

DCA OPEN MEETINGS GUIDE
For owners in common interest communities

All meetings at which a board takes a binding vote are required by law to be open to all owners and advance written notice of such meetings must be given as provided by law. The laws governing open meeting requirements in New Jersey's common interest communities can be found in the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 45:22A-46a.) and the New Jersey Condominium Act (N.J.S.A. 46:8B-13(a)). The New Jersey Department of Community Affairs has promulgated regulations to assist in the implementation of these statutory requirements in Chapter 20 of Title 5 of the New Jersey Administrative Code (N.J.A.C. 5:20-1.1 et seq.).

Advance notice, in addition to being written, must be provided at least 48 hours in advance, giving the time, date, location, and to the extent known, the agenda of the meeting at which a binding vote will be taken. The notice shall be posted prominently in at least one place on the property that is accessible at all times to all unit owners and must be filed with the person responsible for administering the business office of the association.* Condominium association by-laws may prescribe additional or alternative methods of providing notice which provide a greater probability that unit owners will receive it. Mailings directly to owners, for example, are permitted, as is hand delivering a copy to each unit door. No notice need be given for board meetings at which no binding votes will be taken. Note that boards can meet without advance notice to deal with matters that would result in substantial harm were it to wait the 48 hours to provide advance notice. In such case, the board shall provide notice in the ordinarily required manner as soon as possible after the meeting.

Examples of actions that require open meetings are: the adoption of an annual budget, the certification of any elections, hiring or terminating an employee, enacting or changing a rule or entering into a contract. Governing boards may discuss specific matters in closed session, specifically those which involve unwarranted invasion of individual privacy, pending

*Although the Regulation provides that an association shall also mail, telephone, or hand deliver a notice to at least two newspapers designated by the governing board or by the association to receive such notices, there is no necessity of publication. Due to difficulties of proof, this agency will not act on a complaint of failure to provide notice if the association complies with the other notice provisions. Additionally, an association which provides a meeting notice within 7 days of an annual meeting which contains the location, time and date of the coming year's meetings need not provide additional notice if there is no change.

OPEN MEETINGS

Page 2

litigation, contract negotiations, those falling within the attorney-client privilege, and those involving the employment, promotion, discipline or dismissal of an officer or employee of the association. It is important to note that, except as to certain litigation matters which require a case by case determination, although the discussion of these matters identified is confidential; the board's decision is to be made and recorded in an open meeting.

The board is required to take minutes of open meetings and make copies available to unit owners prior to the next open meeting. There is no standard this agency enforces as to the content of the minutes and owners should be aware that minutes are not transcriptions. Similarly, while some association bylaws may require that minutes be mailed to owners, there is no obligation this agency enforces requiring that this be done. Because the provision of minutes is an obligation, it is a common expense. This is only applicable to one copy per owner per meeting. Owners desiring multiple copies of the same meeting minutes may be required to pay the association for copying costs. There is no standard this agency enforces as to the length of time an association must keep minutes. If the association is formed as a non-profit corporation under Title 15A, owners can look to the general corporate standard. This agency does not have authority to enforce Title 15A.

Open Meeting requirements regarding board meetings (as opposed to general membership meetings) do not guarantee a right to participate, only to observe. Unless otherwise required in governing documents, participation is at the board's discretion. ***

The Association Regulation Unit of the New Jersey Department of Community Affairs has the authority to ensure that associations comply with the open meeting requirements as set forth in the law and regulation cited above. If you are aggrieved by the fact that your association is not adhering to these open meeting requirements, please submit the enclosed "Common Interest Community Association Complaint Form" along with the necessary supporting documentation, to the address listed on the form.

The Planned Real Estate Development Full Disclosure Act and the New Jersey Condominium Act are both available on line at www.njleg.state.nj.us. The N.J. Administrative Code can also be found on line at www.michie.com/NJ.

***Longstanding tradition, and Board policy has been for every monthly meeting to provide for public comment and for tenants, even if not permitted to speak, to be allowed to attend & observe open meetings. Suddenly, with no evidence of any vote having been taken, tenants are excluded entirely; members are limited to speak only once a year at the annual meeting; and (it is believed) binding votes are being taken in executive session, or the Bd. President is taking unilateral actions that should be voted on in open session.