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Open Board Meetings

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A question that frequently arises in condominiums, cooperatives and other community associations is whether the board of directors that governs an association must hold its meetings in open session and allow unit owners to participate. Most boards normally meet monthly or quarterly to discuss and make decisions regarding various matters that affect their communities. Specific items that a board commonly will review include the health of the association's finances, the status of pending litigation, possible repair projects or capital improvements, contract negotiations for a multitude of services, proposed amendments to the association's master deed or by-laws, employment and personnel matters, and violations of the association's rules and regulations by residents.

Given the significant impact that a board's decisions on these and similar issues may have on an association, the extent to which a board must conduct its business in open session and permit unit owners to speak can be of vital importance to unit owners. Two New Jersey statutes, the New Jersey Condominium Act and the Planned Real Estate Development Full Disclosure Act ("PREDFDA"), and their regulations, address these concerns.

Under both statutes, all meetings of a community association's governing board, except conference or working sessions at which no binding votes are to be taken, must be open to attendance by all unit owners. The board has the discretion, however, to exclude unit owners from those meetings or portions of meetings dealing with four specific areas: "(1) any matter which if disclosed would constitute an unwarranted invasion of individual privacy; (2) pending or anticipated litigation or contract negotiations; (3) matters falling within the attorney-client privilege to the extent confidentiality is required for the [association's] attorney to exercise his ethical duties; and (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association." Contrary to popular belief, the Open Public Meetings Act, commonly known as the "Sunshine Law", does not apply to community associations.

New Jersey law further mandates that all open meetings must be held at a location within the development, or, if there is no "suitable" meeting room there, elsewhere in the municipality in which the development is located or in an adjoining municipality. The meeting room must be large enough to "accommodate a reasonable number of unit owners who might wish to attend" the meeting. Although unit owners have the right to attend the meeting, they do not have any right to speak. Unit owner participation or the provision of a public comment session is wholly within a board's discretion, unless a specific association's by-laws provide otherwise.

New Jersey law does not recognize any claimed right of a unit owner to give a proxy to someone else to attend a board meeting in the owner's place (as opposed to a unit owners' meeting, where proxies are allowed), to tape record a meeting, or to bring an attorney or court reporter to a meeting. Roberts Rules of Order do not apply to an association's meetings unless they have been formally adopted by the board or the association's by-laws.

Boards, usually due to an emergency or unfamiliarity with the law, sometimes will vote in closed session, or by phone or email, on a matter that the law requires be considered in open session, and subsequently will be challenged by a unit owner who asserts that the vote was “illegal”. Generally, a board can cure the claimed procedural flaw by voting at its next open meeting to ratify the closed session vote.

Condominium boards must give all unit owners at least 48 hours advance written notice of the time, date and location of open meetings, and the agenda, to the extent known. A board is not required to mail the notice to unit owners, but must post it “prominently” in a place on the condominium property that is “accessible at all times to all unit owners” and file it in the association’s management office. A board also must request two local newspapers to publish the notice at no charge, akin to a request to publish a press release. At least once each year, the board must notify the unit owners, through these same procedures, of its schedule of regular meetings for the coming year. If a board must meet due to an emergency, these rules are relaxed.

A board also must take minutes of all open meetings and make copies of the draft minutes available to all unit owners before the next meeting. The board is not required to mail the minutes to unit owners, but must post them within the community or make them available for review at the association’s management office.

Boards’ compliance with these requirements should foster better governance for associations and ultimately better decision-making. Boards should consult with their legal counsel if they have questions about open meetings.