



Meetings & Hearings, Motions & Minutes



Meetings are the lifeblood of common ownership communities. Everything from electing board members to planning social events happens in meetings. Community meetings exemplify American democracy at its most fundamental level. There are practical issues to be considered when planning and holding common ownership community meetings, and whether your community is a condominium, a co-op, or a homeowner association, Maryland law sets standards for conducting those meetings. *Sadly, the failure to observe those laws is one of the most common reasons given by community owners who file complaints with the Commission against the governing bodies of their communities.*

What are the applicable laws?

Every Maryland common ownership association is bound by their governing documents and either the Maryland Condominium Act, the Maryland Homeowners Association Act, or the Maryland Cooperative Housing Corporation Act. Where your association's governing documents differ from the Act, the Act prevails. Where the Act pertaining to your association does not speak, or only speaks generally on the subject of open meetings, boards of directors would be wise to consider the *spirit* embodied in the others' laws and emulate them in their communities. When in doubt, consult legal counsel.

The most important provisions pertaining to meetings and hearings are found here:

- Maryland Condominium Act – Meetings: Sections 11-109 and 11-109.1, Hearings: Section 11-113
- Maryland Homeowners Association Act – Meetings: Section 11B-111
- Maryland Cooperative Housing Corporation Act - Meetings: Section 5-6B-19, Hearings: Section 5-6B-30

What constitutes a “meeting”?

Maryland law generally states that all association meetings should be open to its members, but it does not specifically define what constitutes a meeting. In an attempt to resolve the ambiguity and provide clarity for those who wish to comply with the law, the Commission on Common Ownership Communities offers the following guidelines:

- a) A “meeting” under the open meetings statute is any gathering of the board of directors or a board-authorized committee for the purpose of *making decisions and taking action* on the association's business.
- b) A gathering of the board of directors or committee purely for the purpose of discussing, but *not deciding*, the association's business is not a “meeting”. This, then, allows for a “work session” where the board may, for example, set an agenda, consider a draft budget, review an engineer's report, or debate a contract – but not decide or vote on an action.

What are the different kinds of meetings?

- a) An "Annual Meeting" is a regularly scheduled open meeting of the *members of the association*, required by the association's governing documents. While the board is expected to attend and the board president usually presides, the purpose of the Annual Meeting is to elect new board members and to address other specific business items as defined in the governing documents.
- b) A "board meeting" is a regularly scheduled open meeting of the board of directors for the purpose of conducting the association's business. Board meetings and actions must follow procedures set out in their governing documents and in state and local law. Complaints, issues, contracts, policies, rules and procedures, budgets and finances: anything related to the association must be discussed and decided by the group in an open board meeting.
- c) A "special meeting" is an open meeting of the board of directors (subject to the same notice and quorum requirements as any regular meeting of the board) for the purpose of discussing, and perhaps deciding, a single issue. No other topic may be discussed other than the topic specified in the notice to members.
- d) A "committee meeting" is an open, usually regularly scheduled, meeting of a group appointed by the board of directors and often affirmed annually by board motion. Committees are usually considered advisory to the board, forwarding their recommendations through motions and minutes of the committee meetings.
- e) A "closed meeting", sometimes called an "executive session", is by definition a meeting that members cannot attend. Closed meetings may only be held for one of the reasons permitted in the Condominium, Co-operative Housing, or Homeowners' Association Acts. There are strict rules of procedure that must be followed. [See #5]
- f) An "action without a meeting", a provision found in some bylaws that allows the board to conduct business by email, texting, telephone, or *otherwise not in person*, is also a closed meeting and subject to the Condominium, Co-operative Housing, or Homeowners' Association Acts.
- g) A "hearing" is not considered a "meeting". Hearings are usually part of an association's internal dispute resolution process, regulated by the Condominium and Cooperative Housing Acts.

Are open meetings required?

The Maryland General Assembly adopted the Open Meetings Act of 1977, applying the "open meetings" standard to itself, the Executive Branch of the State government, and to all the county and local governments in Maryland. The underlying premise of open meetings is that those who govern will act more prudently if they are being scrutinized by the governed.

Every common ownership community meeting is either a meeting of the entire membership, a meeting of the board of directors, or a meeting of a board-authorized committee. In Maryland, as a matter of law and general public policy, **all common ownership community meetings must be open to all the residents and owners in the community, except in certain specific circumstances.** [See #5] The governing body may, however, deny access to the general public.

Hearings, on the other hand, may be required by statute to be held in closed or executive session. [See #6]

What are the exceptions to the open meeting rules?

Association business may be conducted in a “closed” or “executive” session only under the following circumstances:

- 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* [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];
- 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 [Condos, Co-ops, & HOAs]; or

A matter may not be discussed and an action may not be taken if it is not permitted by this section. The minutes of the next regular meeting of the board of directors must include:

- A statement of the time, place, and purpose of the closed meeting,
- A record of the public vote of each board member by which the meeting was closed, and
- The authority under this section for closing any meeting.

Matters discussed in a closed session may not be discussed outside the meeting. If in doubt about the required procedures to properly conduct a closed meeting, consult legal counsel; a procedural error could invalidate the board’s decision.

What notice is required?

Reasonable notice of meetings allow residents and unit owners a chance to attend. It recognizes that they may need to reschedule other obligations if they wish to attend, and failure to provide reasonable notice effectively frustrates the intent of the Acts that all meetings be open to all residents and unit owners.

The Homeowners Association and Cooperative Housing Acts do not specify notice requirements for community meetings. However, the community must follow its own governing documents, and the lack of a specific rule does not justify the failure to give reasonable notice.

The Condominium Act specifies that annual and special meetings of unit owners or the board of directors “*may not be held on less than 10 nor more than 90 days’ written notice delivered or mailed to each unit owner at the address shown on the roster on the date of the notice.*” Beyond that, the Condominium Act simply requires that notices for any other meetings (regular meetings of the board of directors or board-authorized committees, for example) satisfy the requirements in each condominium’s bylaws. However, the lack of a specific notice requirement in the bylaws does not justify a failure to give reasonable notice. If in doubt, consult with an attorney to learn what your community should do.

How is a hearing different from a meeting?

In common ownership communities a hearing is best described as a gathering of the board with a resident or unit owner for the purpose of learning the facts surrounding a **complaint, dispute, or rules violation**, and determining the means of resolving it. If the association's bylaws do not provide a process for dispute resolution, the Maryland Condominium Act [Section 11-113] and Cooperative Housing Act [Section 5-6B-30] do. They provide specific steps that must be taken; if those steps fail, then a hearing may be held. The governing body must serve the resident or unit owner with written notice of the following:

- a) The date, time, and place of the hearing to be held "*not less than 10 days from the date of the notice*",
- b) The nature of the violation and the proposed sanction to be imposed,
- c) The right of the resident or unit owner to make statements and produce evidence and witnesses on their behalf, and
- d) The right of the resident or unit owner to appeal the decision to the Commission on Common Ownership Communities or the courts of the State of Maryland.

Hearings are required to be held in closed or executive session by the Condominium & Cooperative Housing Acts; the Homeowners Association Act requires an open session. If a HOA appoints a panel to hear a dispute, they should follow their governing documents and act in a manner that is in the best interests of their community.

Where should meetings be held?

The laws do not specify where meetings should be held. The Commission strongly recommends they be in neutral locations that are spacious enough to safely accommodate all who attend. Board and committee meetings can sometimes draw a crowd, and it is only reasonable and considerate to plan to accommodate everyone who attends. If your community doesn't have a suitable facility, contact nearby schools, public libraries and churches. They will often have meeting spaces available for nonprofit groups like common ownership communities. Finally, don't assume everyone knows the location of an "off-site" meeting. Prepare written directions as well as a simple map for those who need them.

Can I speak at my association's meetings?

Associations are required to designate a reasonable amount of time on the meeting agenda for comments and questions from residents and unit owners. This applies to all open board and committee meetings. However, the chair may set reasonable limits on the length of time an individual may speak. Speaking at other times during a meeting is subject to the chair's discretion.

Can I give another director my proxy?

Proxies are legal instruments, regulated by State and County law and your governing documents that must be worded and handled properly to assure validity. It is not uncommon for a board member to give his or her proxy or voting authority to another board member to use at regular board meetings. Few question this practice, but it is quite often illegal. Ask your association's attorney for advice; a procedural error could invalidate a board decision.

What should I know about running effective meetings?

- a) *Distribute important materials in advance.* Nothing wastes time in meetings like passing around printed materials to read during the meeting itself.
- b) *Prepare and distribute an agenda.* **Agendas** are essential. It is common for the president or the secretary to prepare the agenda, but they do not “set” the agenda or “own” it. The first item on every agenda should be a motion to approve the agenda. That's the time for any member to propose adding other topics for discussion.
- c) *Use rules of order.* Most governing documents require the use of some form of rules of order. The rules of order need not be terribly complicated. Many associations use some form of Roberts Rules of Order. The Community Associations Institute [www.caionline.org/LearningCenter/Pages/default.aspx] has an excellent pamphlet of simplified rules of order that anyone can use after a few minutes of study. The important thing about using rules of order is to be reasonable and to apply the rules consistently. The chair is responsible for upholding the rules of order. This is much easier if the chair does not participate in the discussion of motions. (If the chair wishes to participate in a discussion, he or she should turn over control of the meeting to the vice chair until he or she finishes speaking.) However, not participating in the discussion doesn't prevent the chair from voting on the motions.
- d) *Write motions in advance.* **Motions** can be complicated. They should be written so they can stand alone and the action taken can be understood without any other supporting documentation. They should include who made the motion, who seconded it, accurate and complete wording of the action dictated by the motion, and a record of the **vote** showing who voted for, against, or abstaining. All of this protects the association should there ever be a question as to what exactly was decided and who voted how. It also allows members to assess their directors' voting record.
- e) *Take minutes.* **Minutes** are required by law and may also be required by the association's governing documents. Minutes are crucial; they are probably the only official written record of the meeting's business. Minutes do not have to include every conversation, but they should include every decision. Draft minutes (not yet formally approved) are a "work in progress" and should not be available to owners until the draft has been approved by the board.
- f) *Recordings.* The board of directors has a legal right to limit the audio and video taping of meetings. The secretary may tape the meeting to aid in writing the minutes, but the tapes should be erased after the minutes have been approved. Members should not attempt to record a meeting without the permission of the board or committee involved, and in fact it is illegal to make a recording without the knowledge and consent of the participants in the meeting.

The information provided here should not be construed as legal advice. The specific facts of a given situation or subsequent change in the law may dictate a course of conduct other than as described herein. **When in doubt, consult legal counsel.**

Adopted by
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