

Open Meetings and Voting

Consistency:

1) Clarifies the application of the open meetings laws for committees of the board from “regularly scheduled committee meetings” to “committees addressing community business”, and provides further clarification on what that constitutes. *Widespread practices to delegate responsibilities and actions typically applied to the board to sub-committees of the board, and then using the “regularly scheduled” qualifier to avoid application of the open meeting laws, mandates this clarification. Some of the most significant business conducted by an association like covenant enforcement, architectural control, budget preparation, and capital long term planning all are most often conducted by committees of the board and none of these committees would be considered “regularly scheduled”. Clearly the significance of a committees business is in no way related to the scheduling of its meetings.*

2) Clarifies what courts have repeatedly upheld that violations of community documents are public information within the community and not considered personal information in relation to open meeting exception #3. *Exception #5 allows the homeowner the choice to either contest any violation in either open or closed sessions of the board. Any discussion or decision to cite an alleged violation of community documents should and must be held in open session, unless other qualifying aspects of the violation allow for closed session consideration. This clarification is essential to allow the transparency relative to cited violations and allows the community to ensure that consistency and fairness is applied by the board.*

3) Clarifies the requirement for notification of the criteria for a closed meeting of the board or committee of the board be based on the specific subject matter to be discussed in that specific meeting. *Many association have been guided by their attorneys to simply provide one time blanket notice that all executive meeting of the board will discuss any of the 5 exceptions without specificity, contrary to the clear intent of these statutes. The intent of this provision added in 2017 was for the board to make a conscience review of the open meeting exceptions prior to conducting any closed sessions based on the specific issues to be addressed in that specific closed session. Further proof that the public policy statement and the clear directive provided for interpretation of the open meeting law, are simply being ignored.*

4) Maximizes the flexibility for boards, to distribute and receive absentee ballots including the use of on-line voting services, and provides the criteria for the use of such a system consistent with the current requirements for that use in Title 10-3708. *There is no real reason why absentee ballots must be distributed by mail that is costly and time consuming. While alternative methods of delivery were identified using e-mail or fax, there were no provisions in for dealing with secret ballots by those methods. This proposal not only identifies additional technological means for providing and receiving absentee ballots it applies a process for voter identification that applies to all cases and treats all ballots as secret ballots*

5) Establishes a requirement for members to be granted an opportunity to speak for or against any issue to be decided by the members prior to the vote, consistent with the public policy statement in 33-1248 and 33-1804 respectively.

Transparency:

1) Clarifies that notwithstanding any provision of the community documents or of sections 10-3704, 10-3708 or 10-3821 that any actions taken by the board, business committee of the board or

members will be taken at a meeting in accordance with these chapters. *It has been clearly established that the specific statutes for common interest communities supersede the general statutes for corporations, if they conflict. Attorneys and Community managers have continually used Title 10 provisions to circumvent the clear and specific language of the Title 33 open meeting laws. The sections excluded represent action by a board without a meeting and action by the members by written consent or written ballot without a meeting.*

2) Expands and provides greater opportunity for the board and members to conduct meetings via technological means remotely, as long as members can participate. *This is particularly important in Arizona with so many part year residents in these communities*

3) Establishes a requirement that the agenda for open meetings be provided along with the notice of that meeting, consistent with the public policy statements in section 1248 and 1804. Sets a maximum time of 10 business days for the posting of that notice and agenda and provides clarification that the board is not bound to that agenda if issues are raised by members in the meeting or issues are identified by the board subsequent to the publishing of the notice and agenda. *While there is real value to informing members of the agenda and subject matter to be discussed at these meeting so that they can decide for themselves if they want to provide input on that issue it is and was never the intent to apply the constrains and formality established for public bodies relative to agendas to these board or committees. This also ensures that if a member raises an issue at a meeting, the board cannot dismiss the issue based solely on agenda concerns. The agenda should be informative but should not be used as a tool to limit member input or to not address member issues, or late breaking board or community business.*

4) Establishes the requirement that draft minutes be made available upon request from any member within 10 business days after any open meeting of the board, committees or members. *The boards have denied member access to draft meeting minutes on the basis that they are not community records until approved, which could be several months later. The minutes of a meeting are the primary communications tool to inform homeowners of the actions taken by boards if they were not able to attend those meetings. By clearly identifying the minutes as draft they provide that information to the community in a timely fashion, while still recognizing that they are not official records of the association until approved.*

5) Establishes a requirement that, for any issue to be decided by the members that the board provide an opportunity for arguments for and against the issue to be distributed to the membership prior to the vote. *The association has the contact information for the community and can use that to present only their perspective of any issue for the members to vote on. They can then deny access to that contact information on privacy considerations to any opposition to that position thereby deliberately suppressing any opposition to their perspective. This provision will ensure that members are given an opportunity to be presented both sides of an issue and allowing them to make an informed decision in their vote, while protecting the privacy of the contact information of the community.*

6) Establishes a requirement that if for any reason a board determines that any member is ineligible to vote, that they notify that member prior to the election or vote and provide them the opportunity to correct or contest that ineligibility. *Too many examples exist where homeowner ballots were disqualified after the fact without the knowledge of the homeowner, with or without deliberate attempts to manipulate the ballot outcome by this process.*

Accountability:

1) Establishes a requirement for the board responsibility to ensure the integrity of the election and voting process.

2) Establishes an enforcement condition that if a board or its agent is found to have violated any requirement of the voting process, any adjudicating tribunal has the option to invalidate the election or ballot measure as appropriate. *Without this provision the adjudicating tribunal is not empowered to invalidate an election or ballot measure if true and significant improprieties were determined. They may find that the association conducted improper elections but have often ruled that they could do nothing to correct the situation for the community.*