sees fit). The Bylaws must expressly provide this authority.

❖ **WORK OR STUDY SESSIONS OF THE BOARD**

- **Permissive.** Work or study sessions of Members of the Board of Directors are not prohibited by state statutes and are permissive, subject to the governing documents and adopted Governance Policies.
- **Documents of the Community.** The governing documents of the community are typically silent on work or study sessions of the Members of the Board.
- **Persons Allowed to Attend.** Work or study sessions of the Board are not meetings (i.e., are not called to order, no actions or votes are taken, and no minutes are kept). As such, owners do not have a right of participation or a right of notice (see the discussion above). Yet, owners may have expectations of being allowed to attend, and also of being notified, even though participation and notice are not rights of owners under state statutes. We recommend that board members consider including owners.