

“Open” vs “Executive Session” Meetings of an HOA’s Board of Directors

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Perhaps because homeowners associations are often viewed and characterized as private governments or quasi-public bodies, most meetings of the board of directors of a homeowners association are required to be open to attendance by the association’s members and state laws typically prohibit association boards from taking action on any item of business outside of a board meeting.

Open Meetings

In most states, members of community associations are entitled to attend meetings of the board of directors, except when the board adjourns to, or meets solely, in executive session under circumstances in which such sessions are permitted. Furthermore, subject to reasonable time limitations established by the board, association members are permitted to speak at any meeting of the board, with the exception of meetings that are held in executive session. Although members of the board of directors are generally limited to discussing and taking actions on those matters that have been placed on the agenda that was published to the members with the notice of the board meeting, association members that attend board meetings may generally speak on issues that are not on the agenda. To control time and allow for the board to complete its agenda within a reasonable time frame, many association boards will schedule a specific time on the board meeting agenda for communications or statements from members. Alternatively, some association boards will permit members to speak before each action item on the agenda and before a board vote on the matter is taken. These rights are limited to association members and do not extend to other parties that members may want to bring to the association’s board meeting (i.e. lawyers). Additionally, aside from the time limitations, an association’s board may also exclude all persons who willfully disrupt a meeting in such a way that it cannot be conducted in an orderly fashion.

Executive Session Meetings

Most states have laws that entitle an association’s board of directors to conduct certain items of business in “executive session” meetings and association members are entitled to receive notice of any executive session meeting that is conducted without first convening an open session, unless the executive session is called as an emergency meeting. The nature of business that can be conducted in an executive session meeting of an association’s board of directors is specified in the state statutes, but is generally limited to the following items:

- Litigation,
- Matters relating to the formation of contracts with third parties,
- Member discipline,
- Personnel matters,
- Decisions to foreclose a lien,
- Matters relating to disciplinary action against a member, and

- Plans for payment of delinquent assessments (upon request of the member).

Matters discussed by the board in executive session should be documented in minutes separate from the board's open meeting minutes in order to maintain the confidentiality of the information contained in them and then generally noted in the minutes of the immediately following meeting that is open to the entire membership. The open meeting minutes will contain a brief description of any formal action taken or decision that was made relative to the matter in the executive session meeting. (Example – "The board discussed the lawsuit filed by Mr. Jones and decided to retain legal counsel to defend the suit on behalf of the association").

Consequences of Conducting Unauthorized Business in Executive Session Meetings

Some associations will attempt to circumvent the requirements for conducting business in open meetings by acting upon unauthorized items of business in executive session meetings. The consequences of not conducting required open meetings and the remedies available to association members are left to the state statutes. Generally, the remedy for members would be to commence a civil action for declaratory or equitable relief against the association to compel compliance with the requirements for conducting open meetings. State statutes have specified time periods for commencing such actions and generally provide for the recovery of attorney fees by the prevailing party. There may also be provisions for monetary penalties for each violation.