



#222 HOA Homefront – The Open Meeting Act - a Checklist

By Kelly G. Richardson, Esq.

The Open Meeting Act is a law within a law, found within the Davis-Stirling Common Interest Development Act at Civil Code Sections 4900-4955. A common misconception is that common interest developments are subject to the “Brown Act” (located at Government Code Sections 54950-54963), but it only applies to the “legislative body,” meaning public or publicly controlled entities. The HOA “Brown Act” is the Open Meeting Act, which now is extensively detailed regarding association meetings. The apparent aim of the Act is valuable - to make the governance of associations more open and accessible to members. Here are a few of the more common violations of the Open Meeting Act.

Discussing items not on agenda. Civil 4930 bars boards from discussing non-emergency subjects unless announced on a posted/published agenda at least four days prior to the meeting. There are some narrow exceptions to this rule, but a frequent problem is the reluctance of a board to wait until the next meeting to handle a new issue. If it truly cannot wait four days, it may be an emergency. Otherwise, hold off. Your agenda is probably already full for the meeting, and some delay gives management time to gather information and advise the board.

Unknowing board meetings. Per Civil 4090, any time a quorum of the board is at the same time discussing any association topic, that is a “board meeting”, triggering the Open Meeting Act. When three of five directors happen to be at the pool, or attending a committee meeting, and any of the directors speaks, it then becomes a “board meeting” under this statute.

Email deliberation. Email is so much part of our lives, that the temptation to discuss association business is almost irresistible - and often boards erroneously discuss association business in emails instead of during board meetings - this expressly violates



Civil 4910(b). It is acceptable to relay information via email, but discussing that information needs to wait until a proper board meeting.

Closed Session Abuse. Closed session is for the narrow categories of items which would damage the association (or others) if they were openly discussed. The short list of permissible topics is found in Civil 4935. While it is tempting to discuss other matters in closed session, that practice abuses the trust of the community. Do everything in open session except those narrow discussions which cannot be open.

Interrupting open forum. A common source of disorderly board meetings is member interjections. Oftentimes, the disruption is mutual - because the board also interrupts during member open forum. Let people have their 2 or 3 minutes. Do not interrupt or respond during their time. Respect their time, and insist they respect yours.

Discussing open forum remarks. Members can discuss anything in open forum, but not the board. Per Civil 4930(b)(c), a director can briefly answer a statement or question, refer the matter to management or a committee, or make an announcement.

Failure to make draft minutes available. Under Civil 4950, draft minutes of completed meetings must be made available to members no later than 30 days afterward. If minutes go beyond the legal requirements and note comments, it can be a chore for the secretary to complete them, which often means they are late.

How does your association measure up on these points?

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