

**COMPLYING WITH SENATE BILL 563:
A Guide to Proper “Board Action” Under the New Board Meeting Requirements**

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Senate Bill 563 (*effective January 1, 2012*) dramatically modifies Board meeting requirements under the Davis-Stirling Common Interest Development Act, affecting Board action outside of meetings, action on agenda items, notice and agenda requirements, and, perhaps most of all, conducting business by email. The following is a guide for Boards and management to ensure legal compliance for Board action under this new law.

What are the Board meeting requirements under SB 563?

First and foremost, the general rule is that a Board *must* hold a meeting in order to make decisions or take actions on association business. Decisions or actions made outside of a meeting are generally unlawful, and expose the association and Board to liability claims. A good rule of thumb is that a meeting is required for any action or decision that requires official action (i.e., majority vote).

Under SB 563, a “meeting” now includes the following: (a) any gathering of a majority of the Board at the same time and place to hear, discuss, or deliberate upon any “item of business;” or (b) a teleconference in which a majority of the Board, in different locations, are connected by electronic means (audio or video or both) for a meeting. “Item of business” means any action within the authority of the Board, except actions 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.

Therefore, a meeting is *not required* for the following:

- actions *delegated* by the Board to an officer, agent, committee, or manager;
- actions that consist solely of *providing information* to the Board, for the Board’s consideration or action at a later meeting; or
- actions done solely by individual Board members, on their own initiative, that *do not require a majority* of the Board to consent and do not result in a decision, action, or otherwise.

To perform association functions outside a meeting, Boards should expressly and formally delegate the functions to an officer, agent, employee, or committee. This should be done in a Board meeting and recorded in the minutes. However, Boards must first determine what actions may be lawfully delegated, and to whom, and should adopt formal procedures for delegating those functions, in order to conduct official business in compliance with the law.

Notice and Agenda Required for ALL Meetings

All Board meetings, including those in executive session, now require a notice and an agenda of all “items of business” to be addressed at that meeting. Notice and agenda must be posted in a prominent place within the common area, or sent to all owners by mail, facsimile, personal delivery, news letter or by email (if the owner consents). Open meetings continue to require **four** days’ notice, and SB 563 requires **two** days’ notice for executive session meetings (again, with the agenda).

The only meeting that does *not* require a published notice and agenda is an “emergency meeting,” which is a meeting called under circumstances that: (a) could not have been reasonably foreseen; and (b) require immediate attention or action by the Board, such that giving prior notice is impracticable.

Access to Executive Session Agenda

SB 563 now entitles owners to inspect and copy executive session meeting agenda. Prior law did not provide such; however, upon written request Boards must allow owners to inspect and copy executive session agenda. Because of this, we strongly recommend that executive session agenda be prepared in a general format without reference to sensitive information that will be addressed in the meeting, such as discipline, delinquencies, etc.

Teleconferences - Meetings by Video or Telephone

Boards may meet remotely, by video or telephone conferencing. However, such meetings still require notice and an agenda, except for emergency meetings. If a Board meets by teleconference (except solely in executive session) the notice must *identify a physical location* where owners may attend, and at least one Board member must be present at that location (at all times) with a speakerphone allowing owners to hear all proceedings and participate in the required open homeowner forum. Simultaneously, all Board members participating remotely must be able to hear any director and owner speaking at that location.

Email – Emergency Meetings Only!

Under SB 563, it is now clear that anytime a majority of Board members communicate via email about association business, *this constitutes a “meeting.”* Email meetings are only allowed on an “emergency” basis, so in order to lawfully meet by email, Boards must now: (a) unanimously agree that the issue constitutes an “emergency” under the law; and (b) unanimously consent in writing to meeting via email before the meeting takes place. Only then may an emergency email meeting proceed. The written consents (which may be transmitted by email) are recorded and filed with the minutes of the meeting.

What matters can the Board discuss or act upon during a meeting?

Even during a properly noticed meeting, Boards cannot take action on any item of business that is not on the published agenda, with some exceptions. A Board member (or manager, agent, or employee) may do any of the following:

- (i) *Briefly respond* to statements made or questions posed at a meeting;
- (ii) *Ask a question* for clarification, or make a *brief announcement* or *brief report* on his or her own activities, whether in response to questions or on his or her own initiative;
- (iii) *Provide a reference* for factual information to agents or staff;
- (iv) *Request a future report* from agents or staff concerning any matter, to be given to the Board at a future meeting, or direct staff to place a matter on a future agenda; and
- (v) Direct staff to perform *administrative tasks* to carry out any of the above.

Finally, Boards may act on matters not on the agenda at a meeting if: (a) the Board determines that an *emergency* exists; or (2) at least 2/3 of the Board decides that immediate action is needed and this came to their attention after the agenda was posted (note: if 2/3 of the Board are not present at the meeting, then all Board members present must agree); or (3) the item was on the agenda for a prior meeting no more than 30 days previously and, at that meeting, the Board continued the item to the current meeting.