

FACETS

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HOW DO YOU HANDLE A CONTENTIOUS MEETING? IT'S AS EASY AS ONE, TWO, THREE.

By Brady E. Ortego, Roberts Markel Wienberg PC

Whether you are a director, member, or part of the team of folks that manage community associations, you will have the opportunity to attend a contentious meeting. The contentious meeting typically surrounds a controversial decision by the Board of Directors (the "Board") and can be in the form of an annual or special meeting of the members, a board meeting, or even in the setting of a town hall meeting. As legal counsel, I am often called in to field the slurry of legal questions that inevitably surround controversial decisions. My role is dynamic in that, at times, I am answering questions; other times I am implementing crowd control techniques designed to keep an unruly group civil. While each meeting takes on its own being, in my experience, I have consistently experienced three stages. Members should have their voice in the community even if their ideas oppose those of the Board and even if we all must endure a contentious meeting. Prohibiting or unreasonably limiting the voice of the members only serves to drive the controversy closer to the courtroom. With the knowledge of the three stages and the implementation of techniques to assist in crowd control, you can give the members their voice without escalation of the controversy toward the courtroom.

Stage one begins with the all too easy accusation that the Board made a decision in violation of the law and/or the dedicatory instruments for the community. The basis for this accusation is typically that the members were not allowed to vote or otherwise approve the Board decision. A lesson on the decisions traditionally reserved for the Board versus those reserved for members is appropriate. The members need education in that case law, statutory law, and/or the covenants create the authority for the Board to make the decision absent a vote of the membership. While the message may not be accepted quite as simply, the true issue here is that both the law and dedicatory instruments require a vote of the members for a finite number of decisions, i.e., elections, amendments to restrictions, and assessment increases to name a few. Additionally, the membership elected the Board to make decisions on their behalf; however, members often do not consider that, in some instances, the Board they elected will render a decision that is not of the member's liking.

Once the members accept that the Board complied with the law and dedicatory instruments, stage two focuses on what the members feel the Board should have done. "The Board should have told us!" "The Board

should have included us in the process!" "The Board should have let the members make the decision anyway!" At this stage, it is prudent to encourage volunteerism including participation in committees that are often organized to assist the Board in their decision-making and also attendance at board meetings. Newsletters, website updates, meeting notices, meeting minutes and other appropriate documentation that provided the information to the members and/or outlines the process of the decision-making should be referenced. In one meeting after encouraging volunteerism and participation, a member stood up and announced that she did not have time to attend meetings, participate in committees, read newsletters, read minutes, and/or look at the website. In the same breath, she faulted the Board for not keeping her apprised of what the Board does with "her money." Her cries were echoed with cheers from the other members in the crowd. Common sense dictates my response to this member, but this is a perfect example of the expectations from members and the challenges faced by the Board, management, and legal counsel when there are no words to satisfy an upset member.

It is important to know and expect that members in support of the Board's decision will be in attendance. Even though the Board's decision may have been controversial, odds are, more than just the Board are in favor of the decision. This group is typically the minority group and may be hesitant to speak up at first. Search them out, as it is important for all involved with the meeting to hear both perspectives. You will see them in the crowd nodding along with you as you explain the Board's position.

By the time the meeting reaches stage three, basic biological necessities associated with sleep and hunger appear to drive the audience. Once the members have exhausted themselves with stages one and two, there is little else left to attack other than the character of the Board, the manager, and/or legal counsel. One must exercise extreme caution at this phase. Board members, managers, and attorneys included are not immune to the basic biological needs and the negative effect on behavior that can occur when stressed. You do not have to respond to hostility or personal attacks and responding or engaging typically creates an argument. You will often hear a recycling of the arguments previously made. As the moderator, it is the perfect time to point out that we have heard repeated

arguments, heard from the same members multiple times, and focus on concluding the meeting. Whether the members against the decision made by the Board admit it or not, they are ready to go home too.

Tips for controlling a contentious meeting:

- (1) Early announcement that everyone has 2 minutes to speak (or a similar limited time).
- (2) Early announcement that the meeting will be concluded if people are not civil.
- (3) Early announcement that everyone must speak one at a time.
- (4) Prohibit or limit applause and cheers after a speaker; it simply wastes time to allow it after each speaker.
- (5) Identify the goal of the meeting early on, such that if you feel you are straying from the goal, attention can be re-directed.
- (6) If the meeting is anticipated to be particularly hostile, have the Constable or Sheriff in attendance. Their presence has a calming effect and if lack of civility occurs they are the professionals who can handle these issues.
- (7) Speakers must utilize a microphone or must be recognized prior to speaking if no microphone is available.

In closing, the members must be given a voice and appreciating the path that a contentious meeting may take will prepare you for the unexpected. I learn something from each meeting that I attend that I did not know before. I learn the most from the contentious meetings and all have helped me become a valuable moderator and a calming influence in those situations. Mangers and board members alike can take on these skills and the end result is a healthy respect from the members, even from those members opposed to the Board. ♦

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