

Senate Bill 563: Boards and their Business

A Breakdown of the 2011 Legislation Impacting Board Meetings



Introduction

Senate Bill 563 amends several sections of the California Civil Code—most notably Section 1363.05, known as the “Common Interest Development Open Meeting Act.” The amendments include new restrictions on actions without a meeting and what matters may be considered at a meeting. The amendments also provide new requirements with respect to meetings held in executive session as well as requirements for meetings held electronically or by teleconference. Below is an outline of these new restrictions and requirements.

No Action without a Meeting

Previously, Boards were permitted to take action on an item without a meeting if all members of the Board gave unanimous written consent to that action. The new legislation amends the Open Meeting Act to state that a Board “shall not take action on any item of business outside a meeting.” This amendment will likely produce a substantial effect on the ways in which Boards have traditionally managed the affairs of their Associations during the periods between their regularly scheduled Board meetings.

“...will likely produce a substantial effect...”

New Definition of “Item of Business”

As discussed above, a Board is now prohibited from taking action on “any item of business” outside a meeting. “Item of business” is now defined as “any action within the authority of the Board, except those actions that the Board has validly delegated to any other person or persons, managing agent, officer of the Association, or committee of the Board comprising less than a majority of the directors.”

Executive Session = a “Meeting” of the Board of Directors

The Open Meeting Act’s definition of “meeting” was often interpreted as not including the times when the Board would meet solely in executive session. The new legislation amends the old definition of “meeting” to include executive session—making “meetings that will be held solely in executive session” subject to new requirements.

New Two (2) Day Notice Requirement for Meetings Held “Solely in Executive Session”

The previous notice requirements with respect to meetings required, at a minimum, four (4) day notice be provided to members for all meetings of the membership. There were no previous notice requirements for when a Board met solely in executive session or conducted an emergency meeting. The new legislation amends these notice requirements to require that, at a minimum, two (2) day notice be given to members for “meetings that will be held solely in executive session.”



Meetings via Electronic Transmission

The new legislation explicitly disallows meetings conducted via a series of electronic transmissions (including Email), except for emergency meetings. In order to conduct an emergency meeting via electronic transmission, all Board members must give unanimous written consent and their consent must be filed with the minutes of the emergency meeting. The written consent to conduct an emergency meeting may be transmitted electronically.

“...explicitly disallows meetings conducted via [Email]...”



Meetings via Teleconference

The new legislation amends the Open Meeting Act's definition of "meeting" to include a "teleconference in which a majority of the members of the Board, in different locations, are connected by electronic means, through audio or video or both." If a Board wishes to conduct a meeting of the membership by teleconference, the notice of the teleconference meeting must identify at least one physical location so that the members of the Association may attend, and at least one Board member must be present at that location. This additional notice requirement does not apply to "meetings held solely in executive session" or to emergency meetings.

Agendas for Executive Session Meetings Must be Made Available to the Membership

Existing California law requires an Association to make available specified Association records, but excludes from those requirements agendas for Board meetings that are held in executive session. This new legislation removes this exclusion, ultimately requiring an Association to make agendas for meetings held in executive session available to members.

New Restriction on What Matters May be Considered at a Meeting

The new legislation amends Civil Code Section 1363 to delete the provision generally allowing for a Board to consider any proper matter at a meeting. Before the new legislation, a Board was still precluded from acting on an item that was not on the noticed agenda for the meeting. However, as a result of the new legislation, not only can the Board not act on such an item, but the Board is disallowed from even considering such an item at the meeting unless it was noticed as an agenda item for the meeting.

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