Gmail Andrew Mowery <andrew.p.mowery@gmail.com>

Special Meeting Notice

Andrew Mowery <andrew.p.mowery@gmail.com> Fri, Jul 26, 2019 at 11:55 AM
To: walker flanary <wgflanary@gmail.com>
Cc: Buck Hammond <buck.hammond@gmail.com>, Gloria Jones <jonesgjpohoa@gmail.com>, ben johnson <WindsorBen@gmail.com>
Bcc: Kevin Brucker <kevinb371@gmail.com>, Linda Brucker <linda.brucker@gmail.com>, Colocampbell <colocampbell@gmail.com>, matt clark <wmattclark@hotmail.com>, Keith Knight <send.keith@gmail.com>

Walker,

Thank you for the pedantic response. Did the Policy from Feb. 1, 2006 also consider the highlighted words carefully?

> "Notice for Annual Meeting. Notice for the Annual Meeting each year ***will be sent out by first class mail at least 30 days prior to the meeting***."

If yes, when they carefully considered compliance with the statute, can you state the reason that 30-days notice is necessary for Annual Meetings vs. Special Meetings? Is it possible that both should be treated equally when the circumstances are considered? It is possible the fix is adding two words to that policy ("and Special")?

Similarly, when Altitude Law wrote their article, do you think they carefully considered the highlighted words before unequivocally advocating mailing notices for Special Meetings held to consider removal of the Board?

When are you mailing the notice? Will it include the proper proxy for members to use for this vote? Will you include a summary of issues authored by any members who wish to include them in the mailing?

Meanwhile, you ignored the issue of censorship. Where is dissent properly published for all members to see?

Andy

On Thu, Jul 25, 2019 at 2:36 PM walker flanary <wgflanary@gmail.com> wrote:

> Andy:
>
> Take note of the following and read it carefully. Pay special attention to the words **"OR" and "*OTHER*"**:
>
> Article IV (HOA Bylaws)
> Section 3 (c) 1) Notice is fair and reasonable if:
>
> "The Association notifies its members of the place, date, and time of each annual, regular, and special meeting of members **no fewer than ten (10) days, *or if notice is mailed by* other than first class mail** or registered mail, no fewer than thirty (30) days and no more than sixty (60) days before the meeting."
>
> Notices to members of annual and special meetings have always been sent via first class mail and this will remain the practice!
>
> On Wed, Jul 24, 2019 at 5:04 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:
>
> > Walker,
> >
> > One other point made by Altitude Law (previously sent link) the references mailing out notices.

https://altitude.law/resources/newsletter/special-meetings-of-owners-must-they-be-called-just-because-an-owner-asks/

> Once an association receives a demand for special meeting from owners, ***it must take appropriate steps to review the signatures*** to ensure it truly represents at least 20% of the owners. This means reviewing the signatures themselves to ensure they are from owners and not renters or individuals who are not on the deeds. Also, to the extent a board member or manager is familiar with any owners' signatures, it would behoove the association to make sure the signatures match.
>
> However, ***the Colorado Revised Nonprofit Corporations Act requires an association to perform such verification*** within 30 days of receipt of the request as notice of the special meeting must be sent out on or before the 30th day after receipt. If a board fails ***to mail out notice within the specified 30 days***, the owners demanding the meeting may set the meeting and ***mail out their own notice*** on behalf of the association, which would mean the association would have no control over the date, time, or location of the meeting.
>
> Please keep in mind meeting notices must be provided at least 10, but not more than 50 days before the meeting. Therefore, notices of special meetings must also follow such timeline. Based on these requirements, it is possible for an association to technically wait 80 days from the date a request is submitted before holding a special meeting (i.e. notice is sent 30 days after receipt and meeting date is 50 days after notice date). However, ***this may be viewed as bad faith by the board*** and cause political ramifications.

Now, just because Altitude Law says "mail out" doesn't have the same weight as our Bylaws or statutes. But, this is, once again, our previously stated attorney of choice, Altitude Law giving such advice. And, included in this same set of advice is the comment about procrastinating to the end-limits of deadlines is considered "bad faith", which is, again, part of the issue I've been raising. You can be narrowly within the boundaries of statutes, but still be acting in a manner that is frowned upon by many. And, that's been our pattern, therefore my concern.

In addition, as I pointed out before the 7/16/19 deadline, CCIOA requires the association to verify the signatures. Since we canceled our regularly scheduled board meeting, and this doesn't appear to be a committee function, it appears we did not properly fulfill that requirement.

While I am not aware of any of the Petitioners protesting the date or location of the meeting, this may be a moot point in terms of an actual change to the scheduling. But, the fact of the matter, in spite of knowledge of the requirements, we once again chose to ignore them. If they chose to challenge the scheduling, I do believe they would have a valid case to schedule at a time and place of their choosing, and "mail out" their own notice. As for the determination of whether the notice includes details about the meeting agenda and how members participate, as well as the valid proxies to be used, I do not believe what has already been posted meets those requirements.

If you have hired Altitude Law (and it's about time to disclose that to all Board members, if that is the fact), you might want to run their article by Melissa Garcia to ensure that we are compliant with all requirements. If we are operating without an attorney, then I would suggest you get professional advice vs. relying upon your own opinion.

Andy

On Wed, Jul 24, 2019 at 3:11 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

> Walker,

The Bylaws call for 30-day written notice by hand-delivery or USPS mail. And, if you think the sole action of posting on the website (status quo) is sufficient per the bylaws or CCIOA, the Nonprofit Act calls for a subjective criteria of "fair and reasonable". If you know posting on the website isn't reaching everyone, then it's logical to conclude that making a discretionary choice is neither fair nor reasonable to those who are not reached by such means. If you'd like to debate whether it's a fact that members are actually accessing this information on the website, please provide the exported website data up to current. I have already provided the evidence prior to your takeover of the website.

That, in turn, calls into question the underlying motive for doing the least possible effort and method for contacting everyone when the subject of the meeting is the very removal of the persons making such a decision. It has the appearance of suppressing participation of those who might vote for your removal, or causing them to be absent, uninformed, or less-informed when making their decision. Again, you haven't responded to your censorship actions which are apparently not an effort to put dissent or criticism in it's correct place, but rather to silence and eliminate it altogether. We are not an authoritarian HOA operating under the euphemism of a "republic" where the elected board members operate without any regard to the wants and needs of it's members in between elections, and that is part of the core issue of non-compliance that has caused the conflict in the first place. You must allow owners to have access to information from those who oppose you and are demanding your removal - and that includes other board members.

The overarching problem is that you are ignoring ***ethics*** while searching for the minimum legal threshold by which to self-determine your actions as compliant with the statutes and governing documents. Analysis of the subjective criteria and data regarding how our members use the website (or supply email addresses, for that matter) clearly point to a necessity to mail out a notice. Compliance with the letter of the statutes is required, but compliance with the spirit and ethics of the statutes is also required with good faith subjective judgement. Your email states you will comply with bylaws, but the citation from CRS 7-127-104 Paragraph (1) is:

> (1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members ***in a fair and reasonable manner.***

You ignore the last 6 words of the statute that applies here. And, fair and reasonable isn't left to the imagination:

> (3) Notice is fair and reasonable if:
>
> (a) The nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days, or ***if notice is mailed by other than first class or registered mail,*** no fewer than thirty days, nor more than sixty days before the meeting date, and if notice is given by newspaper as provided in section 7-121-402 (2), the notice must be published five separate times with the first such publication no more than sixty days, and the last such publication no fewer than ten days, before the meeting date.
>
> (b) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members or for which the members' approval is sought under sections 7-128-501, 7-129-110, 7-130-103, 7-130-201, 7-131-102, 7-132-102, and 7-134-102; and
>
> (c) Unless otherwise provided by articles 121 to 137 of this title or the bylaws, notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.

Fair and reasonable is defined, and if you send by mail, you meet the criteria. If you do not, the statute outlines publishing that would be necessary. And, given that few, if any, now read local newspapers, I don't think it's fair or reasonable to use that as a criteria.

This is why Altitude Law (whom you may have already formed a relationship with, but are not disclosing to other Board members as required by statute) offers advice on this matter:

> Notice
>
> In the event a Special Meeting of the Members is called for recall purposes, the

notice for such meeting should:

- ***Be mailed to all homeowners*** not less than 10 days or more than 50 days prior to the meeting, and in accordance with the Association's Bylaws.
- Be physically posted in the community.
- Be posted on the Association's website and ***emailed to all homeowners*** who have provided an email address to the Association and requested such electronic notice.
- Indicate that the purpose of the meeting is to vote upon the proposed recall and removal of the Board and clarify if the entire Board or only specific individual directors will be subject to the removal vote at the meeting.
- ***Include a proxy form***.
- ***Include a clear agenda and outline the process that will occur at the meeting*** including the process to allow homeowners and directors to address the membership and how any vacancies will be filled if a director is removed.

Would you care to cite the Bylaw that contradicts or overrides such advice on a matter requiring subjective judgment? Or, would you care to open up a discussion about the inadequacy of what has already been done?

If you have a written standard you are following, whether from within our governing documents or from another source (another HOA law firm, for instance), then please go ahead and provide. However, if your intent is to send cryptic legalese to general members, and back it up with non-specific references to "bylaws", I'd question whether that meets the criteria of "fair and reasonable" in CRS 7-127-104.

Again, I'm planning to contact everyone in the neighborhood in writing directly, at this point, as you clearly don't intend to allow dissent to reach them through any of the HOA resources (website, Facebook, mailing). I don't see where censorship is defined or allowed in our Bylaws, but go ahead and cite the clause you feel supports one board member censoring another.

I await your response.

Sincerely,

Andy

On Wed, Jul 24, 2019 at 12:38 PM walker flanary <wgflanary@gmail.com> wrote:

> All Board Members:
>
> In an effort to discourage unnecessary emails with regard to the notice to be given to HOA members concerning the upcoming special meeting, please refer to the notice provisions of our by-laws, which is clear on the subject. Notice will be given in an appropriate and timely manner pursuant thereto.
>
> Regards,
>
> Walker

On Tue, Jul 23, 2019 at 10:18 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

To the Board:

Are we sending a mailing 30 days in advance? If no, what's the explanation/reason?

Sincerely,

Andy

On Tue, Jul 16, 2019 at 5:34 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

Per CCIOA 38-33.3-308 Paragraph (1):

> Meetings of the unit owners, as the members of the association, shall be held at least once each year. ***Special meetings of the unit owners*** may be called by the president, by a majority of the executive board, or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than fifty days in advance of any meeting of the unit owners, ***the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner***. The notice of any meeting of the unit owners shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given pursuant to paragraph (b) of subsection (2) of this section. The notice shall state the time and place of the meeting and the items on the agenda, including 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***.

Per CRS 7-127-104. Notice of meeting.

> (1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members ***in a fair and reasonable manner.***
> (2) Any notice that conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.
> (3) Notice is fair and reasonable if:
>
> > (a) The nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days, or ***if notice is mailed by other than first class or registered mail,*** no fewer than thirty days, nor more than sixty days before the meeting date, and if notice is given by newspaper as provided in section 7-121-402 (2), the notice must be published five separate times with the first such publication no more than sixty days, and the last such publication no fewer than ten days, before the meeting date.
> > (b) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members or for which the members' approval is sought under sections 7-128-501, 7-129-110, 7-130-103, 7-130-201, 7-131-102, 7-132-102, and 7-134-102; and
> > (c) Unless otherwise provided by articles 121 to 137 of this title or the bylaws, notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.
>
> (4) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7-127-106, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.
> (5) When giving notice of an annual, regular, or special meeting of members, a nonprofit corporation shall give notice of a matter a member intends to raise at the meeting if:
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> > (a) Requested in writing to do so by a person entitled to call a special meeting; and
> > (b) **The request is received by the secretary or president of the nonprofit**

corporation at least ten days before the nonprofit corporation gives notice of the meeting.

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To the Board:

I have received the Special Meeting Notice attached to the email by Walker on 7/15/19. It appears necessary to send a notice (different than the one attached) via USPS mail to all members for the following reasons:

A. CCIOA 38-33.3-308(1) appears to require either hand-delivery or USPS mailing of a notice.
B. Our Bylaws Article IV Section 3(c)(1) references "first class or registered mail" in regards to notices
C. CRS 7-127-104 states that the association "shall" give notice that is "fair and reasonable"
    1. We know that 47% of our members have not visited the HOA website in the current year. We also know that over 60% have not visited the website in the past 30 days.
    2. We know that several members do not have an email registered with the HOA website
    3. We have received feedback complaints from members regarding notice
    4. USPS mail is defined as a "fair and reasonable" option in this section if sent no fewer than 30 days in advance of a Special Meeting (July 28, 2019 in this instance)

In the past, we have argued over the explicit instructions in CCIOA and the Non-Profit Act. Over the weekend, I met with an aide to Gov. Jared Polis who shared an interesting comment regarding efforts to seek only minimal compliance by only seeking the explicit instructions vs. following standards for which subjectivity may be used. In this case, the standard is "fair and reasonable" in regards to notice. I advocate that it is not fair and reasonable to only give notice in a manner which we know does not reach a high percentage of our members, or does not reach some members at all. When I relayed the debate we have had over emailing notices regarding board meetings, he found it to be "typical" of those who don't believe there are ethical considerations above and beyond following the minimum standards of the law. He asked me if those opposed to sending e-mail notices ever brought up the topic of "fair and reasonable", and I said I could not recall that entering the discussion - that our board would only act if explicitly directed by the letter of the law. He acknowledged this is a "typical" problem, and motivation for changing the law.

I believe that given the nature of this Special Meeting it is only fair and reasonable notice if we post an announcement on the website that includes adding an event to the calendar, that we email all members, that we post flyers on the USPS mailboxes, and that we send a USPS First Class written notice that also contains both proxies, and a summary of the issues.

Included in this mailing should be allowed a summary of the issues regarding this Board that are pertinent to the decision to be made by the owners. Specifically, I am formally requesting inclusion of a written summary of my contention that members of this Board have not been compliant with state statutes and the governing documents. I am making this request pursuant to the requirements in CRS 7-127-104. I am also making this formal request due to the extreme efforts to censor any and all discussion and dissemination of documents related to this topic by blocking my access to the HOA Facebook Group, removal all related documents from the HOA website, and sending a broadcast emails suggesting that the Board needs to approve the dissemination of dissenting opinions prior to their publishing. In fact, when a decision about the performance of a Board member is at issue, it appears to be necessary for those voting to have the ability to consider facts and opinions from everyone - not just those approved by the Board. I am formally requesting a remedy to this issue of censorship, including time to present at the meeting itself.

I also believe it will be necessary for the Board to make specific decisions regarding proxies (including compliance with CRS 7-127-203 and 7-127-204), regarding the agenda and schedule for the meeting, regarding the process for any member who wishes to speak, and the process by which secret ballots will be printed, issued, collected, and counted. This is a significant amount of work, and if I am correct about timelines, we have approximately 12 days to meet the requirements for mailing such a notice out to
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members 30 days in advance.

While my calls to either have Action without a Meeting, or a Special Meeting with sufficient notice have gone mostly without response, I think it is necessary to continue to document any and all attempts to do things that are compliant and correct. I do hope that you'll consider a response.

Sincerely,

Andy

On Mon, Jul 15, 2019 at 7:28 AM walker flanary <wgflanary@gmail.com> wrote:

Board:

Attached is a copy of the notice of special meeting of the HOA sent to the Tuminello's in response to their request. This will be posted on the website in the very near future.

On Mon, Jul 8, 2019 at 8:11 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

In addition to the unanswered questions below, I have a few more questions:

1. Was the board meeting cancelled by the majority of the board or was this an officer decision?
2. What is the reason for the cancellation?
3. In response to the petition:
    A. Are we validating the signatures, as this is a required duty?
    B. Are we having a Special Meeting to validate the signatures and/or schedule the petitioners meeting?
    C. Are we using Action Without A Meeting to validate the signatures and/or schedule the petitioners meeting?
    D. Are we ignoring the petitioners' deadline, and allowing the petitioners to schedule their own meeting?
    E. Are we attempting to invalidate the petitioner's action?
    F. If we are not official responding by the 7/16/19 deadline by validating and scheduling, will we let the petitioners know in advance of our intentions?

On Fri, Jul 5, 2019 at 9:24 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

Is there going to be another "special meeting" sprung on us like last time?

Will there be an attempt at any Action Without A Meeting for any subject matter?

More to the point: Is the Board planning to respond to the Petitioners with a board vote on any related topic prior to the 30-day deadline, which is in less than 2 weeks? Or, is the Board intending to allow the Petitioners to schedule their own meeting?

If you are planning another Special Meeting, I will need no less than 7 days advance notice, and, again, I will be participating by conference call.

On Fri, Jul 5, 2019 at 9:12 PM walker flanary <wgflanary@gmail.com> wrote:
Pardon the typo. The next meeting is August 13, 2019

On Fri, Jul 5, 2019 at 9:11 PM walker flanary <wgflanary@gmail.com> wrote:
The Board meeting set for July 9, 2019 has been cancelled. The next scheduled meeting will be held August 123, 2019.

On Fri, Jul 5, 2019 at 2:25 PM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:
To the Board:

We are now 4 days before the next scheduled board meeting. I've not received a response to any email about Board business in weeks, and it does not appear that you have any intention to be compliant with the Non-Profit Act in regards to sharing information with Board members. Please refer to earlier emails regarding the statutory citation.

Regardless, you have an obligation to post on the website so that Owners can plan in advance. Leaving everyone hanging until the last minute is anti-transparent, particularly when you have a petition to remove the board without any response. It's kind of astounding, actually.

But, if you can't respond to me, at least have the courtesy and decency to inform the rest of the owners about the meeting time, location, and whatever rules you plan to enforce at the meeting (such as confiscating their personal belongings). I will be attending by conference call, so please let me know what number to call. Also, it would be nice not only to have an agenda, but also to know what business you've transacted since our last legitimate meeting on 5/14/19. Again, the Non-Profit Act requires that you share ALL information - you cannot continue to keep secret what you are doing.

Also, just so that you know, the petitioners have been given alternate means to review and pass along all information you removed from the website. In addition, that same information is also now shared with several legislators who are creating new legislation after the veto of HB 19-1212 because Gov. Polis wants more transparency and owner rights included in the legislation. I have been in contact with Rep. Brianna Titone for quite some time, and I'll just say that our conflict is run-of-the-mill, and demonstrative of the need to have clearly defined boundaries for board members who only seek to comply with the law as minimally as possible, if at all. When I told her that you weren't responding to the petitioners, she was kind of floored at the defiance and recognition that the community cannot address board members who are non-compliant with statutes and governing documents without such extreme efforts.

I am aware of your door-to-door campaigning against me (not my positions or the report of violations I've advocated a response to), by passing along derogatory comments and ad hominem attacks. These include accusations, insinuations, and advocacy of my actions being actually criminal in nature.

I would like to ensure that this is a topic of discussion on the agenda. Please confirm either

directly, or by posting the agenda on the website. I will not respond in kind to such accusations. My approach has been to document the words and actions that are non-compliant with state law or the governing documents, but not to make such issues personal. I want to remind you that I am still awaiting a response as to whether or not your accusations of "harassment" (meeting criminal criteria, as Buck has advocated) is being made by individuals, or is a board action. I will respond appropriately when you put your disposition on the matter in writing.

As a reminder, per se slander criteria is met if a false accusation of criminal conduct is made to any other person than the subject, and this was done in writing by Buck. He made abundantly clear he was not just using the word "harassment" as a general description, and took specific actions (contacting the D.A., attempting to use the accusation as a bargaining chip for Walker's resignation, and in direct verbal accusations which I have audio recordings). I simply need to know whether you are advancing this issue in your door-to-door campaigning as board members, or as individuals. Not all of the owners you are approaching are appreciative of your effort to brand my actions as criminal, and some are relaying what you are doing back to me. As a result, this does need to be discussed at the board meeting to clarify exactly whether these are personal or board actions, and what code of conduct should apply going forward.

Please also note that I have several tabled items for the agenda from the 5/14/19 meeting, as well as several written motions for consideration. If these are not to be included in the agenda, please explain why in writing.

Sincerely,

Andy