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Let the Sunshine In – Staying Compliant with the Laws Mandating Open Board Meetings

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INTRODUCTION

In Virginia and Maryland, Board meetings are required to be held in a manner which is reasonably accessible to all members within the community. While DC has only nominal regulations affecting regular Board meetings, many of our Association clients routinely ask us for guidance to ensure that they are complying with the applicable laws within their respective jurisdictions that govern meetings of the Board of Directors.

Virginia and Maryland meeting laws contain similar guidelines to ensure that Board meetings are open to members of the Association. Many Association governing documents may also impose additional requirements on how and when Board meetings are convened and it is important that those documents be consulted as well.

1. NOTICE

In Virginia, notice of the date, time and place for regular meetings of the Board (or of any committee of the Association) must be “published where it is reasonably calculated to be available to a majority of the owners.” In the case of special meetings of the Board (or any committee of the Association) notice of any special or emergency meeting must be reasonable under the circumstances and must be given at the same time that the Board or committee members are provided notice of the special meeting.

In Maryland, the Homeowners Associations Act requires that owners be provided “reasonable” notice of regular or special meetings of the Board prior to the date of the proposed meeting. The Maryland Condominium Act details that notice of Board meetings must be consistent with the requirements detailed in the Association’s Bylaws.

While governing documents differ from community to community, the documents for most of our Association clients in Maryland, DC and Virginia require a minimum of three days advance notice for any regular or special meeting of the Board of Directors. Associations should refer to their community's documents to confirm the required minimum notice for meetings of the Board of Directors.

2. AGENDA AND MEETING PACKETS

Virginia law requires at least one copy of all agenda packets and materials to be made available for inspection by the membership at the same time such documents are made available to the Board. Any topics or information that will be discussed in an executive or closed session should not be included in the agenda or meeting packages made available to the general membership at or prior to any Board meeting.

3. OPEN MEETINGS & OPEN FORUM

The statutes governing Board meetings that have been adopted in Maryland and Virginia are patterned upon the open meeting requirements for local governments.. The rationale is that community association Boards should conduct business in open meetings in much the same manner as the Board of Supervisors or Council for a particular jurisdiction holds its meetings.. It is important to note that in many associations only members in good standing may be allowed to observe Board meetings.

Both Virginia and Maryland law require that the Board set aside a period of time during a meeting to allow owners an opportunity to comment on any matter relating to the Association. The Board should generally attempt to provide all owners with an opportunity to raise their concerns during a designated time period at either the beginning or end of the Board's meeting. Board meetings are business meetings so member comments should be raised only during the designated open forum time period.

4. CLOSED MEETINGS

Both Maryland and Virginia law allow a Board to convene in executive session only after voting to do so in open session. The motion must specifically state the purpose for the executive session. The reference to the motion and stated purpose of the executive session must also be included in the minutes. The Board can only vote on those matters specifically designated to be discussed in executive session as allowed by law. Following a motion to reconvene into open meeting the Board may take votes or make decisions on those matters discussed during the executive session.

Keep in mind the law restricts the matters which may be discussed in executive session. In Virginia, Boards may meet in executive session to discuss only the following categories of matters: matters with legal counsel, contract consideration, personnel matters, probable or pending litigation matters involving violations of the association documents, and the personal liability of unit/lot owners. In Maryland, executive

session topics are a bit broader and may be limited to: matters pertaining to employees, consultation with legal counsel, matters pertaining to pending or potential litigation, investigative proceedings concerning possible criminal misconduct, business transactions and negotiations for which disclosure could adversely affect the economic interests of the Association, compliance with specific law protecting particular matters from public disclosure or, on a vote of 2/3rds of the Board, for an exception which would override the general public policy in favor of open meetings.

5. DISTRICT OF COLUMBIA CONDOMINIUMS

Unlike Maryland and Virginia, condominium Boards in DC are typically not obligated to operate in open session. Given the limited regulation of DC condominium Boards by statute, condominium associations in D.C.

should generally defer to the meeting requirements detailed in their condominium's Bylaws to determine proper procedures to convene a meeting of the Board. If your condominium's meetings are not generally open for members, we typically recommend that DC condominium boards consider adopting some procedures to communicate with their members about matters affecting the condominium.

This memo is intended to merely offer a summary of the open meeting requirements in Virginia, Maryland and DC. Consequently, if you have any questions or concerns regarding how your Board should conduct its meetings, please feel free to contact any one of our community association attorneys.