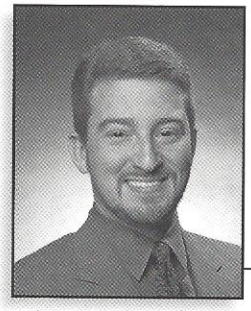
Legally *Speaking...*



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EXECUTIVE SESSIONS:
Few and Far Between

By Adam J. Cohen, Esq.

Running a community requires transparency. Unit owners are entitled to know how the people they elect make the decisions which impact their community, and open meetings are the best way for a board to satisfy that obligation. Only in rare situations should a board hold a "closed" meeting, or to use the legal moniker, an "executive session." Those situations depend on a reasonable determination that the need for secrecy is truly substantial enough to outweigh the unit owners' right to know and participate.

Last year's amendments to the Common Interest Ownership Act made clear that open meetings are the rule and closed meetings the exception. The Act now states that meetings of the executive board and of committees authorized to act for the association may hold executive sessions only to do five things:

> (A) Consult with the association's attorney concerning legal matters; (B) discuss existing or potential litigation or mediation, arbitration or administrative proceedings; (C) discuss labor or personnel matters; (D) discuss contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or (E) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.[1]

The first two situations are easily understandable, since preserving the attorney-client privilege and strategizing for legal disputes both require discussions in confidence. Similarly, labor and personnel matters can implicate legally-protected employment rights. Revealing the details of vendor contracts to the public or competitors before they are finalized could put the association at a disadvantage when negotiating for the best price. The last situation is a "catch-all" which usually concerns discussion of a unit owner's delinquent common charges, but might also be relevant when an owner's or board member's medical issues or other intimately personal circumstances can affect the community.

Even when executive sessions are legally permissible, they can only be held during a regular or special meeting, not instead of one.[2] In other words, the community remains entitled to know that the closed meeting will occur. Even if the "confidential" issue is the only topic the board plans to discuss, notices must be sent out to each unit owner identifying the meeting's time, date, location, and purpose.[3]

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The meeting always starts as "open" before being "closed." Although not specifically required by the Act, having the board announce which of the legally-allowed situations authorizes the executive session and then voting on whether to hold one is a good practice before closing the meeting.

The board is free to invite specific involved people to remain in attendance – such as the association's attorney or property manager, or if the board wishes the unit owner, employee, or proposed vendor under discussion. Information considered and records reviewed during the executive session need not be made available to unit owners, and minutes of the discussion need not be taken.[4] Perhaps the most crucial restriction, however, is that the board can never take a binding vote while in the executive session. The members may only discuss the issue before opening the meeting up again to entertain a motion, consider comments from the unit owners, and then vote on the action on the record. A vote taken during an executive session, and any action predicated on that vote, is legally void.[5]

Notably, some communities created before 1984 have bylaws which give their boards more power to hold executive sessions, and they are grandfathered against these provisions of the Act to the extent of the inconsistency. Nevertheless, openness is always the best policy. Executive sessions are occasionally necessary, but they should be few and far between. If your board does not want to be thought of as ignoring its constituents and making decisions behind closed doors, then the best way to avoid that is to just not do those things. ■

Notes:

1. C.G.S. § 47-250(b)(1).
2. C.G.S. § 47-250(b)(1).
3. C.G.S. § 47-250(b)(5).
4. C.G.S. § 47-250(b)(6), § 47-260(a)(2), and § 47-260(d)(5).
5. C.G.S. § 47-250(b)(1); Bosco v. Arrowhead by Lake Ass'n, Inc., Connecticut Superior Court, No. CV054007579S, 2008 WL 2168922 (May 8, 2008) (condo board president's execution of promissory note as authorized by board resolution approved in executive session was therefore invalid).

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