HOA Deciphered

A Brief Summary of Terms and Procedures *

This document is written so that we in Bernath Place can all operate at a common level when discussing HOA-related matters. It's written for the busy parent, the new family to the neighborhood, as well as for those who have been here for years.

Over time, terminology and rules are passed along in formal meetings, as well as informal settings such driveways and dining rooms. Sometimes these ideas and concepts are spot-on, but at other times people repeat what has been passed down from someone who heard from someone else, whether correct or incorrect. The aim of this quick reference is to put everyone on an even footing.

Content is derived from Bernath Place Articles of Incorporation, Bylaws, Declaration of Covenants and Amendments, Florida Statutes Title XL (Chapter 720), "Robert's Rules of Order" and personal experience gleaned from interaction with fellow members of Bernath. **

1. Commonly-used (and misused) terms

Members

- Lot/parcel owners, as recorded with the county, who live within the HOA.
    - Membership may NOT be separated from the lot.
- Tenants and guests are NOT members.

Directors

- Directors serve on the Board of Directors.
- Elected by the members.
- There may be no less than three directors in order to constitute a Board of Directors.
    - Bylaws do not limit how many may serve at one time.
- Directors are members charged with management of the Association.
    - Keep complete records of all activities of the Association.
    - Supervise all officers, agents and employees of the Association.
    - Have fiduciary responsibility to members per FL Statute 720.303(1).
    - Promote the recreation, health, safety, welfare, common benefit and enjoyment of the owners and occupants of units or lots.
    - Members may request or petition a meeting of the Board for an item of interest.
    - May propose new rules as well as amendments to governing documents..
        - 1/2 member approval required for adoption of amendments ***
- Director-at-Large is a term sometimes used for a director that is NOT an officer of the Board.
- Member-at-Large is a term that can create confusion but is sometimes used when referring to directors (or director-at-large) who are NOT Officers of the Board.
    - If the term "at-Large" is used, it is more consistent to use the term "Director-at-Large" since the term "Member-at-Large" could be confused with a member/lot owner.
    - In other words, "Director-at-Large" is much more specific in the context of referring to a director.

- For example, Bernath Place Bylaws mention some form of the term “member” 47 times, and a form of the term “director” is used 61 times. However, the term “at-Large” is mentioned 0 (zero) times.
- Terms of all directors are three years, regardless of whether they are an officer or director-at-large.
    - There is no special category of directors that is exempt from the three year term.

<u>Officers</u>

- Officers of the Board of Directors
    - President, Vice President(s), Secretary, Treasurer
    - All officers are directors, but NOT ALL directors are officers.
    - The term “director” is sometimes incorrectly exchanged with “officer”.
        - President
            - Oversee daily affairs of the Association.
            - Supervise meetings of members and directors.
            - Subject to control of the Board of Directors.
        - Vice-President(s)
            - May be more than one Vice President serving concurrently.
            - Performs duties as assigned by the President and Board of Directors.
            - Acts in absence of the President, or upon the failure of the President to act.
            - When acting as President, has all the powers and is subject to the same restrictions as the President .
        - Secretary
            - Maintain all records
                - Meeting minutes, governing documents, etc.
                - Keeps a book of meeting minutes.
            - Records minutes of Board of Directors and Member Meetings.
            - Responsible for notice of meetings.
            - De facto compliance officer.
        - Treasurer
            - Responsible for funds, securities and financial records.
            - Secretary and Treasurer may be held by the same person.
        - Special offices
            - Board may create special offices if deemed necessary.

<u>Assessments</u>

Assessment is a broad term, but this document will concentrate on the ones that have been used by Bernath Place.

- <u>Dues assessment</u>

    - Dues assessment, regular assessment, annual assessment, yearly assessment, annual dues, or dues.
        - All refer to the same type of assessment.
    - Set by the Board.
    - Set at uniform rate for all lots.
    - Some examples of how annual dues are used:
        - Common area and amenities maintenance
        - Liability insurance
        - Management, administrative, and legal fees
        - Utilities
- Special assessment
    - For special projects and only for one year.
    - Must be passed by 2/3 of the voting members.
    - Set at uniform rate for all lots.
    - Not the same as current MSBU (Mutual Services Benefit Unit) which:
        - Was used for new road, bridge, gates, solar lights;
        - May also be used for drainage (swales and ditches) and other infrastructure;
        - Is assessed as a non-ad valorem tax

2. Governance:

State

- Florida Statutes (Chapter 720)
    - Also known as Florida Homeowners Association Act
- Florida Statutes (Chapter 617)
    - Governs the formation, governance, and operations of nonprofit corporations.

Bernath Place Governing Documents

- Articles of Incorporation
- Bylaws
- Declaration of Covenants (aka Covenants)
    - Includes original and Amended Covenants.
    - Amended Covenants replace all previous versions.
- Rules
    - The Board is given power to create additional rules for, but not limited to:
        - Common areas and amenities
        - Personal conduct of members, residents, guests, and tenants
            - Activities considered to be obnoxious or offensive
        - Frequency and duration of members' ability to speak at meetings

Meeting types

Board of Directors

- Regular Board of Directors meetings:

    - Directors are the sole voters in these meetings.
    - Members must be allowed to attend and speak.
    - The association may adopt written reasonable rules governing the frequency, duration, and other manner of member statements, which may include a sign-up sheet for members wishing to speak.
    - Guests are only allowed to attend with permission of the Board.
- Special
    - Held to address special or urgent matters that cannot wait until the next regularly noticed meeting.
    - No other business is carried out.
    - Budget Meeting
        - Directors vote on handling of excess income.
        - Offset next year's assessment OR move to reserve fund.
        - Set the next year's budget.
- Emergency
    - May only be conducted during a declared state of emergency.
- Meeting with HOA Attorney
    - May be closed to members if proposed or pending litigation is being discussed, if the contents of the discussion are governed by the attorney-client privilege.
    - Otherwise, can members attend?
        - This question remains to be answered.

Member Meeting

- Members vote and are allowed to speak.
    - Section 720.306(6) of the Florida Homeowners' Association Act provides that members ".. have the right to attend all membership meetings and speak at membership meetings regarding all items open for discussion or included on the agenda. Notwithstanding any provision to the contrary in the governing documents or any rules adopted by the board or the membership, a member has the right to speak for at least 3 minutes on any item. The association may adopt written reasonable rules governing the frequency, duration, and other manner of member statements."
- Annual Regular Meeting
    - Board of Directors presents a statement of all acts and corporate affairs.
    - Financial report
    - Election of directors
    - New business
        - Set by agenda, as well as;
        - Any other business brought by members.
- Special Meeting
    - Other member meetings called to address special topics or for votes (ie. Special assessments).

Meeting Procecedures

Robert's Rules of Order (Latest Edition)

- Prescribed in Bylaws
    - Article 15 Section 2
    - Must use Robert's Rules of Order Latest Edition
- Must be used for Board of Directors and Member meetings
    - UNLESS the majority votes to waive Robert's Rules for that particular meeting
- Creates rights:
    - Right of majority rule
    - Right of the minority to be heard
    - Right of the individual to participate in the decision-making process
- Creates more solid legal footing for passage of rules, votes on expenditures, etc.
- Gives individuals a chance to speak and take part in decision-making

- Basic principles
    - <u>Step 1</u>
        - A motion is stated after a Director or Member is recognized by the President
        - Correct way of saying this is, "I move …" and the person bringing the motion states the motion
    - Step 2
        - One of two things can then happen:
        - Motion is seconded
        - OR motion dies "on the floor" for lack of second
        - "Thirding" a motion is not a valid act. Multiple people may second if desired, but only the original "second" is recognized.
    - Step 3
        - President or Chairman restates the motion.
    - Step 4
        - Floor is opened for discussion.
    - Step 5
        - Discussion is closed and a vote brought to the assembly.
        - Neither a motion nor seconding of the motion show approval of the motion.
            - Seconding the motion only indicates the "seconder" finds the motion worthy of a discussion.

3. <u>Votes by the Members of the Association</u>

- Election of Directors;
- Waiving of use of Robert's Rules of Order;
- ANY votes held during Member Meetings;
- Special assessments and approval of capital expenses (2/3 vote of the members);
- Review and/or modification of annual assessment.
    - The annual assessment may be reviewed and/or modified by a vote of 2/3 of the votes which can be cast by the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- Recall of directors;
- Dissolution of the Association (2/3 vote of the members);

- Increasing number of directors (Florida Statutes - Chapter 617)
- Approval of reserve amounts;
- Changes in reserve amounts;
- Authorize reserve fund use for purposes other than those intended when the fund was established;
- Amendments to Articles of Incorporation, Bylaws or CC&Rs;
- Approval of Minutes of previous Member Meetings;
- Adjournment of Member Meetings.

---

* This is NOT a legally-binding document and may only be used as a reference to encourage Members of The Bernath Homeowners' Association to search for further information of their own initiative. This a basic explanation of terms and procedures and is NOT intended to be all-inclusive. All parts of this document are subject to edit.

** Contact Terry Owens if you believe you have found any factual errors.

*** FL Statute 720.303(15)(d) The requirements of this subsection may be met by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website if such website is accessible to the members of the association **and** the association sends notice to each member of the association of its intent to utilize the website for this purpose. Such notice **must** be sent in both of the following ways:

1. By electronic mail to any member of the association who has consented to receive notices by electronic transmission and provided an electronic mailing address to the association for that purpose.
2. By mail to all other members of the association at the address identified as the member's mailing address in the official records of the association.