

HOA Homefront

New Law, Requiring Better Planning of Board Meetings

By: Kelly G. Richardson

On January 1, 2008, many new laws will become effective, only one of which will affect common interest developments. However, it will forever change how most boards prepare for and conduct board meetings.

Traditionally, association boards had great flexibility in setting agendas and were not required to have any agenda prior to the meeting. The only requirement was that members be given four days minimum advance notice of any unscheduled (or "special") board meeting. There was no requirement that any agenda be posted, and so long as proper notification of the fact of the meeting was given, the board could take any action within its power during the meeting.

That changes for common interest developments with the New Year.

Civil Code §1363.05, known as the "Open Meeting Act," has a new section "i" added. Under this section, boards must post their agenda at the same time they post notice of the meeting – at least four days ahead. The difficult part of this new law is not the agenda posting requirement, but rather the consequences of not having an item of business shown on the agenda. Commencing January 1, 2008, if an item of business is not shown on the agenda in advance, the board cannot even discuss it.

Some exceptions are provided for, but they are quite narrow. Here is the list of what a board can do about non-agenda items:

- 1) If an emergency (by vote of majority of the board), it can be discussed and voted upon.
- 2) The board can listen to members speak on topics in Open Forum which are not on the agenda, and can answer questions.

3) The board can provide clarifications, announcements, or reports on ongoing activities.

4) The board can refer a matter to the manager for action or to report back to the board at a future meeting.

In the months since the legislature passed this law, some HOA professionals have suggested the key is a very generic "one size fits all" agenda. If, they suggest, the agenda is so broad that it covers every possible issue, the law is met. This is a bad idea for two reasons. First, it violates the law, because a vague agenda covering the entire universe is not an agenda, but a sham. Second, remember you are governing a community.

What will the neighbors think if your board takes such a tricky tactic?

The Open Meeting Act is all about good HOA governments doing business in the open. This new change to the law gives the membership a much better opportunity to decide if they want to attend a particular board meeting. More specific knowledge of the board's agenda will help build confidence in the board, which will benefit everyone in the association.

Since most board members don't see their agenda for the board meeting until a few minutes before the meeting, it will be a major change for many to start requiring agendas to be carefully planned. The manager and/or chairman will need to start thinking about the agenda about one week prior to the meeting. Committees will need to get their input prepared one week prior to the meeting. A committee that shows up at the last minute at a board meeting with a non-emergency recommendation will have to wait until it can be placed on the next agenda.

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When new items are brought to the Board's attention, either by open forum speakers or by a director's request, those matters will need to be added to the next agenda. Care should be taken to resist the easy temptation to declare all non-agenda matters as "emergencies." The statute is very clear that emergency situations exist "if there are

circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action." As a wise person said somewhere, an emergency is not your failure to plan.

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