

Board Meetings

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General Considerations

- When: monthly, quarterly? (should meet at least quarterly – Bylaws typically address issue)
- Where: onsite vs. offsite meetings (Bylaws control; pros and cons of each location)
- Who: member/owner, renter, owner representative, lawyer, proxy holder?
- Quorum: no quorum no meeting – set by Bylaws
- Purpose: Conduct Board business
- Board Meeting vs. Member meeting
- Robert's Rules of Order: not required for Board or Committee meetings; Board's can adopt more flexible guidelines; only invoke strict procedure if necessary to gain control of meeting

Common Interest Development Open Meeting Act

- Codified at Cal. Civil Code section 1363.05 – Brown Act = legislative bodies and public agencies; n/a as to HOAs (private org.); Brown Act much more restrictive and comprehensive
- Executive Session: litigation, formation of contracts with third parties, member discipline, employment issues, or meet with a member to discuss delinquent assessment issues
- Regular Session: Everything else! (promote transparency, communication, member confidence etc.)
- Notice: 4 Days before the meeting; post in prominent places in common area; alternative notice = mail, delivery, newsletter or similar means of communication; the notice shall contain the agenda (exceptions: time and place fixed by Bylaws (rare) or Bylaws require more than 4 days notice)
- Emergency Meeting: called by Pres. Or any 2 directors; “circumstances that could not have been reasonably foreseen which require immediate attention and possible action”; still give notice just less than 4 days; minutes should reflect basis for emergency meeting

Open Meeting Act Cont.

- Meeting Minutes: regular and executive session; matters discussed in executive session noted in minutes for next regular meeting; minutes available within 30 days following meeting; no member access to executive session minutes; keep it simple! (Less is better than more – official record of who, when, where, action items handled by Board, motions made and outcome)
- Member Right to Speak: applies to board and member meetings; absolute right of each member; Board can establish “reasonable time limit”? Cannot control topic; use of speaker form like City Council
- Meeting Defined: any congregation of majority of Board at same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the Board; exception executive session topics; workshops?; agenda meetings? Fairly broad definition that can be quite restrictive; not a lot of judicial guidance on this issue

Open Meeting Act Cont.

- Agendas: Act revised to stress use and distribution of agendas before the meeting; causes Boards to get organized; gives members advance notice so they can decide whether to attend; streamlines meetings? Who can put topics on the agenda – Director, Manager, member?
- Posting Agendas: post with meeting notice 4 days ahead (exception: emergency meetings of the Board)
- Not on agenda = no Board discussion or action (exception: “resident” can raise topics not on agenda; also numerous exceptions apply for Board)

Open Meeting Act Cont.

- Exceptions to agenda requirement for Board (at least 8 exceptions):
 - Brief response to off agenda statements or questions by Board
 - Ask a brief question, make a brief announcement or make a brief report of his or her own activities (i.e., ok for short/minor off agenda comments by Board or agent)
 - Provide reference to factual information to agent/manager
 - Request agent to report back to Board or place matter on future agenda
 - Direct agent to do acts required to conform with agenda requirements of Act
 - Emergency item: majority of the Board agrees; emergency = unforeseen, requires immediate attention AND possible action (should announce basis at meeting and record in the meeting minutes)
 - Need for immediate action: not emergency; 2/3 of Board must approve; if less than 2/3 present must be unanimous; need to take “immediate action” and could not have been placed on the agenda (make same announcement and record as above)
 - Item on prior agenda: meeting not more than 30 days prior; item was continued to this specific meeting; again, make record
 - Do the exceptions swallow the rule?

Standard Agenda Board of Directors Meeting

- Call to order by President
- Determine whether a quorum is present
- If quorum is not present, adjourn and reschedule either by verbal or written notice as specified in CC&Rs or Bylaws
- If quorum is present, proceed with meeting
- Adopt minutes of last meeting by: a) read minutes of last meeting or vote to waive; b) call for corrections; and c) vote on adoption.
- Homeowner forum
- Consent calendar (if appropriate)
- Present reports including: a) treasurer; b) architectural committee; c) landscape committee; d) newsletter committee; e) maintenance committee; and f) property manager
- Unfinished business
- New business
- Executive session (if necessary)
- Adjournment

Board Action/Voting

- Motions on proposed Board action
 - Director seeks recognition from chair
 - President recognizes Director
 - Director makes motion
 - Another Director seconds motion
 - President states the question
 - Debate/discussion
 - President calls for vote
 - President announces vote result

Abstention from voting: utilize if Director has conflict of interest; Director must indicate he abstains; the abstention should be noted in the meeting minutes

Board Resolutions: A resolution is a written motion; provides detailed record of motion and rationale behind it; not required by statute, but may be required by lenders etc. where a detailed record is desired.

Voting by President: may vote same as any other director; not intended to be tie breaker – unless Bylaws require

Director proxies: no such thing and arguably violates fiduciary duty; only intended for use by members at member meetings

Virtual Meetings

- Approved alternatives to the traditional face to face meeting (must have 1. means to communicate with all other members concurrently and 2. can propose and object to actions):
 - Telephone conference: no limit on who can utilize; members can listen in; treat same as if Director is present; impediment to effective communication? Can be a good tool for emergency meetings or executive session meetings
 - Electronic video screen communication: never seen it utilized; cost prohibitive?
 - Electronic transmission: same as video screen comment

Does the Board have to accommodate the request of a Director to participate in a meeting or meetings via phone or other technology? Who shoulders the cost?

Consistent with the Open Meeting Act? No express prohibition, BUT may run afoul of the Act – “members may attend meetings of the Board of Directors of the Association.” Implies that Directors will be physically present.

Action Without A Meeting

Cal. Corps. Code section 7211

- Obviates need for Board to physically meet
- Requirements: 1. action may be taken by the board, 2. all members must individually or collectively consent in writing 3. consent must be unanimous 4. the record of the consent must be filed with the minutes for the Association
- No limits on use per statute, BUT should be used ONLY when absolutely necessary
- Will e-mail consents suffice?
- Open Meeting Act considerations: Arguably could run afoul of the Act; no express prohibition under Act
- Agenda requirement of Open Meeting Act – consistent or inconsistent? No express prohibition

Disruptive Meeting Attendees

- Disruptive members, i.e. members who shout, use profanity or just interfere with meetings; the possible remedies include the following:
 - Have chair eject them from meeting
 - If they refuse to leave, adjourn the meeting to another time and date
 - Impose penalties (fines, suspension of member rights, etc.) against the owner after appropriate due process (hearing)
 - Call the police if they refuse to leave
 - Move the meeting to a different type of setting, e.g., library, church, bank, community center where there is a more formal setting/business type setting
 - Have security at the meeting
 - Obtain a restraining order against the person or persons (personal safety TRO or workplace TRO; easy to get initially upon proper showing, but will ultimately need to prove case for a more permanent order)

Need to do cost benefit analysis in terms of what makes sense for the Association in controlling disruptive members

Non-members: may be excluded from meetings altogether.

Board members: censure, remove as officer, or remove from Board

Tips For Good Board Meetings

- Make sure the Chair runs the meeting and keeps members and directors focused
- Stick to the agenda, UNLESS one of the exceptions applies
- Keep the meeting length within reasonable limits
- Keep the meeting professional, but treat people with respect
- Promote civility – its okay to agree to disagree on topics
- Promote transparency – maximize regular session and minimize executive session
- Promote member confidence in Board
- Do your homework before the meeting, i.e., read the Board package and make sure you have what you need ahead of time to make a decision