

# Boards Have Right to Executive Sessions

## CONDO WATCH

By David Mack

Sometimes condo boards must consider matters that are too sensitive to be discussed before any owners in attendance.

It then becomes necessary for the directors to move temporarily in to executive session to keep their deliberations secret. Owners are not permitted to sit in unless the matters being debated require their involvement.

For condos, Section 18 of the Illinois Condominium Property Act provides that by-laws specify that the only topics that can be discussed in private are litigation or potential litigation, personnel issues and homeowner arrearages or fines. To discuss anything else in executive session would be improper and illegal.

Non-condo associations follow the Illinois Not for Profit Act, which limits executive sessions to the same three purposes as the condo law merely for associations of 24 or more units in cities of one million or more—which means only Chicago. Non-condos in the suburbs apparently can conduct closed meetings on other subjects without breaking any law.

When one of the condo boards he serves is considering an executive session to discuss matters not deemed private by the law, Steven Heuberger, president of Villa Management in Vernon Hills and an attorney, advises the directors

they would be exceeding their authority in doing so.

"If it's not appropriate, we tell them it's not appropriate," Heuberger said, adding that even the non-condos among the 40 associations his firm manages adhere to the condo law's open meetings dictate.

Although its discussion of sensitive issues should be done out of earshot of others, once a board had adopted a course of action, it must reconvene publicly to put the decision in the record. Heuberger compared a board's action with a jury whose deliberations are held behind closed doors, but which must render its verdict in the courtroom.

Executive sessions are always part of another meeting. Either they are included on the agendas of the regular monthly get-togethers or special meetings must be called following all the notice to owner requirements of the law.

"This is to make sure that whenever a board meets, even if solely to discuss private matters, it is not doing so secretly. Every meeting must be noticed, even if it winds up being an executive session and everybody is asked to leave," Heuberger said.

The position of an executive session on a monthly agenda can be important.

While it might become necessary to vote everybody out of the room when the public discussion of an issue turns sensitive, boards ideally should schedule their planned private conversations at

the end of the regular meeting, just before adjournment.

This is a matter of accommodation to those owners who are interested enough to take the time to learn what goes on in their associations by attending meetings.

If a board goes into executive session while there are still other topics of interest scheduled for discussion in front of the audience, "people will leave and they won't return or they'll get angry," Heuberger said.

This would not be good board public relations, and if done too often could discourage owners

from future participation in the affairs of an association.

Whether or not to take minutes at an executive session is a judgment call by a board.

Heuberger recommends his clients never take any minutes at these closed-door confabs, but concedes that some board members might feel they'll have difficulty remembering what was said and want written backup.

However, "if you want to keep something secret, don't take minutes," he said.

Matters discussed in private that lead to actions against a board, such as an employee suing

over termination, causes asking for any discovery procedure.

As pointed out when a board records public table, the action must be put on the minutes of a meeting.

Heuberger considers the possibility that Illinois might, in the future, take away minutes at executive sessions.

While unwilling to predict the likelihood of such a change, he said, "the Legislature passes laws that are difficult for boards

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