

# UNDERSTANDING THE TYPES OF MEETINGS OF YOUR HOA.....

What's the difference between a homeowners association board meeting and an annual meeting, or an executive session and an emergency meeting? Confused? Here's some clarification.

## **1. Annual Meetings**

Annual meetings or annual membership meetings are required by a homeowners association's governing documents, which specify when they are to be conducted and how and when members are to be notified about the meeting.

***This is the main meeting of the year when members typically receive the new budget, elect a board, hear committee reports and discuss items of common interest.***

**Note:** Members must be given notice of an annual meeting no less than 10 but no more than 90 days before the date of the meeting. This notice must also include the items that will be discussed.

## **2. Board Meetings**

***Most of the regular business of an Association is conducted at a regular board meeting.*** Associations hold their regular meeting monthly, quarterly or as needed. The business that is conducted at an HOA board meeting is limited to noticed items only; **no other business may be transacted.**

Meetings of the membership and board meetings of an Association shall be conducted in accordance with a recognized system of parliamentary procedure, such as the [Open Meeting Act](#)\*. The Board shall permit any member to speak at any meeting of the membership of the Association. This is typically called the "[Members Forum](#) or Open Discussion."

At board meetings the board members set policy, oversee the manager's work, review operations, resolve disputes, talk to residents, and plan for the future. Often the **health** and **harmony** of an entire community is directly linked to how constructive these meetings are.

A **four-day notice is required for a board meeting** and the notice must include what will be discussed, and usually includes the agenda.

### 3. Executive Session

The governing documents require the homeowners association to notify the members in advance of all meetings, and members are welcome – in fact encouraged – to attend and listen.

The **one exception** to that is members can't listen when the HOA board goes into executive session. The board is required to give two days notice for an executive session if it's not held in conjunction with a board meeting.

Topics that the board can discuss in executive session are limited ***by law*** to a narrow range of sensitive topics such as legal, personnel issues, contracts or delinquent assessments. Executive sessions keep the discussion private.

*"Boards can vote on matters in executive session. They are not required to convene into an open meeting to cast their votes. For example, if a board meets with the association's attorney to discuss a pending mediation and authorizes settlement at a certain dollar amount, the vote should be done privately. To require that this vote be done in an open meeting would make negotiations impossible since the board's negotiating position would be published to the entire community. As the Court of Appeals noted:*

*It is no secret that crowds cannot keep them [secrets]. . . . "[o]ne can only imagine the sleepless nights an attorney and the Board of Directors may incur if privileged information is placed in the hands of hundreds of homeowners who may not all have the same goals in mind." (Smith v. Laguna Sur Villas).*

*Accordingly, boards can meet in executive session and vote on matters in executive session. The board's actions are then generally noted in the minutes of the next open meeting (such as: "The board discussed issues related to the pending mediation.")"*

### 4. Emergency Meeting

An emergency meeting is necessary when circumstances that could not have been reasonably anticipated and which **require immediate attention** or possible action by the board, and which of necessity make it impracticable to provide notice as required.

An emergency meeting of the HOA board may be called by the president or by not less than two members of the board other than the president. You can use email to find out director availability for the meeting, as well as to schedule the date and time for the meeting.

**You do not need to post notice of this type of meeting** since by its nature it needs to be immediate. If immediate board action is required and a director does not waive the two-day notice period to call an emergency meeting, that director would not be living up to their fiduciary responsibility to the Association.

An emergency meeting can be held in person, by phone, or even email if all directors **agree in writing**.

Meetings can be confusing. Follow these guidelines for each type of meeting and remember that the HOA board can only make decisions on the items on the agenda. Don't forget that meetings require notice to all members of the homeowners association, whether you mail the notice/agenda or post it at the designated spot within the Association.

**\*Open Meeting Act.**

- (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act. [New: Civ. Code §4900]
- (b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to, or meets solely in, executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in [Section 5650](#) or [5655](#). The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session. As specified in paragraph (2) of subdivision (k), a member of the association shall be entitled to attend a teleconference meeting or the portion of a teleconference meeting that is open to members, and that meeting or portion of the meeting shall be audible to the members in a location specified in the notice of the meeting. [New: Civ. Code §4935]
- (c) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership. [New: Civ. Code §4935]
- (d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon request and upon reimbursement of the association's costs for making that distribution. [New: Civ. Code §4950(a)]
- (e) Members of the association shall be notified in writing at the time that the pro forma budget required in [Section 1365](#) is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained. [New: Civ. Code §4950(b)]
- (f) Unless the bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subdivision (k), except for an emergency meeting or a meeting that will be held solely in executive session, at least four days prior to the meeting. Except for an emergency meeting, members shall be given notice of the

time and place of a meeting that will be held solely in executive session at least two days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given by mail, by delivery of the notice to each unit in the development, by newsletter or similar means of communication, or, with the consent of the member, by electronic means. The notice shall contain the agenda for the meeting. [New: Civ. Code §4920; Civ. Code §4045]

(g) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section. [New: Civ. Code §4923]

(h) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board of directors or before a meeting of the association shall be established by the board of directors. [New: Civ. Code §4925(b), §5000(b)]

(i) [New: Civ. Code §4930]

(1) Except as described in paragraphs (2) to (4), inclusive, the board of directors of the association may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was posted and distributed pursuant to subdivision (f). This subdivision does not prohibit a resident who is not a member of the board from speaking on issues not on the agenda.

(2) Notwithstanding paragraph (1), a member of the board of directors, a managing agent or other agent of the board of directors, or a member of the staff of the board of directors, may do any of the following:

(A) Briefly respond to statements made or questions posed by a person speaking at a meeting as described in subdivision (h).

(B) Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, whether in response to questions posed by a member of the association or based upon his or her own initiative.

(3) Notwithstanding paragraph (1), the board of directors or a member of the board of directors, subject to rules or procedures of the board of directors, may do any of the following:

(A) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.

(B) Request its managing agent or other agents or staff to report back to the board of directors at a subsequent meeting concerning any matter, or take action to direct its managing agent or other agents or staff to place a matter of business on a future agenda.

(C) Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this subdivision.

(4)

(A) Notwithstanding paragraph (1), the board of directors may take action on any item of business not appearing on the agenda posted and distributed pursuant to subdivision (f) under any of the following conditions:

(i) Upon a determination made by a majority of the board of directors present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.

(ii) Upon a determination made by the board by a vote of two-thirds of the members present at the meeting, or, if less than two-thirds of total membership of the board is present at the meeting, by a unanimous vote of the members present, that there is a need to take immediate action and that the need for action came to the attention of the board after the agenda was posted and distributed pursuant to subdivision (f).

(iii) The item appeared on an agenda that was posted and distributed pursuant to subdivision (f) for a prior meeting of the board of directors that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

(B) Before discussing any item pursuant to this paragraph, the board of directors shall openly identify the item to the members in attendance at the meeting.

(j)

(1) The board of directors shall not take action on any item of business outside of a meeting.

(2)

(A) Notwithstanding [Section 7211](#) of the Corporations Code, the board of directors shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in subparagraph (B).

(B) Electronic transmissions may be used as a method of conducting an emergency meeting if all members of the board, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the meeting of the board. Written consent to conduct an emergency meeting may be transmitted electronically.

[New: [Civ. Code §4910](#)]

(k) As used in this section:

(1) "Item of business" means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the directors. [New: [Civ. Code §4155](#)]

(2) "Meeting" means either of the following: [New: [Civ. Code §4090](#)]

(A) 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.

(B) A teleconference in which a majority of the members of the board, in different locations, are connected by electronic means, through audio or video or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this title. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend and at least one member of the board of directors or a person designated by the board shall be present at that location. Participation by board members in a teleconference meeting constitutes presence at that meeting as long as all board members participating in the meeting are able to hear one another and members of the association speaking on matters before the board.