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The 411 on Executive Sessions

I am frequently asked the following question by board members and managers ..."what is an executive session and what subjects can a board discuss during an executive session?" This is a great question and managers and board members should read below to refresh their memories regarding the use of executive sessions.

An executive session is a meeting with just the board members (no other owners), the manager and, maybe the association's attorney, if the attorney is present at the meeting. The board can only discuss five (5) topics during the executive session. Pursuant to the Arizona Open Meeting Law (A.R.S. Section 33-1804 (planned communities) and A.R.S. Section 33-1248 (condominiums), [a]ny portion of a meeting MAY be closed to conduct an executive session so long as the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.
5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

The executive session usually occurs before or after the regular open board meeting. The Board must properly notice the executive session at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors (even though the membership cannot attend). Any notice of an executive session board meeting shall state the time and place of the meeting. It is important to note that if the Board has already noticed the regular board meeting and the executive session occurs before or after the regular board meeting, it is a best practice to also state when the executive session will be conducted as part of the regular board meeting notice. Finally, notice to members of an executive session meeting is not required if emergency circumstances require action by the board before notice can be given.

Most boards in Arizona use executive sessions to discuss the following: advice from the association's attorney (in person, emails, opinion letters), owners who are delinquent in the payment of assessments and/or in violation of the association's documents and job performance of vendors. It is our firm's opinion that the hiring and firing of vendors should always be voted on during the open board meeting. It is also important to remember the minutes of the executive session should be taken, approved and maintained in a folder/binder/online separate from the regular minutes of the board meeting. Executive session minutes are not open for review by the owners.

Board Members and Managers, don't forget about our "First Friday Call In"! Please call our firm the First Friday of each month to have one question answered by a Mulcahy attorney for FREE. Our next First Friday Call In is Friday, October 7, 2011 between 9:00 a.m. and 10:00 a.m.

I hope you are enjoying the cooler fall weather!

Sincerely,

Beth Mulcahy, Esq., Founder and Senior Partner
Mulcahy Law Firm, P.C.