

The Ins and Outs of Executive Committees

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The recent amendments to the Common Interest Development Open Meeting Act have made it challenging for community association boards of directors to deal with important association business. Specifically, the prohibition on boards taking action on any "item of business" outside of a properly noticed board meeting can restrict a board's ability to make time-sensitive decisions. However, Civil Code § 1363.05 provides an exception to this prohibition by excluding "those actions that the board has validly delegated to any other person or persons (managing agent, officer of the association, or committee of the board comprising less than a majority of the directors)" [emphasis added] from the definition of an "item of business."

A "committee of the board" is commonly referred to as an executive committee. Let's review the important elements of establishing and maintaining an executive committee:

Statutory basis. Corporations Code § 7212 grants boards the authority to form an executive committee. An executive committee must be comprised entirely of directors (with a minimum of two directors) and serves at the discretion of the board. The delegation of duties to an executive committee is subject to the Corporations Code and the requirements of an association's bylaws.

Formation. Executive committees may only be formed by the board of directors. Specifically, the board, by a resolution adopted by a majority of the number of directors in office, may create an executive committee. Appointments to the committee are generally made by a majority vote of the directors then in office and members of an executive committee serve at the pleasure of the board. At the time of formation, the board should prepare a resolution that outlines the executive committee's powers,

responsibilities and limitations so that the committee's "job description" is clear.

Purposes. Executive committees are beneficial for time sensitive matters, such as a construction project that requires the board to review change orders and pending legal matters that require the board to work closely with association legal counsel. Executive committees are also useful for dealing with personnel matters and the formation of contracts with service providers and contractors that require immediate attention. Litigation/legal committees are desirable (and sometimes necessary) when one or more directors are the subject of litigation or the board's workload is so immense that utilizing a committee to handle a legal matter is more efficient than involving the entire board.

Excluding certain board members. Sometimes it is necessary to exclude a "rogue" director from particular matters or association business because that director has a history of disclosing confidential matters or has announced his/her intention to do so. To preserve confidentiality and/or to ensure the preservation of the attorney-client privilege, the board may create an executive committee, minus the rogue director, to address those issues. Additionally, directors with conflicts of interest should be excluded from certain executive committees dealing with the matter or business that brought about or is related to the conflict of interest.

Restrictions. While executive committees are useful, there are certain restrictions on their authority and activities. First, while executive committees are not required to give notice to the membership of their meetings, this becomes an issue for three-member boards. Because executive committees must contain a minimum of two directors, if an association has a three-member board, the meeting of the executive committee would constitute a board meeting that

would require notice to the members. A second restriction on executive committees is the type of business that may be handled. Corporations Code § 7212 prohibits boards from delegating certain authority to a committee, including:

- Approval of any action that requires membership approval
- The filling of vacancies on the board or executive committees
- The amendment, repeal, or adoption of bylaws

A third and final restriction is that executive committees must keep minutes of their meetings.

Executive committees can be an effective tool for efficiency. However, there are numerous legal constraints imposed on executive committees that an association's board of directors must be aware of. Accordingly, it is recommended that a board consult with association legal counsel prior to the formation of an executive committee.

ABOUT THE AUTHOR



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