

How to Hold a Closed Meeting

When considering a closed meeting, a board of directors must consult the provisions in their governing documents, as well as open meeting policies and relevant state law. These provisions, however, do not tell a board of directors how to put them into practice. Therefore the CCOC has developed, and suggests, the following guidelines to assist board members in complying with the law *and* best practices when holding a closed meeting.

In Maryland, as a matter of law and general public policy, all common ownership community meetings must be open to the owners and residents in the community. The CCOC has made the following resolution.

(a) A meeting is a gathering, regardless of description, of a quorum of the board of directors or a board-authorized committee of a common ownership community convened for the purpose of considering or transacting association business.

(b) A member of a common ownership community board of directors or a board authorized committee may not use a gathering, regardless of description- e.g., work session, social gathering in which a quorum is present to evade open meeting requirements.

The CCOC will not uphold decisions made by a board in an improperly closed meeting."

Before a closed meeting

1. Board members must first consider whether their purpose is authorized by the Maryland Condominium, Co-operative Housing, or Homeowners Association Act (the "Acts"), which state: "A meeting of a board of directors or other governing body of the [association] may be held in closed session only for the following purposes:
 - a. Discussion of matters pertaining to employees and personnel [Condos, Co-ops, & HOAs];
 - b. Protection of the privacy or reputation of individuals *in matters not related to association business* (emphasis added) [Condos, Co-ops, & HOAs];
 - c. Consultation with legal counsel on legal matter [Condos, Co-ops, & HOAs];
 - d. Consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters [Condos, Co-ops, & HOAs];
 - e. Investigative proceedings concerning possible or actual criminal misconduct [Condos, Co-ops, & HOAs];
 - f. Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure [Condos & HOAs];
 - g. Discussion of an individual owner's assessment account [Condos & HOAs]; or
 - h. Consideration of the terms or conditions of a business transaction in the negotiation stage *if the disclosure could adversely affect the economic interests of the association*" (emphasis added) [Condos, Co-ops, & HOAs]
2. Board members may vote to hold a closed meeting (either immediately or at a later date) during any properly called open meeting.

How to Hold a Closed Meeting

3. If an open meeting is called *only* for the purpose of immediately going into a closed meeting, the notice to members should say so, and a dated copy of the notice should be included with the “closing statement”.
4. The Chair of the meeting should prepare a written “closing statement” to be read in open session that
 - a. states the time, place, and purpose of the closed meeting, and
 - b. cites the provision in the Acts [at #1] relied upon as authority for closing the meeting.
5. The public vote of each board member to hold a closed meeting must be recorded (i.e. not “unanimous”).
6. This closing statement and record of the vote will satisfy the requirement of the Acts [at #9].

During a closed meeting

7. The Acts require that board members confine their discussions to the topic(s) that closed it, and that they take no action not related to the topic. (They also should maintain the discussion’s confidentiality outside the board room).
8. Minutes of the closed meeting are to be written, adopted, and sealed. They are not available for public inspection unless a majority of the board votes to unseal them, whether on its own initiative, in response to a request, or by order of a court or the CCOC.

After a closed meeting

9. The Acts require that minutes of the next regular open meeting of the board of directors include a statement [i.e. the “closing statement” at #4] relating:
 - The time, place, and purpose of the closed meeting,
 - The provision in the Acts relied upon as authority for closing the meeting, and
 - The public vote of each board member to close the meeting (i.e. not “unanimous”).

The statement for the minutes also should include:

- who attended the closed meeting,
- a summary of the proceedings, described as fully as possible without compromising confidentiality, and
- what decisions were made and actions taken (if any), described as fully as possible without compromising confidentiality.

A board also should consider that just because the Acts say they can hold a closed meeting, does not mean they *should*. A board has an obligation to act in good faith and to be as transparent and accountable as possible when discussing issues affecting the association, and should not conceal the decisions it makes during these meetings.

How to Hold a Closed Meeting

The Commission is providing this **general guidance** as a service to the public, consistent with its educational mandate under Chapter 10B. Residents and associations seeking legal advice about specific issues should consult with a licensed Maryland attorney.

Source material

- [Montgomery County, MD - Office of Common Ownership Communities website](#)
- February 5, 2020, Resolution of the Commission
- [Maryland Attorney General website](#)
 - Sample Forms and Checklist
 - Maryland Open Meetings Act Manual, Chapters 5 & 6, pages 37-49
- Maryland Condominium Act, Section 11-109.1, pages 22, 27-28
- Maryland Co-operative Housing Corporation Act, Section 5-6B-19(e) (1) & (2), pages 200-202
- Maryland Homeowners Association Act, Section 11B-111(4) & (5), pages 18-20