

New Arizona Case Law: Board of Directors Cannot Exclude Board Member from Executive Session Without Good Cause

The Arizona Court of Appeals, Division One, issued an opinion today regarding a Board of Director's authority to exclude a board member from an executive session within an Association in Arizona. In *McNally, v. Sun Lakes Homeowners Association #1, Inc.*, the Arizona Court of Appeals concluded that the Board of Directors of Sun Lakes Homeowners Association #1, Inc. ("Association"), lacked the authority to exclude one of the Board members from its executive sessions. The court limited its holding to the specific facts of this particular case and stated that there may be some situations when a board could request a board member to sustain from attending a particular executive session or when the board could ask the court to exclude a board member from an executive session, but that this was not the case for the specific facts involved in this matter.

This case involved a situation where one particular Board member, out of a seven-member board, read a confidential email from an executive session to the Association members present at a regular open session meeting. The Association's general counsel attorney had previously advised the Board members to keep the specific email confidential. Following the open meeting when the confidential emailed was read, the Board approved a motion banning the board member from all executive sessions for the remainder of her term on the Board. The Board member then filed a lawsuit and an application for a preliminary injunction to compel the Board to allow her to participate in executive sessions while she was a remaining board member. The Superior Court denied her preliminary injunction to compel the Board to allow her to participate in the executive sessions.

The Courts of Appeals said that the Superior Court erred in denying the preliminary injunction. The court stated that neither Arizona law nor the Association's governing documents authorized the board to pass a motion banning a board member from all executive sessions. The court stated that Arizona law requires board members to assist in managing the affairs of the Association and that by banning this board member from executive sessions it was prohibiting the board member from performing her duties and responsibilities as a Board member. In addition, the court stated that Arizona law requires notice of board meetings, which helps guarantee that board members will be available and therefore guarantees the participation of all board members in assisting with the affairs of the Association. The Court held, "[b]ecause McNally is a duly-elected director, the Board did not have the discretionary power to exclude her from all of its executive sessions."

Instead of acting in the manner that it did, the court held that the Board could have started the process of removing her from the board pursuant to Arizona law or could have asked the court for an injunction prohibiting her from disclosing the confidential information. The court made it clear that despite its ruling, there may be situations when a board member should abstain from an executive session, such as in the case of a conflict of interest or alleged misconduct on behalf of that board member. Therefore, while the lawsuit is pending in Superior Court, this specific board member is allowed to participate in the board's executive sessions.