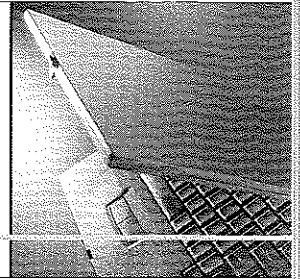


# CHAPTER ONE:

## THE ASSOCIATION OR CORPORATE SECRETARY



THE ASSOCIATION OR CORPORATE SECRETARY is generally a member of the association and, like all officers, elected annually by the board. In some instances, where state law and association documents permit, associations can appoint a secretary who is neither a member nor a director.

State laws typically define the role of a community association secretary if the association is incorporated as a non-stock, non-profit corporation. Regardless of whether the association is incorporated, the community's bylaws also outline the secretary's responsibilities.

To avoid conflicting duties, select a secretary who is not a member of the board. If additional secretaries are needed, most documents allow the board to appoint assistant secretaries and other officers. If assistant secretaries are appointed, they may perform some of the duties of the secretary. All assistants should report to the corporate secretary, who is ultimately responsible for ensuring that tasks are completed.

### **THREE JOBS IN ONE**

Unless assistants are appointed, the association secretary wears three hats. The recording secretary is responsible for recording and keeping the minutes of all association meetings; the corresponding secretary maintains all correspondence and related documents; and the filing secretary handles the storage and retrieval of all association documents.

The documents should be available for review by members, prospective buyers, and new directors at all times. Consider creating a table of contents of the association's documents and rules, including the adoption of the original resolutions and any

subsequent amendments. New directors and officers should have a complete set of the association's documents. To minimize copying costs, some associations ask directors to sign for their copies of documents and to return them when they leave office.

An association's articles of incorporation typically require the association to use a corporate seal on significant documents. The articles sometimes decree the appearance and wording of the seal. The secretary keeps the seal and is responsible for affixing it on certain papers signed by an association officer. Not all states require an association to have a corporate seal, but many banks ask for a copy of a resolution bearing the seal to open an account or to purchase a certificate of deposit. Companies that produce corporate seals can be found in the telephone book.

The secretary cannot officially bind the association to a financial transaction or contract, but the seal is often required to witness or attest to the signatures of association officers. The signature of the secretary—endorsed by the corporate seal—indicates that the officers signing the document are who they say they are and that they are authorized to sign the document.

#### **MAINTAINING A MEMBERSHIP LIST**

The association secretary maintains a list of all the members of the association, their current mailing address, as well as their voting percentages. Care should be taken to ensure that the names of the owners are correct and, if possible, that they appear as they do on the deed. Renters will be kept on a separate list.

How an association maintains its membership list depends on the size of the association and the technology available to its officers, managers, and members. Very small associations can keep this information in a notebook or on index cards—or on a PDA. Mid-size associations may simply want to maintain a typed list of members that can easily be updated and duplicated on labels. Whenever possible, and especially for large associations, maintaining a membership list on a computer system is a must. Computerized lists can be easily manipulated to produce mailing lists, agendas, meeting sign-in sheets, architectural control records for each unit, and lists of contractors and vendors. In addition, associations with computers and internet access can communicate with members through e-mail notices—a valid form of meeting notice in many states.

**FIGURE 1. DUTIES OF AN ASSOCIATION SECRETARY**

- An association is a business and, like any business, must preserve its history, maintain its records, and protect itself from liability. As its chief information officer, the association secretary shepherds its records.
- The association secretary has three jobs: to serve as the recording secretary, the corresponding secretary, and the filing secretary. While others may assist in the performance of these tasks, it is the association or corporate secretary who must ultimately ensure that records are handled properly.
- The role will not overwhelm the secretary who establishes systems and follows them consistently. If association documents do not clearly state certain procedures, the secretary should play a key role in designing systems for each area of responsibility.
- Taking minutes is a fast-paced job. Requesting that board members submit written resolutions before meetings will expedite the recording and transcribing process if the resolutions are adopted.
- A wise secretary carefully prepares for each meeting. A diagram of the seating arrangements and the use of voting and attendance charts will help in recording votes. Different colored pens and pencils can be used to flag motions, revisions, and resolutions.
- Minutes should be transcribed and a draft forwarded to directors within 24 hours. Stamps reading "APPROVED" and "UNAPPROVED" should be used to mark each page of the minutes. Unapproved minutes should not be filed in the minute book until approved.
- The corresponding secretary has many bosses. Boards should set guidelines to determine who drafts and signs various types of correspondence. While a secretary may prepare technical papers and contracts, he or she cannot proofread or be responsible for content.
- Some records are more important than others. Documents that govern the community, protect it from liability, and affect its monetary position require special attention. The secretary should make copies of the association's professional contracts, articles of incorporation, bylaws, deeds, and covenants. Store the originals in a safe deposit box or ask the association attorney to keep them.
- As the custodian of all records, the secretary will devise an effective filing system and will store files in a safe and accessible place.
- The secretary maintains files, but also must dispose of obsolete files. The secretary will seek the advice of both the accountant and the association attorney to draft a proposed "kill" schedule, which must be approved by the board.

**FIGURE 2. SAMPLE SECRETARIAL RESPONSIBILITIES**

**Article 1396—1.02 Definitions**

(10) "Secretary" means that officer designated as "secretary" in the articles of incorporation or the bylaws of a corporation, or that officer or committee of persons authorized in the articles of incorporation, the bylaws, or otherwise, to perform the functions of a secretary, irrespective of the name by which he or she, or they, may be designated.

**Article 1396—2.20 Officers**

A. The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board. Any two or more offices may be held by the same person, except the offices of president and secretary.

**Article 1396—2.23 Books and Records**

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority of the board of directors, and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote.

B. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

*—From the Texas' Nonprofit Corporation Act Pertaining to the Duties and Responsibilities of a Secretary*

**MEETING NOTICES**

In accordance with the association's bylaws, the corporate secretary announces all meetings. For the record, the secretary prepares and signs an Affidavit of Giving Notice indicating the date he or she mailed the meeting notices. A copy of the meeting notice is attached to the affidavit; a list of those to whom notices were mailed also is often included. This list can be used to verify addresses when homeowners claim they did not receive a notice. Use the returned mail to update the association's membership roster.

### FIGURE 3. SAMPLE PROOF OF NOTICE

I, [name of association secretary], declare that:

At all times herein mentioned, I was secretary of the [name] Association, a [state] corporation, and the person charged with the duty of giving notice of meetings of the corporation.

I served the foregoing attached notice of meeting on [date], by depositing true and correct copies thereof in the United States mail at [city, state], in sealed envelopes. With postage fully prepaid, addressed to the members whose names appear on the attached notice at the addresses appearing under their respective names on such notice, which were the latest addresses given to me by the association for the purpose of giving notice to such members.

At said time there was a regular delivery of the United States mail between the places of deposit and address.

Executed on [date] at [location].

SEAL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed name and title

### THE PROXY PROCESS

An association's documents or state law usually permit a member to vote by proxy, selecting someone to vote on his or her behalf. An absentee owner might leave a proxy with a good friend or a business associate empowering that person, within the limits of state law, to vote in his or her stead. The association's document retention policy should specifically address how the proxies should be kept and for what length of time.

It is up to the secretary to verify that the person issuing a proxy is the owner of record and is in good standing and therefore eligible to vote. An owner in good standing is one who has paid all assessments, special assessments, fines and charges, and who is not otherwise in violation of the governing documents. The secretary also must ensure that a person who has filed a proxy does not vote in person. Finally, the secretary must ensure that proxies and ballots are kept in the association's records.

## DECIDING WHETHER TO USE PROXIES

The proxy process will run smoothly if the meeting notice states the conditions of voting by proxy. When determining the proxy process, it is important to consider the following questions:

1. Will duplicates of the proxy form be used? If board members are concerned about having a quorum to pass an important issue, the idea of being able to use duplicates will appeal to them. By using duplicate proxy forms, board members can carry blank copies for homeowners to sign if they choose to launch a door-to-door solicitation effort.
2. Will a proxy signed before a specified date (such as the date of meeting notice) be valid?
3. Does the proxy need to be notarized? Such a requirement may inconvenience some homeowners and could reduce the number of proxies submitted, which could result in the lack of a quorum. Some state laws and association documents require proxies to be notarized. In these cases, the wise association will pay for a notary to be onsite at specific times to encourage members to submit their proxies.
4. When and where does the proxy need to be submitted? Some documents mandate that proxies be submitted at some date prior to the meeting, while others do not. Prior submission of proxies is a good idea if the association is large or if there is weighted voting. If homeowners submit their proxies 24 to 48 hours before the meeting, the secretary will have enough time to mark the voting sheet. This advance preparation will enable the secretary to quickly determine if there are duplicate proxies and if there are enough votes to constitute a quorum. However, unless the documents specify a submission deadline, the secretary should accept proxies until the meeting is called to order.
5. Who must sign the proxy? Rules for issuing proxies must be clearly stated for multiple owners of a single unit.
6. What happens if a member who has already submitted a proxy decides to attend the meeting and wants to vote at the meeting? Unless the document or statutes state otherwise, a homeowner typically can revoke a proxy up until the time of the vote.

Because proxies may need to be returned to members who show up at the meeting to vote in person, the secretary should file the proxies either alphabetically or according to unit numbers before the meeting.

See Appendix 1 for more information about proxies.

**FIGURE 4. SAMPLE PROXY FORM**

I, the undersigned, being a bona fide member in good standing of the [name] Association, Inc., and as such entitled to cast one (1) vote at the annual meeting of said association, do hereby appoint

\_\_\_\_\_ of \_\_\_\_\_  
[name] [address]

as my proxy to attend said meeting with full power to vote for me in my name, place, and stead in the same manner and to the same extent and with the same effect that I might were I personally present thereat.

\_\_\_\_\_ [signature] [unit number]

\_\_\_\_\_ [printed name] [mailing address]

\_\_\_\_\_ [date signed] [telephone number]

Accepted this \_\_\_\_\_ day of \_\_\_\_\_  
[day] [month] [year]

\_\_\_\_\_  
Secretary, [name] Association, Inc.

*Note: This sample is for illustrative purposes only. Please consult an attorney for a proper proxy form for your association. Improper proxy forms can invalidate the results of an election or meeting.*

### **MAINTAINING MEETING DOCUMENTS**

Either the secretary or the community association manager must retain all meeting papers including the minutes, ballots, and proxies. One technique is to use a pocket file folder with the date, time, and place of the meeting noted on the file. It is also wise to mark each piece of paper with initials or a date stamp before filing. A brightly colored ink will help flag these papers and prevent a member who wants to "view" the file from slipping in a ballot and then asking for a vote recount. It is also a good idea to have one or more people verify the count of items and sign a statement that would be placed in the file.

Since the secretary is responsible for all association records, it is the secretary who also must dispose of them. Prepare a disposal procedure and a list of files that need to be destroyed and submit it to the board for approval. Next, prepare a schedule of when each board member should review the documents to be destroyed.