



The background is a detailed architectural drawing of a building facade, likely a tower or a prominent entrance. The drawing is rendered in a light blue or grey tone. It features various structural elements and materials, with numerous handwritten and printed annotations. Key annotations include: 'Wrought Iron Work' at the top; 'ALL CHIMNEYS TO WEIGH NOT LESS THAN 500 LBS. PER SQUARE' near the roofline; 'Barnett Co. Asphalt Lamark Blend Shingles' in several places; 'G.I. Gutter' and 'G.I. Frontals' indicating galvanized iron components; '2x4 Plates' and '5x8x2 Anchor Bolts 36" o.c.' for structural details; 'TOWER CORNICE 1 1/2" Scale' for a specific architectural feature; 'Brick Chimney' and 'Brick Carbel' for masonry work; 'Flashing' and 'Ceiling' for interior or exterior details; 'Steel Sash' and 'Steel Sill' for window components; 'Wood Lintel' and 'Huge Sash' for other window features; and 'Brick in Corners' for corner detailing. Scales of 1/4" and 1/2" are indicated for different parts of the drawing. The drawing is signed 'Billings' in the lower center.

Association Essentials

Laying the Foundation: Recordkeeping and More

September 21, 2019

ONTARIO
Revised Aug. 20, 1936

JOB # 834 SHEET # 2

Agenda

1. Session 1

- Conversation with Judge Reynolds
- Recordkeeping Issues
- Legal Update – Short-Term Rentals

2. Q & A

3. Break

4. Session 2

- Recording Board Action
- Taking and Keeping Minutes
- How to Run Board Meetings and Annual Meetings

5. Q & A

6. Door Prize

7. Adjourn

Judge Reynolds



25.5240

“Receipt for a Donut”



Typical Records

- Governance Records
 - Governing Documents
 - Meeting Minutes
 - Resolutions
- Operations Records
 - Budgets and financial reports
 - Tax documents
 - Invoices
 - Bank records
 - Correspondence
 - Miscellaneous

Recordkeeping Issues

- Why recordkeeping matters
 - Legal compliance
 - Fiduciary duties to Association
 - Protect the Board
 - Member inspection requests
- Institutional Knowledge

Member Inspections

- KRS 273.233
 - Complete Books and Records of Account
 - Minutes of all Meetings
 - Name and Addresses of Members
- General rule: entitled to inspect as a matter of right, unless Articles or Bylaws state otherwise.
 - Request must be (i) for proper purpose and (ii) at reasonable time.
 - Typical requests: budgets, expenses, financials, meeting minutes, and contracts
- Best Practices
 - Sunshine is best disinfectant
 - Be firm with spurious requests

Recordkeeping Issues

- Storage
 - Retention Period
 - No minimum requirement in KRS Chapter 273
 - Governing Documents and Board Action: Permanent
 - You should have a corporate book that contains all of these documents
 - Tax documents: minimum 7 years
 - Best Practices:
 - Develop document retention policy
 - No “information silos” (but Secretary is in charge of records)
 - Digitize all records in the cloud or secure backup server
 - Keep physical copies for at least 7 years
 - Shred old files and documents after 7 years (after confirming digital backups)

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Legal Update: Short-Term Rentals

- In November 2018, the Kentucky Supreme Court rendered its decision in *Hensley v. Gadd*, 560 S.W.3d 516 (Ky. 2018), which could directly impact the enforcement of restrictions in homeowner associations, townhome associations, and condominium associations.
- The Supreme Court held that a restriction describing lots as “single family residential lots” and limiting use to “residential purposes” prohibits the use of a lot for short-term transient rentals (*e.g.* AirBnB, VRBO, and similar services).
- What is “short-term”? Court suggests 30 days or less.

Legal Update: Short-Term Rentals

LFUCG CODE OF ORDINANCES

Sec. 13-76. - Short term rentals.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(3) Short term rental shall mean a dwelling unit that is rented, leased, or otherwise assigned for a tenancy of less than thirty (30) consecutive days, where no meals are served. This term does not include hotel or motel rooms, extended stay hotels, bed and breakfast facilities, or boarding and lodging house rooms.

Legal Update: Short-Term Rentals

FAYETTE COUNTY about 1 year ago

Lexington Airbnb hosts made \$1.8 million in 2016. Now the city will get its cut.

FAYETTE COUNTY

Airbnb and other short-term rentals are big in Lexington. These people aren't happy.

FAYETTE COUNTY about 2 years ago

Kentuckians earned \$10.2 million with Airbnb in 2016. Now the state will get its cut.

In 2017, Louisville hosts pulled in a combined \$10 million from 78,000 guests, more than everywhere else in the state combined, according to Airbnb data. Next came Lexington, where hosts collected \$3.1 million from 28,000 guests.

The popular home-sharing site says its number of guests in the Bluegrass State since last October — 224,000 — is up 94 percent compared with the same time the year before.

Legal Update: Short-Term Rentals

- Airbnb agreed to pay collect transient room taxes for LFUCG, but other services have yet to do the same
- Transient room taxes can add millions in tax revenue

For example, if you charge a \$100 rental fee, the total tax amount owed would be \$16.07. If you want to pass those taxes on the customer, their total bill would be \$116.07 See the below rate card for details.

Room Rate	\$ 100.00
8.5% Local Transient Room Tax	8.50
1% State Transient Room Tax	1.00
Taxable Amount	\$ 109.50
6% Sales Tax	6.57
Total	\$ 116.07

Legal Update: Short-Term Rentals

An evolving market

Airbnb hosts in Fayette County numbered more than 500 and earned a combined \$4.8 million in income in 2018, according to Airbnb public affairs representative Ben Breit. The local Airbnb community ushered in roughly 46,000 guest arrivals to the Bluegrass throughout the year.

“The competition is getting stronger in Lexington,” Eidson said. Standing out and offering highly responsive guest services, Eidson said, are keys to doing well with Airbnb rentals.

Source: “Growing Airbnb Market Drives Some Investors to Rethink Real Estate”, Susan Baniak, Business Lexington (March 2019) (available at: <https://smileypete.com/business/airbnb/>)

Future of Short-Term Rentals



"I see Airbnb for us not just as a way to augment a property's income or use," Eidson said. "I believe it is the way of the future, and that 10 years from now, most leasing will be done on platforms just like Airbnb."

This fourplex on West Fifth Street, constructed with four shipping containers and connected by traditional construction, features three Airbnb rentals and one long-term rental unit.

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Q & A



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Break!



Poll Question

- By show of hands, how does YOUR Board normally take action?
 1. Informal phone conversations?
 2. Meetings?
 3. Email/text chain discussions?
 4. Consent resolutions?
 5. Online services or other?

Recording Board Action

- The Board can take action in two primary ways:

Vote at a Board Meeting

- Default: simple majority
- Requires quorum of directors
- Deliberation may be open (if governing documents require open meetings)
- RECORDING: vote/action must be recorded in meeting minutes; minutes must be adopted at next meeting

OR

Unanimous Written Consent Resolution

- Required: unanimous consent
- No meeting required
- Requires a prepared writing to be signed by all directors
- RECORDING: vote/action described in the prepared writing; no meeting/minutes required

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What If We Took “Unauthorized” Action?

- If the Board took action following an “unauthorized” method—email or text chain, informal phone call, etc.—hope is not lost
- The Board can *ratify* prior action to make it official:
 - Option 1: Read it into the minutes at the next meeting, or
 - Option 2: Prepare a unanimous consent resolution
- Ratification may be a useful tool in emergency situations—just don’t abuse it to end-around the normal course of business
 - Standards still apply – fully informed, best interests, etc...

Recording Board Action

REMEMBER:

Your governing documents may require a *Member* vote on certain issues—always review the governing documents first!

The Forest and the Trees

- The *process* for taking action is different from the *action itself*
- There are two components to Board action:
 - One: Board process to take the action, and
 - Two: Creation of the document representing the action
- Example: if you want to amend the Bylaws, you need to (1) draft a written amendment to be placed in the corporate books for future reference and (2) take Board action to approve/adopt the amendment
- Rationale: Boards change & knowledge is lost → documents are critical for the future

Taking and Keeping Minutes

- Purpose: record the substantive discussion, motions, and actions of the meeting
- DO:
 - Adopt minutes from the last meeting and retain hard copy
 - Make note of topics of discussion
 - Record all motions and votes thereon
 - Remember you are creating a document to be used in the future
- DON'T:
 - Try to transcribe the discussion
 - Focus on form over substance
 - Forget why minutes are important: recording Board *action*

Minutes Format: the “Upside-Down” Agenda

1. Call to Order
2. Old Business (Follow up/action items from last agenda)
3. New Business
4. Owner Participation
5. Executive Session
6. President’s Report
7. Treasurer’s Report
8. Committee Reports (if any)
9. Review/Approve Prior Minutes
10. Ratify email decisions (see below)
11. Summarize all follow up/action items from the meeting
12. Adjournment

Resolution Format

**BOARD RESOLUTION OF [YOUR COMPANY NAME]
IN RECOGNITION AND PROFOUND APPRECIATION OF DISTINGUISHED
SERVICE BY [NAME]**

DULY PASSED ON [DATE]

**IN RECOGNITION AND PROFOUND APPRECIATION OF DISTINGUISHED SERVICE BY
[NAME]**

WHEREAS, [NAME] has always been mindful of the interests of [DETAILS] and [HE/SHE] has worked tirelessly to advance the [DETAILS];

WHEREAS, [NAME] has provided outstanding leadership and guidance to [CAUSE]; and

WHEREAS, [NAME] faithfully and with honor, integrity and great distinction served as [TITLE] of [YOUR COMPANY NAME] for over [NUMBER] years;

RESOLVED, that [YOUR COMPANY NAME] Board of Directors formally acknowledges and extends its profound appreciation to [NAME] for [HIS/HER] many years of service to [YOUR COMPANY NAME] and to the cause of [DETAILS]. As a token of its appreciation, [YOUR COMPANY NAME] will provide [DETAILS].

RESOLVED FURTHER, that the officers of [YOUR COMPANY NAME] are, and each acting alone is, hereby authorized and directed to take such further action as may be necessary, appropriate or advisable to implement this resolution and amendment and any such prior actions are hereby ratified; and

We, the undersigned, hereby certify that [YOUR COMPANY NAME] is comprised of [NUMBER] members, of whom [NUMBER], constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held this [DAY] day of [MONTH, YEAR], and that the foregoing Resolution was duly adopted at said meeting by the affirmative vote of [NUMBER] members, and opposed by [NUMBER] members, and that said Resolution has been duly recorded in the Minute Book and is in full force and effect.

[DIRECTOR]

[DIRECTOR]

[DIRECTOR]

Board Meetings vs. Annual Meetings

What are the differences between Board meetings and annual meetings in your Association?

How to Run Board Meetings

- Do you have OPEN or CLOSED Board meetings?
 - General Rule: If members are present, remind them that it is not an “open discussion” meeting—they may be addressed briefly at a designated portion of the meeting, but no “call and response”
- Agendas: Make one and *stick to it*
- Procedural Issues:
 - Quorum
 - Agenda (the “Upside-Down Agenda”)
 - Action
 - Next Steps

How to Run Annual Meetings

- Purpose: Typically, to elect directors and officers, and to discuss (or be presented with) a draft budget
- Preparation:
 - Ballots: In Person, Proxy, or Other?
 - Budgets—what is the timeline for adoption?
 - Director terms: straight terms or staggered?
 - Voting rights/procedures—have you looked at the Bylaws lately?
 - Agenda—keep discussion and side conversation to a minimum
- If Directors are nominated from the floor – time to speak?
- Elect proctors and understand the tabulation process
- Retain the ballots for at least the length of the term of directors

Parting Thoughts

- Maintain order--polite but firm
- Clearly define the purpose and scope of the meeting, and hold your members/Directors to it—no hijacking
 - Remember:
 - they can call a special meeting if they want/need to
 - You have a fiduciary duty – your members don't
- Be firm but polite
- Try to keep meetings to one (1) hour or less to prevent “meeting fatigue”
- Have more frequent—but shorter—Board meetings
- Take recordkeeping and retention seriously—your fiduciary duties require it!

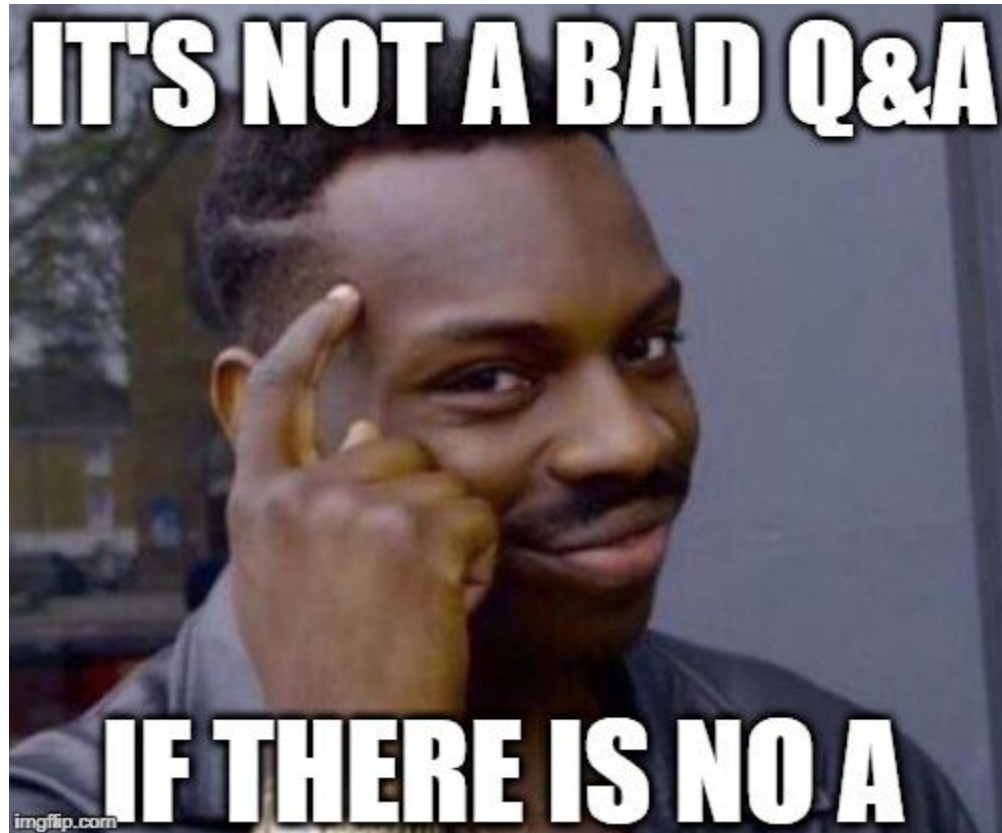
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Sample Documents

- Examples of key documents are available on our Association Essentials website:

<https://www.blfky.com/association-essentials.html>

Q & A



Door Prize



See You in Spring 2020!

