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## “Open Meetings” Doesn’t Mean Owners Hear EVERYTHING, Does It? Scott B. Carpenter, Esq.

Many boards and managers are aware that Arizona requires board of directors meetings of condominium and planned community associations to be “open.” But there are a few tricky questions that sometimes arise.

Both the Arizona Condominium Act at A.R.S. Section 33-1248 and the planned community statutes at A.R.S. Section 33-1804 require all board of directors meetings to be “open to all members of the association or any person designated by a member in writing as the member’s representative.” Neither the Arizona Condominium Act nor the planned community statutes define “meeting.” What is a “Board meeting”? Can the Board determine whether a particular gathering of board members is a “meeting” or “not a meeting”? Some boards of directors attempt to avoid the statutory requirement of “open board meetings” by calling their gatherings “Workshops”, “Agenda Planning”, or a “Pre-Meeting Meeting.” Although the statutes do not define “board meeting”, the generally accepted definition is that any gathering of board members (1) that meets or is in excess of the quorum requirement (the minimum number of directors who must be in attendance for business to be conducted – typically in most governing documents this is a “majority” of the directors), and (2) where association business is discussed is a “board meeting.” This would require that “Workshops”, “Agenda Planning” and other board gatherings be open to the membership because a quorum or more is present and association business is discussed.

Assuming the gathering of board members is a “meeting”, there are several types of board meetings (or portions thereof) that can, at the board’s option, be closed to the members. The “closed meeting” section of the statute is entirely at the board’s option. It is not required that the board meet in closed or executive session to discuss any of the following topics, but it is the board’s prerogative or option to close the meeting:

1. Legal advice from an attorney for the association or board of directors. (The attorney can be present or the board could be discussing advice given to the board or manager telephonically or written advice from the attorney).
2. Pending (already filed) or contemplated (not yet filed but pondered) litigation (lawsuits involving the association as a party – either plaintiff or defendant).
3. Personal, health or financial information about an individual owner in the association.

4. Personal, health or financial information about an individual employee of the association.
5. Personal, health or financial information about an individual employee of a contractor of the association. (This includes employees of the landscape contractor, employees of the pool maintenance contractor, employees of the professional management company, etc.)
6. [discussion of] Records (documents) of the association directly related to the personal, health or financial information about an individual owner, employee or employee of a contractor of the association.
7. Job performance of, compensation of, health records of or specific complaints against an individual employee of the association.
8. Job performance of, compensation of, health records of or specific complaints against an individual employee of a contractor of the association.
9. The consensus best practice is to hold board meetings that cover any topic not set forth in the eight exceptions above in an open forum for the owners and their designated representatives to attend, listen and speak at an appropriate time (required by statute to be "before formal action is taken on an item under discussion").

If there are questions about open meetings, or a formal opinion needed, contact Scott Carpenter or another attorney in the firm.