

## **Restricted by the Amended Open Meeting Act? Learn to Delegate.**

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Civil Code Section 4900 et. seq. (a.k.a., the Open Meeting Act) leaves very little breathing room to handle an association's business outside of a properly noticed board meeting. Therefore, in order to deal with these new legal requirements boards must find efficient ways to handle business in between meetings. One such tool is delegation.

The Open Meeting Act allows boards to delegate duties to other persons, including the association's managing agent, officers and committees of the board. As a result, tasks that require action in between board meetings can and should be delegated to officers, executive committees, or management depending on the task and authority required. The delegation should be made in a board meeting and reflected in the minutes (or preferably in a board resolution) that documents the purpose, scope and duration of the delegation.

When delegating to an executive committee of the board, make sure the number of directors does not comprise quorum. Create a charter for the executive committee that identifies such items as the types of matters to be decided by the committee, the length of the committee's duration (i.e., for a specific project or ongoing). Also, the tasks or decisions delegated to each committee are not already delegated to someone else by contract or the association's governing documents (or are prohibited from being delegated by state statute).

Many boards may now be inclined to delegate more tasks or projects to management. For example, it may be more efficient to set or increase spending authority for managers so that day-to-day maintenance decisions can be made in between board meetings. Both the board and management should review the management contract scope and exclusions for any language that may limit or prevent delegation. Also, verify whether the tasks delegated to management will require additional compensation.

Of course, the act of delegating to management does not absolve the board of the ultimate responsibility for the delegated task or decision. The monthly management report to the board should include a summary of all items delegated with backup for action taken or expenses incurred within the spending authority. Finally, any uncertainty about the appropriateness of any action taken through delegation should be resolved by ratification at the next board meeting.

Delegating tasks to individual directors should not be overlooked. If a board is in agreement on a landscape contract but all that remains is flower choice, that decision can be delegated to a member of the board. If a contract has been approved subject to verification of certain items, a decision on those remaining items can be delegated to a director. As with all delegation, the board should be clear to document the issue or task delegated to the director and understand that any further action must be brought to the full board. This protects against the risk that a director may act outside the scope of his/her authority.

It is imperative to inform and educate boards about the new Open Meeting Act requirements and the importance of observing proper corporate process. Further, it is crucial to guard against activities that otherwise might involve a majority of the directors outside a noticed meeting (i.e., group violation inspections), and instead consider well-defined delegation to committees, a director, or management, without specific limits. And, finally, if the board has discovered an inadvertent violation of the Open Meeting Act, the action or decision should be ratified at the next open board meeting, along with an explanation of the circumstances that led to the inadvertent Open Meeting Act violation.