



Senate Bill 563 Brings Sweeping Changes to The Open Meeting Act and How Community Association Boards and Their Managers Conduct Association Business

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The Open Meeting Act (Civil Code Section 1363.05), first passed in 1995, has been amended and expanded several times over the years; however, the changes which took effect in January 2012 SB 563 are by far the most sweeping in their impact upon California common interest developments.

Elimination of action without a meeting by unanimous written consent. The heart of SB 563 was its ban of board decisions by unanimous written consent. This method of decision-making was previously permitted by the Corporations Code but is now not permitted.

Agenda notice of executive session meetings. Although the Act requires agendas and notice to be posted four days before an open board meeting, prior law was unclear about whether notice of an executive session meeting was required. CC 1363.05 mandates a minimum of two (2) days' notice of an executive session board meeting.

No board decisions by email, except in emergencies. The Open meeting Act prohibits boards from making decisions by e-mail, except in the case of an emergency. A decision may be made by e-mail if the board unanimously agrees to do so. The decision to meet by email may be made also by email and the e-mails must be made part of the minutes of that meeting.

The definition of "emergency" is already contained in the Open Meeting Act: "...if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action..."

Telephonic board meeting participation. The Open Meeting Act now declares a telephone conference between a majority of the directors to be a "board meeting". A director may participate by telephone, so long as there is a location where members can attend and listen to the deliberation. A mobile phone on "speaker" mode is not recommended, due to the requirement that all in the room be able to hear and be heard on the speaker phone. Telephonic participation is not new, as the Corporations Code has for many years permitted it, but the procedure is now contained in the Open Meeting Act.

New definition of "meeting". By far the most significant substantive amendment to the Open Meeting Act is the broad definition of what is considered a meeting. Prior law defined a board "meeting" as a gathering of a majority of directors at the same place to discuss an item "scheduled to be heard" in an upcoming meeting. Now, the definition is infinitely broader: a meeting is "a congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business that is within the authority of the board."

The impact: This means that many of the tasks board members took for granted can no longer be done outside of a regular noticed meeting.

Compliance is possible. In order to avoid inadvertent violations of these new meeting requirements:

- First, make sure no committee has a majority of the board on its roster.
- Second, educate directors as to the law and the importance of observing proper corporate process.
- Third, avoid activities which otherwise might involve a majority of the directors outside the meeting, and consider more delegation to a committee, director, or manager, within specific limits.
- Finally, if the board has discovered a violation of this law, ratify the decision at the next open board meeting, and explain the circumstances the meeting occurred without proper notice.