

## FREQUENT CONDOMINIUM GOVERNANCE ISSUES

- I. Misunderstanding of LAWS GOVERNING CONDOMINIUM ASSOCIATIONS
  - A. Property Code – Chapter 81 and portions of Chapter 82 or all of Chapter 82<sup>1</sup>
  - B. Business Organizations Code (usually non-profit corporation provisions and portions of for-profit corporation provisions)<sup>2</sup>
  - C. Governing Documents
    - (1) Declaration
    - (2) Bylaws
    - (3) Rules and Regulations
    - (4) Policy
  - D. Case Law/Common Law
    - Seeks to harmonize the above
    - Therefore if no direct conflict, supplements provisions of each
    - Direct conflict, hierarchy above generally applies

Examples: Amendment of Bylaws - power in Board and Membership Meetings – not always necessary with Unanimous Consent
- II. IMPORTANCE OF MEETINGS AND FOLLOWING RULES FOR MEETINGS
  - A. Opportunity for Discussion
  - B. Strict adherence vs. consensus/objections – Roberts Rules of Order
  - C. Different rules for Board vs. Member Meetings
- III. ROLES/POWER OF MEMBERS vs. BOARD vs. MEMBERS OF BOARD
  - A. Association Members: elect members of the Board; input to Board Members; right to vote only on certain extraordinary issues
  - B. Board: Right to Govern/Establish Policy, amend Bylaws, enact Rules & Regulations
    - Can delegate certain items to Management Company/Officers/Board Members/Others
  - C. Officers
    - Have only those powers explicitly or implicitly of the office or as specifically delegated by Board
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  - D. Board Members – none outside of Board meeting, except as specifically delegated by Board
- IV. LEGAL ISSUES & ATTORNEY CLIENT PRIVILEGE
  - A. Association vs. Members
  - B. Executive Session
  - C. Communications & Waiver of Attorney Client Privilege

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<sup>1</sup> Many “unless otherwise stated/provided by” provisions

<sup>2</sup> Many “unless otherwise stated/provided by” provisions