

MOTION or FORMAL RESOLUTION?

and How Do RULES fit Into The Picture?

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When is a formal resolution required (or recommended) and where does it apply? What is the difference between a “motion” and a “resolution” and where does a “rule” fit in the picture? Some say that every decision of a Board of Directors should be memorialized in a formal written resolution. Others disagree.

Black’s Law Dictionary, 6th edition, defines a resolution as “*a formal expression of the opinion or will of an official body or public assembly, adopted by vote.*” It further defines a “Corporate Resolution” as “*the formal documentation of an action taken by the board of directors of the corporation.*”

Black’s Law Dictionary also defines “motion” as “*In parliamentary law, the formal mode in which a member submits a proposed measure or resolve for the consideration and action of the meeting.*”

From these definitions it is easy to see how a verbal motion, defining a new rule, can be voted on and passed by the board and then converted into a formal written resolution for distribution to the owners. The question we ask now is when is a formal written resolution needed and when is a verbal motion (passed by the board and captured in the final approved minutes of the meeting) adequate?

Most board meetings contain a variation of motions made by individual board members, which ultimately wind up in the minutes of the meeting. Many of these motions are purely administrative or, what I call, “non-intrusive”. A non-intrusive motion would be a motion to not hold a board meeting in the month of December or to approve a small amount of money for the social committee to buy soda for the annual Halloween party. These motions do not affect an owner’s right to the use of the facilities or his/her quiet enjoyment of their home. They are more administrative in nature.

Decisions of the board that do affect an owner’s use of the facilities or quiet enjoyment of their home should always be communicated to the owners and the best way to do that is through a formal written resolution. For example, due to an increasing crime problem in the community, the board voted on and approved a motion to require that vehicles belonging to owners have association supplied stickers on their windshield enabling security to more readily identify vehicles that do not belong in the community. This resolution, once approved, would be mailed to all owners.

Another example for the use of a formal written resolution would be the adoption of a formal collection policy by the association. Again, a copy of the resolution and the collection policy (a rule) would be sent to all owners and as of 10-1-09, must be included with the Budget mailed annually to the members for ratification. Why do I call the collection policy a rule? Why is the Architectural Policy a rule?

A rule, in the world of community associations, is created by and approved by the board of directors. Almost all association-governing documents give a board rule making authority. This does not, however, give a board the right to arbitrarily dream up rules that have no basis in the documents. A rule must have its basis in the governing documents. This means that if a board of directors creates a rule that states “no vehicles with commercial advertising or lettering may be parked within the community,” somewhere in the governing documents the board must be given the right to control this type of vehicle and/or parking of these vehicles within the community. Although the basis may not be so discernable, it must be there. If there were no reference to commercial vehicles in the documents, it would be very difficult to justify or support such a rule.

Owner maintenance of their residence or lot is another good example. Most documents are very clear that an owner must maintain their property but are not very clear as to what that means. A board can, and usually does, draft rules and guidelines that “clarify” this area of owner responsibility. Often times, this is in the form of “Architectural Guidelines.”

Based on the foregoing discussion we can see that a motion is a formal method used by members of the board to raise an issue for consideration and action by the board. If passed, it is captured in the formal minutes of the meeting. If it is of a nature that should be further formalized by a written resolution, the board would usually approve a motion to have the manager or secretary draw up a formal resolution for approval at the next meeting.

Formal resolutions are usually in a standard format. Check with your manager or attorney for that format. With few exceptions, you can draw up your own resolutions once you understand the standard formatting. Depending on the issue, having the resolution reviewed by the association attorney is always a good idea to see if they can defend it if taken to court about that specific rule.

It is important to remember that even formal written resolutions by a board of directors are not necessarily permanent. Decisions of the board, in the form of rules or resolutions, can be changed at any time by a subsequent decision of another board. All it takes is a vote of another board in the form of an approved motion to rescind a rule or decision by a previous board. Of course actions like this, particularly where the action involves altering decisions by prior boards, should be preceded by adequate notice to the owners allowing them input.

This is all the more reason why all decisions should be based upon good business decisions and good judgement. The “Prudent Man Rule” Rules! Be reasonable and your decisions are not likely to be challenged by future boards.

Keep in mind that Nevada Law has requirements regarding the adoption and distribution of rules, which must be kept in mind. Any rule must be distributed to the owners within 30 days after adoption and cannot be enforced until that 30 day period has passed. The format of the rules is restricted as well. See NRS 116.31065 for those requirements.