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OPEN AND SHUT: HOW TO ENSURE THAT BOARD MEETINGS ARE "OPEN" TO THE MEMBERS

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Most association boards of directors know that their meetings are required by Virginia, Maryland and District of Columbia statutes to be "open" to the members of the association. Yet many boards seek guidance about what, specifically, they need to do in order to satisfy the requirements of the statutes. This memorandum discusses the open meeting requirements in each jurisdiction, and sets forth what steps a board can take to ensure that its meetings are "open" to the members.

The statutes applicable to property owners' associations and condominium unit owners associations in Maryland and Virginia include a number of requirements to ensure that the meetings of a community association board of directors and its committees and subcommittees are "open." In order to comply with these requirements, a board of directors, its committees and subcommittees should take the following steps before, during and after each of its meetings:

1. Post notice of the meeting in a location that is likely to be seen by the members of

the Association. The notice should state the date, time, and place of the meeting. Special or emergency meeting notices should be posted for the members at the same time as the notice is given to the board or committee. Please note that the Board or committee must send notice to the owner's address of record, and if requested, the board or committee must send the notice of the meeting directly to that member by email.

2. Make the agenda or meeting packets available for inspection by the members at the same time the agenda or information is available to board or committee members. The exception here is that information and agenda items for an executive/closed session of the board or committee (as discussed below) do not have to be available.

3. Make meetings open to members. Obviously, the members must not be prohibited from attending the meeting. However, the Board should give some consideration to when and where the meetings are held. Meeting at a time and place that is accessible and reasonably

convenient for most people will promote the open nature of the meeting. Bear in mind that in Virginia, members may record any open portion of the meeting, subject to reasonable rules the board or committee places on the recording (such as placement of recording devices, etc).

4. Set aside time for an “open forum” to allow members to comment on the business of the meeting. While some communities may need to place time restrictions on this part of the meeting, the Board should attempt to provide a satisfactory opportunity for members to raise their concerns with the Board. If the Board knows that a particular meeting will be met with controversy, the Board should balance the open forum requirement with the need to conduct a civil and orderly meeting.

5. Keep minutes reflecting the actions taken or decisions made by the Board. In Virginia, associations are required to keep minutes and make the minutes available for inspection by the members, with the exception of minutes from executive session. Although Maryland law does not require associations to keep minutes of the meetings, it may be worthwhile to do so in order to keep a record of the Board’s actions.

The most obvious exception to the open meeting requirements is when a Board may meet in executive session. While executive session is closed to the members, it is

important that the Board comply with the following requirements so that the meeting as a whole remains open to the membership:

1. The Board may adjourn into executive session only after voting to do so in open session. The motion to close the meeting to the members must state the purpose for convening in executive session, and no other topics may be discussed once the session is closed to the members. No votes taken or decisions made in executive session are effective. Rather, after the closed session, the board or committee must come back into open session before taking a vote or making a decision.

2. Meeting may be closed to members only to discuss limited topics. The statutes for Maryland and Virginia allow for closed sessions to consider personnel matters, consult with legal counsel and to discuss probable or pending litigation.

In addition to these topics, the Virginia statutes allow for closed sessions to consider contracts, to discuss matters involving covenants violations, and to discuss and consider the personal liability of members to the association.

Boards in Maryland may also meet in a closed meeting if the closed meeting is necessary for the protection of the privacy or reputation of individuals in matters not related to the association’s business, to conduct investigative proceedings

concerning possible or actual criminal misconduct, or to comply with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure. In addition, Maryland boards may hold a closed meeting on the recorded affirmative vote of two-thirds of the board or committee members present, and some other exceptional reason so compelling as to override the general public policy in favor of open meetings. Maryland homeowners' associations may close a meeting to consider the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the association.

The District of Columbia Code has far fewer requirements than Maryland or Virginia regarding Board meetings, and provides little guidance as to how associations are to conduct meetings. Condominium associations in D.C. should refer to their Bylaws for requirements pertaining to meetings. The D.C. Code merely requires that condominium associations hold meetings of the unit owners associations at least once each year and has specific provisions regarding notice of meetings that must be found in a condominium association's Bylaws. The Code also requires that notice of meetings be sent or delivered by an officer designated in the Bylaws, and the notice must be sent to all unit owners of record at the address of the unit or any other address designated by the

unit owner to the officer. In addition, the meeting notice must be sent at least twenty-one days prior to any annual or regularly scheduled meeting and at least seven days in advance of any other meeting. Although associations in the District do not have to comply with the requirements listed above, Boards may want to consider adopting some of these criteria for the sake of promoting open communication with its members.

Consistently following the steps laid out above will help boards and committees to ensure that their meetings are "open" to the members, which, in turn, will promote trust and communication throughout the community. If you have any questions or concerns regarding your Board or committee meetings in your community, please feel free to contact any one of our community association attorneys.