

HOA RECORDS, COMMUNICATIONS AND RECORD RETENTION

Topics Covered

Records requests – what are owners allowed to see?

Governing documents

Financial documents

Meeting Minutes, Confidentiality and Communications

Handling ARC requests

Record Retention Guidelines



What records are owners entitled to see?

- Governed by NCGS §55A, Part 16 (North Carolina Nonprofit Corporation Act)
- **§55A-16-01. Corporate records.** “A corporation shall keep a copy of the following records at its principal office:
 - (a) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;
 - (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
 - (c) Resolutions adopted by its members or board of directors relating to the number or classification of directors or to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

- (d) The minutes of all membership meetings, and records of all actions taken by the members without a meeting pursuant to G.S. 55A-7-04 or G.S. 55A-7-08, for the past three years;
- (e) All written communications to members generally within the past three years, and the financial statements, if any, that have been furnished or would have been required to be furnished to a member upon demand under G.S. 55A-16-20 during the past three years;
- (f) A list of the names and business or home addresses of its current directors and officers;”

§ 55A-16-02. Inspection of records by members.

- (a) A member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in G.S. 55A-16-01(e) if the member gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy.
- (b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy:
 - (1) Excerpts from any records required to be maintained under G.S. 55A-16-01(a) [*meeting minutes, actions taken by the board and committees*], to the extent not subject to inspection under G.S. 55A-16-02(a);
 - (2) Accounting records of the corporation; and
 - (3) Subject to G.S. 55A-16-05, the membership list.

What are the limitations on members’ inspection rights?

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

- (1) The member's demand is made in good faith and for a proper purpose;
- (2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and
- (3) The records are directly connected with this purpose.

§ 55A-16-05. Limitations on use of membership list.

Without consent of the board of directors, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, and without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; or
- (3) Sold to or purchased by any person.

§ 55A-16-03. Scope of inspection rights.

“The corporation may impose a reasonable charge, covering the costs of labor and material, for producing for inspection or copying any records provided to the member. The charge shall not exceed the estimated cost of production or reproduction of the records.”

Financial Records

- Financial records must be kept (income statement and balance sheet)
- Within 75 days after the close of the fiscal year, an income statement and balance sheet must be *made available* to members at no charge
- Homeowners are entitled to inspect some records but not all
- Notice of indemnification of a director must be made known to the members

Dealing with the “Kitchen Sink” Request

- Require the member to articulate (in writing) the exact records they are requesting, what their purpose is in seeking these records, and how the records are related to that purpose.

- The member may drop the request when they are told they will have to pay for research and reproduction of documents in advance.

What records are members NOT entitled to inspect?

- Vendor contracts and invoices
- Information relating to violations or enforcement actions taken
- Account statements for owners
- Ballots or proxies (vote tallies are OK)
- Privileged communications between the board and the HOA's attorney
- NEVER publish a "deadbeats list" or any information relating to specific delinquencies
- OK to publish figures on total delinquencies – don't include any owner-specific information

Why should boards and management companies timely comply?

- Lack of transparency (real or perceived) is one of the biggest complaints
- Statutory costs and attorney's fees if a nonprofit fails to comply
- *Almason v. Southgate on Fairview Condominium Association*
 - An Association must attempt to provide the required documents in good faith
 - Appellate Court: "the production of documents was not perfect, but [] Defendants acted in good faith the entire time."

The HOA's Governing Documents

- A Declaration (of Condominium, or of Covenants, Conditions and Restrictions for single-family subdivisions and townhomes)
- Bylaws ("playbook" for the corporation)
- Articles of Incorporation
- Rules and regulations
- Do you have complete, recorded copies of everything?
- Are they outdated or otherwise in need of revision?
- Do you need to update the corporation's registered agent information with the Secretary of State?
- Pending legislation, if passed, will require all nonprofit corporations to file an annual report with the NC Secretary of State (but no fee required)



Meeting Minutes and Communication

- Communication between board and attorneys should remain confidential
- Communications between board members are not “privileged” – e-mails would be discoverable by opposing party in litigation
- Provide the minimum information necessary in minutes: Succinct language
- Include a description of the action taken and not everything that was said: Action items only
- Do not include sensitive, personal, or private information in the minutes; use executive session minutes for this purpose, and keep a separate set of minutes
- Board can and should have closed-door meetings to discuss sensitive or confidential issues
- Members are entitled to copies of board and member meeting minutes, BUT. . .
- Executive or Closed Session meeting minutes should be kept separately, and should not be shared with members absent a subpoena or a discovery request in connection with a pending lawsuit

ARC Applications

- Check your documents – many say that the application is approved automatically if the HOA doesn’t respond within a certain number of days (typically 10-30 days)
- Have a form (that is consistent with the governing documents) and follow it
- Make sure architectural committees understand the importance of requiring the form to be filled out. Educate your committees (and boards)!



Record Retention

Three Years:

- credit card and cash receipts
- invoices
- bank records
- non-construction-related contracts (e.g. management, landscaping, pest control, etc. – to be kept for three years after expiration or termination)
- proxies and ballots

Eight Years:

- employment and personnel records
- communications to or from members
- construction-related contracts
- maintenance records
- warranties (unless the warranty is for a period longer)
- accounting and tax records (except as noted below)
- 1099s
- membership files (e.g. contact information – to be retained for 8 years after sale of a lot or unit)

Permanent:

- meeting minutes (annual meetings, board meetings, committee meetings)
- election tallies or results
- corporate resolutions or other corporate actions

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- corporate governing documents (declaration, bylaws, articles, rules and regulations, policies, amendments)
- reserve studies
- architectural requests, denials and approvals including all supporting documentation
- violation notices and hearing results
- annual budgets
- legal documents (legal opinions, materials related to lawsuits, or other advice); employment and termination agreements
- real estate documents (leases, deeds, easements)
- real estate tax records
- tax returns
- licenses and permits
- trademark registrations
- insurance policies and claims
- accident/injury reports

Presenters

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