

# HOA Homefront

## Closed Meetings; Reminder Letters for the Slightly Delinquent

By: Kelly G. Richardson

### Reader Questions

#### Dear Sir:

Over the years we have lived in several CIDs, served on several Boards and enjoyed participating. When we moved to this community I attended several Board meetings but slowly became discouraged and stopped going.

After the Open Forum part at the start of the meeting, our Board immediately leaves the room and goes into Executive Session. Several hours later they return and the meeting is adjourned. Many of our neighbors feel that, for some reason, our Board wants to keep everything secret!

Boards that I served on were more “user friendly.” We seldom felt the need for an “executive session” and openly discussed items with any resident interested enough to attend our meetings. We felt it was important to keep everyone informed — after all, it was their money we were spending.

I enjoy reading your column — you provide a great service to HOA. So, how do we solve this problem?

**E.A., Newport Beach**

#### Dear E.A.:

Executive session is often over-used, in spite of the law's very clear restrictions on what can be discussed in executive session. Under Civil Code Section 1363.05(b) (in the Open Meeting Act portion of the Davis-Sterling Act), only a very few items can be handled in executive session: Litigation (or threatened), association employee issues, member discipline or member payment plans to catch up arrearages, and formation of contracts. That is it — only those topics.

In addition to being illegal, the overuse of executive session discourages members, as you have experienced yourself, and destroys trust and confidence in the board. As volunteer

directors, preserving your neighbors' trust in your should be paramount.

Association business, except for executive session topics, should be conducted in the open, with members watching — quietly.

If the board works in closed session due to fear of interruptions, then adopt and enforce reasonable meeting conduct rules. Meetings should be open.

The answer is to educate the community on proper common interest development practices. Hopefully your board will also read this column, and learn more about the proper use of executive session.

Best regards,  
**Kelly G. Richardson, Esq.**

#### Hi Kelly, here is my HOA question:

We raised our monthly assessment as of January 1, 2008. However, several residents failed to notice the various publications that contained the increase. These included the Monthly Budget mailed out as required, plus it was repeated in the Newsletter and it is clearly stated on their bill.

A number of residents don't read anything. Is it acceptable to send the residents that have not increased their payments a personalized letter reminding them to bring their account up to date and to modify their payment accordingly?

Our standard policy, per our Management Company, is to wait until they are delinquent by the amount of 1 full payment which would take many months.

Thanks,  
**E.S., San Juan Capistrano**

**Dear E.S.:**

Unfortunately, association members do not always heed the advance warnings given them by well-run associations. The association need not wait until members are seriously delinquent before sending a reminder letter, particularly where as in your situation assessments were recently raised. I assume your association sent out notice of the increase at least thirty days (but not more than sixty) before the increased assessment was due, in compliance with Civil Code Section 1366(d).

Hopefully, your association already has in place a written assessments collections policy, required by Civil Code Section 1365(e) to be sent annually to all members. This policy should be in place to help members know when the association takes collection action such as late charges or liens.

If members are falling delinquent by small amounts, simply through inadvertence, there is nothing to be gained by waiting until they are behind by the equivalent of one full month's assessments. Send them a reminder, just as you would want someone to remind you.

Thanks for your question. Good luck getting your neighbors up to date.

Sincerely,  
**Kelly G. Richardson, Esq.**

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Kelly G. Richardson, Esq. is the Managing Partner of Richardson & Harman PC, a California law firm known for its real estate and community association advice. Mr. Richardson is a popular lecturer for attorney groups, Southern California Associations of Realtors®, real estate brokerages and community association industry groups. He is general counsel for several Los Angeles area Associations of REALTORS®, and is a member of the C.A.R. Legal Affairs Forum.

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