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THE COMMUNITY ASSOCIATION LAW
LUNCH & LEARN LECTURE SERIES
DESK REFERENCE SET

VOLUME 1:

How to Run a Legal, Smooth and Successful
Board Meeting

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I. **Typical Homeowner Association Board Meetings.**

Almost every community association has a board of directors. The board of directors is the executive body of the community association who makes decisions on its behalf. The board of directors develops association policy and procedures. It is also empowered to make decisions on behalf of the members of the association in order to smoothly operate the association and function as a corporate entity. In order to accomplish these tasks, the directors must meet regularly in board meetings.

Generally, there are three types of board meetings: (1) regular board meetings; (2) emergency meetings; and (3) executive session meetings of the Board.

a. **Regular Board Meetings.**

Regular board meetings are those meetings in which the community association conducts the general "day-to-day" business of the association. As representatives of the community members, the deliberations and decisions of the directors are made on behalf of the members and, therefore, their board meetings are generally open for members to attend. These "open meeting" discussions generally include board business decisions, the adoption of standard

policies and procedures of the association, passing rules and discussing the budget and general corporate issues pertaining to the association.

1. Who may participate, when and to what extent?

Arizona law requires that regular board meetings be “open” to all members of the Association. The open meeting laws for planned communities are found in Arizona Revised Statutes § 33-1804 and condominiums are governed by Arizona Revised Statutes § 33-1248. Although these board meetings are open to the attendance of community members (or their designated representatives), they are not membership meetings and should be limited to discussion among board members until an appropriate time is allotted for membership input. The community association open meeting statutes specifically provide:

[A]ll meetings of the association and board of directors are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak before the board takes formal action on an item under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

There are three (3) essential points to remember from this statute. First, members (or their representative identified in writing) are allowed to speak “at an appropriate time” during the board’s meeting and “before the board takes

formal action on an item under discussion". Although allowed to attend and participate, member input and participation is limited to a time when the board allows them to speak, but before the board makes any final decision on the issue discussed. This law allows the board to maintain control of its meeting. Important decisions could be delayed and taken far off track if members are permitted to chime in at any time about any subject. Keeping this restriction in mind, boards can very efficiently discuss and deliberate on the board's business without interruptions from members. Before making any final decision, members may be allowed to express their opinions.

Also, the board determines the "appropriate time" for member input. If a board is struggling to conduct effective board meetings, free of interruptions from members, it should determine exactly when the members can express themselves. An "open forum" at the beginning of a board meeting, before any board business is discussed, can exhaust valuable time that could otherwise be used to conduct board business. Also, as the board discusses its business, many questions and issues of members may be resolved and, therefore, they may have no need to address the board once their questions have been addressed. An appropriate time for member input would be after the directors have had the opportunity to discuss the issue amongst them and before they make a final decision.

A second important point to remember is that the board is permitted to "place reasonable time restrictions" on members who wish to address the

board. This allows the board to avoid the homeowner who wants to take an hour or so to raise every possibly imaginable (and sometimes irrelevant) issue occurring within the community. Your state legislature recognizes that homeowner association board members are lay persons, volunteering their time away from family, personal activities and often work to serve their community. For this reason, directors are given the ability to restrict the amount of time a member may use to address the board.

Boards must use good judgment in determining how much time should be afforded. After serving in a community for any amount of time, managers and directors will come to know its members and their propensity for wanting to take too much time. If necessary, strict time restraints can be dictated by the board (i.e., 1 or 3 minutes per person) so as to control how long your meeting will last. Regardless, directors should use fair judgment in regulating membership input.

Finally, the board also has the ability to limit the number of people that may speak on any given subject. For example, if 53 members appear at a board meeting to support a certain rule that may be passed, and 54 other members appear to rally against the rule, the Board does not have to allow all 107 members to address the issue. (Even if limited to only 2 minutes each, the board meeting would last more than 3½ hours on this issue alone). The statute allows the board to “provide for a reasonable number of persons to speak on each side of an issue”. The board may ask each side to designate one or more

“spokesperson(s)” to address the board on the issue. Again, this keeps time to a minimum, yet allows members to participate to the extent allowed by law.

2. How HOA and government open meeting laws differ.

Many people confuse Arizona’s “Open Meeting Laws” applicable to community associations with those that regulate governmental meetings. Community associations are private entities and are not subject to governmental open meeting laws. However, members will frequently complain about boards allegedly violating the open meeting laws because of this simple misunderstanding.

The open meeting laws that apply to governmental bodies define a “meeting” as “the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action.” Since a homeowners association is not a “public body”, A.R.S. §38-431 does not apply to homeowners associations.

3. E-mail Discussions.

A.R.S. §33-1804 and A.R.S. §33-1248 provide: “the board of directors may permit any or all directors to participate in a regular or special meeting by or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the

meeting.” Therefore, unless the communication is simultaneously heard by those present, the directors are not legally conducting a “meeting”.

Regardless of this technical distinction, directors should be very careful not to “conduct business” with each other by email. Although board decisions can be made through email correspondence in certain circumstances, it is always best to avoid having any decision set aside or the accusations of violating the open meeting laws by conducting general board business without allowing the members to attend and participate as provided by Arizona law.

B. Emergency Meetings of the Board

Emergency meetings of the board may be called when the board must meet to handle an emergency within the association that simply cannot wait for the formal “notice” procedures. Because these meetings are held in “emergency” situations, they will likely occur without notice to the members and at a time and/or place that the board does not usually meet. Emergency meetings require immediate decision that must be made before a regular board meeting or executive session meeting. For example, a major waterline break in the community may require the board to hire a plumber to turn off the water and fix the pipe to avoid flooding common areas or owners’ lots or units. Although the members are generally allowed to express their input on hiring a contractor (i.e., a plumber), the board has no time to allow this member participation. A board will typically meet in emergency session (and may even do so via telephone conference) to decide how to handle the situation.

C. Executive Session Meetings of the Board

Executive session meetings are meetings of the board that are closed to the members and held to discuss issues which, by statute, are not required to be discussed in a regular board meeting. These meetings occur “behind closed doors” or outside the presence of, and without participation from, the members. Executive session meetings do not have to be noticed to the members.

1. What should be discussed behind “closed doors”?

According to the community association statutes (A.R.S. §33-1248 for condominiums and A.R.S. §33-1804 for planned communities), the following topics should be discussed in the closed or executive session board meeting:

(1) Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment;

(2) Pending or contemplated litigation;

(3) Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about

an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; and

(4) Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

These topics are reserved for closed-door meetings because of the sensitive nature of the matters discussed. For example, legal advice to a client (i.e., the directors of the association) must be given in confidence to protect the attorney/client privilege. Therefore, advice and conversations regarding pending legal action must be discussed without the members present. Also, delinquencies and violations of individual homeowners are considered "dirty laundry" that should not be aired to the public. As such, discussions regarding these personal matters should be discussed only in executive session.

It is not uncommon for these personal issues relating to particular homeowners or contractors to be brought up by members or directors during the course of a regular board meeting. If an executive session topic arises, board members or the manager in attendance should simply remind the remaining directors and the members in attendance that the matter discussed is not appropriate for a regular meeting and should be tabled for an executive session meeting.

Hearings requested by individual homeowners who wish to contest fines or violations should also be held in executive session because such hearings deal with the personal and financial information of an individual member, and because they are generally considered pending or contemplated legal action. The member may be invited to participate in that portion of the executive session addressing the violation, but should be excused for the remainder of the executive session addressing any other issues.

2. Duties and Obligations of Board Members.

Directors and officers of an association are charged with a “fiduciary duty” to the Association. Board members may be held personally liable for any damage caused to the Association as a result of a breach of this duty.

Directors have an obligation to exercise reasonable care in making decisions on behalf of the association. They must use good “business judgment” and will meet their duty if they work under the “business judgment rule”. This rule means a board member will be insulated from personal liability if the board member acts (1) in good faith, in a manner that he or she believes to be in the best interest of the Association, and (2) makes a decision that any other reasonable director would make in the same situation or circumstances.

The “business judgment rule” is found both in Arizona common law and in Arizona Revised Statutes §10-3830 of the Arizona Nonprofit Corporations Act. The statutes state that a board member will have met his or her duties when he or she acts “in good faith[,] with the care an ordinarily prudent person in a like

position would exercise under similar circumstances [and] in a manner the director reasonably believes to be in the best interests of the corporation.”

This rule also protects board members from personal liability if they make their decision after relying on “information, opinions, reports or statements, including financial statements and other financial data,” received from “legal counsel, public accountants or other person as to matters the director reasonably believes are within the person’s professional or expert competence.” In other words, If the board’s decision ends with a bad result – even if the association suffers a financial loss as a result – the directors should be shielded from claims of personal liability if their decision was made on the advice of the association’s attorney.

When making decisions on behalf of the association, board members should have a good faith belief that the decisions they are making are in the best interest of the corporation. When making decisions requiring expertise of professionals, the board can and should rely upon attorneys, accountants, its management company, or other relevant professionals.

Board members should adhere to the following:

- (1) Understand general association business;
- (2) Attend and participate in meetings;
- (3) Register a dissent in the minutes when disagreeing with the Board’s action; and

- (4) Be familiar with and gain a general understanding of the CC&R's, Articles of Incorporation, Bylaws and other association documents.

Another duty relating to the fiduciary responsibilities is a duty of loyalty. Directors should have undivided loyalty to the association. This duty prohibits directors from receiving a benefit for serving on the board at the expense of the association or its members. This duty of loyalty is breached when a board member acts in his or her own interest or with a conflicting interest. One example of board members breaching such a duty is if board members refuse to enforce the governing documents against other board members, or if the documents are enforced inconsistently. (Board members are not exempt from their obligations as homeowners and should receive no special treatment.) Another example of a breach of the duty of loyalty is when a board member has a financial interest in a transaction or decision before the board and fails to excuse himself from the decision. The Arizona Nonprofit Corporations Act discusses conflicting interests transactions beginning in Arizona Revised Statutes §10-3860. The Arizona legislature has also recently adopted additional provisions regarding conflicts of interest for planned communities in Section 23-1811.

3. Confidentiality and Closed Meeting Discussions.

Another example of breaching the duty of loyalty or fiduciary duty is to discuss with other members matters that are either protected by attorney/client

privilege (i.e., correspondence, communications or advice from legal counsel) or matters that are reserved for executive session board meeting discussions provided in Arizona statutes. To avoid breaching this duty of loyalty board members should consider the following:

- (1) Enforce the governing documents equally, not selectively, and without regard to whether the owner is a neighbor, friend or relative;
- (2) Fully disclose any potential conflict prior to any deliberations;
- (3) Ask to be dismissed and do not participate in the decision making process for any issues where a conflict may exist;
- (4) Maintain accurate records; and
- (5) Keep confidences (i.e., attorney/client communications and results from executive session meetings).

Occasionally there will be factions and differences of opinions among members of the board. Diverse positions among board members can lead to progressive discussion and innovative administration. Board members, however, must understand that board decisions are made by majority vote. If the minority is out-voted on an issue, the minority should attempt to provide unified support, unless the action taken by the majority is unlawful. Since board members serve at the will of the members of each community, the general membership of each community has the ability to remove board members who the members believe are not taking action in accordance with the desires of the majority. As

such, dissident board members should use caution when challenging a valid decision of the majority of the board.

II. Notice Requirement Concerning Board Meeting.

Each type of board meeting has differing notice requirements:

A. Regular Board Meeting Notice Requirements.

The notice requirement concerning regular board meetings are generally found in an association's bylaws. If the association's bylaws have no notice provisions, Arizona law provides a minimum regular board meeting notice requirement. Both the Condominium Act (A.R.S. §33-1248) and the Planned Community Statutes (A.R.S. §33-1804) state that members of the association must be given no less than forty-eight hours advanced notice of the board meetings by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors (this includes posting notice on an association website).

Finally, notices of regular board meetings must include the time, date and location of the meeting.

B. Emergency Meetings of the Board.

Notice of emergency meetings of the board, under both the Condominium Act (A.R.S. §33-1248) and the Planned Community Statutes (A.R.S. §33-1804) are not required to be provided to owners. An association's bylaws, however, may contain a requirement to provide notice of emergency meetings

of the board. Each association's bylaws should be carefully examined in emergency situations to determine if any notice is required.

C. Executive Session Meetings of the Board

Notice of executive session meeting is not required to be given to owners under Arizona law. Again, an association's bylaws may contain a requirement to provide notice of emergency and any related executive session board meeting.

III. How to Conduct a Board Meeting.

A hotly debated and often challenged aspect of community association board meetings is how the meetings should be conducted. Generally speaking, there is little statutory guidance or document-specific provisions governing how to conduct a board meeting.

The most important issue regarding conducting board meetings is to determine and utilize procedures that assist the board to effectively and efficiently run and control its meeting. Board meetings need to be organized, run smoothly, and effectively communicate the position of the association to the members, while conducting the business of the association.

A. Preparing and Sticking to an Agenda.

Planning and conducting an effective board meeting starts with a good meeting agenda. The agenda is the "road map" of the meeting and is a powerful tool to keep both board members and members on issue and in

control. A good agenda will facilitate a smooth, efficient and effective board meeting.

There is really no standardized form for a board meeting agenda. Finding a model agenda that meets the needs of any specific community is the key to establishing and conducting effective board meetings. The following is a suggested model agenda:

I. Executive Session Board Meeting.

The executive session may be held before or after the regular board meeting, or at another time not related to the regular board meeting depending on the business needed to be discussed or the respective availability of your directors, attorney and/or any participating members.

II. Call to Order.

This is the informal, but official opening of the board meeting.

(II. Alternatively: Member Open Forum.)

(Open forums may be at the beginning or end of an agenda. For further discussion, refer to Section VI, below.)

III. Ratify Last Board Meeting Minutes.

This is the time set aside to ratify the meeting minutes of the last board meeting. Additionally, the board may introduce and/or ratify any business that was conducted without a board meeting by unanimous consent.

IV. Old Business.

The board may discuss unresolved or tabled items of business from the last board meeting(s).

V. New Business.

This is the time set aside to discuss new items presented to the board for discussion and vote. During this time the board may also discuss matters that are regularly discussed in board meetings (i.e., discuss and approve the budget or association financials). Members in attendance must be allowed time to address the board before any formal or final vote is taken on any business item on the agenda.

VI. Member Open Forum.

As stated in earlier sections of this material, Arizona community association statutes require that board decisions are to be made in "open" meetings that allow members to participate before final decisions are made. Members or their designated representatives must be provided with an opportunity to speak at an appropriate time during the deliberations and proceedings of the board meeting. Some issues may not be set forth on the agenda or discussed by the board during the regular board business portion of the agenda. In open forum, members may be allowed to address the board with issues or matters requiring a vote. As stated above, time limitations may be utilized to ensure that the board meeting can be ended on time.

(NOTE: Some boards may choose to have an open forum meeting at the beginning of the board meeting, rather than the end. Pursuant to the open

meeting laws in community associations, members or their designated representatives, must be provided with an opportunity to speak at an appropriate time during the deliberations and proceedings of the board meeting. Before the board can deliberate or vote on any issues not discussed in executive session, the board must allow members to address the issue. As such, open forums may be held directly after the call to order and before any other agenda item so that this “opportunity” is provided and the board can then conduct the remainder of the meeting without having to be interrupted with comments, issues or questions from members in attendance.)

VII. Adjourn.

This is a formal call to end of the board meeting and concludes all association business until the next meeting of the board.

B. Board Meeting Procedures.

There are many ways to conduct a Board meeting. Some Boards choose to follow *Robert's Rules of Order*. Some Boards like to follow standard “Parliamentary Procedure”. Often times associations have implemented rules or have restrictions in their governing documents requiring the board to follow a certain standard practice (i.e., strict use of parliamentary procedure, etc.). Boards generally have the ability to choose any procedure to conduct its board meeting. Moreover, even when rules and restrictions “require” the strict use of certain procedures (i.e., “In conducting a board meeting, the board must use

parliamentary procedure”) most boards will apply a relaxed version of these procedures and will still meet its duty in conducting the meeting.

1. **Robert’s Rules of Order and “Parliamentary Procedure”.**

It is common for boards to adopt some form of “parliamentary procedure” in conducting meetings and transacting business. Typically, utilizing parliamentary procedure, like *Roberts Rules of Order*, assists boards in conducting “business-like” board meetings with official sounding “motions” made by directors, which require a “second” vote before all the directors either vote “Aye” or “Nay” on the issue. However, even if *Roberts Rules of Order* is expressly adopted by the board, these rules of procedure do not control or override the Governing Documents. In other words, unless the CC&R’s, bylaws or articles of incorporation specifically state that the board must conduct its business pursuant to *Roberts Rules of Order* or parliamentary procedure, the Board is only bound to conduct its meetings in accordance with the provisions of the governing documents. Generally speaking, the only limitation that is expressed in governing documents is that the board should simply conduct its board meetings in a “business-like” manner.

Even if an association’s governing documents expressly state that *Roberts Rules of Order* or “parliamentary procedure” is required, it is unlikely that the association’s board has truly been applying *Roberts Rules of Order* or parliamentary procedure in a strict sense. Unless a parliamentarian is a board member who can ensure that *Roberts Rules of Order* are implemented with strict

compliance, it is likely that the board has not been strictly utilizing the parliamentary procedure in its meetings. These rules are complicated, complex and outdated. Many directors of boards believe they are applying *Roberts Rules of Order* in conducting business but would find otherwise if they closely scrutinized their actions in light of the rules. Therefore, it is likely that prior board business believed to be conducted pursuant to *Roberts Rules of Order* was not conducted in strict accordance to these rules.

Rather than worrying whether the board members are strictly complying with parliamentary procedure, directors should focus on conducting the board's business in a "business-like manner" without attempting to preclude director's votes or business for failure to strictly comply with parliamentary procedures.

2. Choosing a procedure that works for you.

The best procedure to use is the one that works the best for the board. As a baseline, it is always helpful to have a standard procedure regarding addressing and voting on issues. For example, if the Board is deciding to hire a landscaping contractor ("Greenacre Landscaping"), the board might use the following procedure:

Board President: Is there a motion to hire Greenacre
Landscaping?

Board member 1: I make a motion to hire Greenacre Landscaping.

Board President: Is there a second?

Board member 2: I second.

Board President: Is there any discussion concerning this contractor before we take a vote?

Board President: Since there is no more to discuss concerning this issue, I call for a vote. All those in favor say "Aye". All those opposed, "Nay".

(Vote is taken among 5 board members: 3 Aye votes and 2 Nay votes.)

Board President: Motion passes.

C. Board Meeting Minutes

Many association boards struggle with how to properly take board meeting minutes. Meeting minutes should be simple, concise and legible. They should only record action items that occur at the board meeting. The person taking the minutes does not need to record a verbatim recitation of every word that is said at a board meeting.

Good meeting minutes may be only one (1) page. For example, below is what typical board meeting minutes might look like:

Greenacre Homeowners Association Meeting Minutes of 9/14/06

1. Motion was made to begin Executive Session Board Meeting. Motion was seconded and carried unanimously.
2. Motion was made to adjourn Executive Session Board Meeting. Motion was seconded and carried unanimously.
3. Regular Board Meeting was called to order at 11:00 a.m.

4. Member Open Forum was held from 11:01am to 11:30am.
5. Motion was made to accept and ratify the Meeting Minutes for the Board meeting held on 8/14/06. Motion was seconded. Motion carried unanimously.
6. Motion was made to hire Greenacre Landscaping as a landscaper for the Association. Discussion held regarding potential conflict of interest with Greenacre. (No conflict exists.) Motion was seconded and discussion was entertained. Motion carried unanimously.
7. Motion made to adjourn the meeting. Motion was seconded and carried unanimously.

Again, this is simply an example of regular board meeting minutes. The form may be more detailed if a director requests that a meeting minute entry be more detailed. However, board meeting minutes may be as simple as the example minutes above.

Meeting minutes are simply to document and evidence the result of the business conducted. It is not necessary to transcribe every discussion that took place. Remember, they are simply "minutes" of your meetings, not a rehash of the "hours" that actually transpired. Good minute taking skills will help the association's record keeping, business transactions and can even make or break a lawsuit against an association. Minutes should be both carefully recorded and reviewed before they are ratified at the following meeting.

VI. Conclusion.

Conducting a legal, smooth and successful board meeting takes time and practice. This volume of the Community Association Law Lunch & Learn Desk Reference Set provides standard guidance for conducting a board meeting. This Desk Reference Set, in conjunction with the experiences of a professional property manager, can go a long way in help your community association run a legal, smooth and successful board meeting.