The Most Ignored Law in California

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There are a number of laws which, it seems, hardly anyone obeys or takes seriously. For example, the "California rolling stop" at stop signs, or the law prohibiting the removal of mattress tags. In the community association arena, there is a law which is almost universally ignored at one time or another by many homeowner associations. The law is the Open Meeting Act, found at Civil Code Section 4900 et seq. That law confirms members' rights:

1. To attend meetings;

2. To have the opportunity to speak to the board at some time during the meeting;

3. To receive proper advance notice of meetings;

4. To receive minutes soon after meetings; and

5. To only be excluded from closed executive session meetings under certain defined circumstances.

It is this last requirement of the Open Meeting Act which seems to be the most widely abused, as boards all too often conduct important business in closed sessions.

WHY EXECUTIVE SESSION?

Sometimes boards would prefer to be in closed session to avoid the comments, criticism or even disruption caused by some members. A closed session insulates them from having to "take any guff". Closed sessions also are often argued to be much more efficient. Because a much smaller number of people attend the meeting, business can be conducted much more informally, and directors feel freer to speak openly without fear of repercussions (whether deserved or not). Some boards have closed sessions, but they call them "working meetings."

NEGATIVE RESULTS

Illegal closed-door meetings reap in a number of negative results. They will produce mistrust and further division. Closed-door meetings deprive members of valuable information pertaining to their homes, and deprive the board of potentially valuable input, information and support.

How can members support what they don't know?

FOUR NARROW SUBJECTS

Executive sessions may only address four narrow subjects:

- Litigation
- Personnel issues
- Formation of contracts (when the member requests it)
- Member discipline or member payment plans on dues arrearages

That is it. Only those four subjects are proper executive session topics. Everything else must be in open session.

Litigation
By "litigation" it would seem clear that this would include threatened or potential litigation. The preservation of the attorney-client privilege in discussions potentially involving claims against the association, or to be brought by the association, is very important, and protected by the Open Meeting Act. However, if the Board is asking for clarification of maintenance responsibilities, in the absence of a lawsuit threat that might be legal advice that should be properly shared with the members in open session. Rule of thumb: If it pertains to a dispute or to only one member, it is potential litigation and should be kept in closed session.

Personnel Issues
By "personnel issues" the statute protects the privacy of association employees who have their own privacy rights. However, most associations do not have employees of their own, but hire vendors such as managers, gardeners and plumbers to do work - and they are not employees.

Formation of Contracts
Does this mean the Board can hire a new manager or landscaper in secret? No. While many argue that this means that even the interview process or the submission of bids be in executive session, this writer disagrees. The healthiest approach for the association is to conduct the entire vendor search in open session, until the first-choice bidder is selected. Then the board adjourns to closed session to discuss what contractual terms will be offered, and what will be the association's final negotiating position on the subject.

Member Discipline and Dues Arrearages
Members have a right to some privacy. There is little to be gained in embarrassing people about their delinquencies or their failures to follow association rules. Although some members may not request closed session, the member should be invited to do so. If they do not request it, the matter may be discussed in open session.

CONSEQUENCES OF IMPROPER CLOSED MEETINGS
The Open Meeting Act does not have any explicit penalty for associations that violate the law. There is not yet any reported appellate court opinion which discusses the consequences of violation. However, the consequences could be extremely severe. It could be that a vendor voted upon in an improper executive session was not an action of the corporation, but only a personal liability of the board members, or that a court could set aside association decisions and actions made during illegal closed sessions. We don't yet know the answer to this; do you want your association to be the test case?

THERE ARE ALTERNATIVES
There are alternatives to help make your open board meetings run more smoothly. First, have some basic rules of conduct. Unruly, disruptive persons (sometimes those are directors, not the audience) should upon majority board vote be asked to leave if they violate the meeting rules or interfere with the progress of the meeting.

Second, have an organized agenda, and keep discussions on topic. Third, require your chairperson to take personal responsibility to move the meeting in an orderly manner through that agenda. Don't be afraid to allow questions from the floor, within reason, and don't be afraid to proceed to a vote when things become repetitive. Fourth, don't equate dissent with disloyalty, and don't take questions as insults. Finally, remember that you as a director are working for your neighbors, and not vice versa. They have a right to know how you are exercising the power which they have entrusted to you. Obey the Open Meeting Act. As for the mattress tags, California rolling stops, and music file sharing on the internet, I'll leave those to your conscience.