

THOUGHT LEADERSHIP

OPEN MEETING REQUIREMENTS – DO THEY APPLY TO COMMITTEES?

June 18, 2021 | Phaedra J. Howard



Under the Minnesota Common Interest Ownership Act (“MCIOA”), which governs essentially all associations formed on or after June 1, 1994^[1], as well as older condominiums and any older townhome or cooperative associations that have amended their governing documents to “opt in” to MCIOA, meetings of the board of directors must be open to the members, subject to certain enumerated exceptions, which are discussed below^[2]. However, the question often arises as to whether or to what extent the open meeting requirement applies to meetings of committees rather than meetings of the board.

Committees may be standing committees created under the governing documents and/or by the board to serve on an ongoing basis, or may be ad hoc committees formed for a particular purpose and dissolved once that purpose has been fulfilled. An example of a standing committee might be a social committee, grounds committee, or an architectural review committee. An ad hoc committee might be formed for the purpose of working on a particular maintenance or improvement project, updating the rules, etc. Committees may also consist of several subcommittees that are tasked with certain aspects of a project that the committee might be working on. Generally, committees and subcommittees do not have any authority to make decisions or take actions on their own and can only make recommendations to the board. However, certain committees may have the authority of the board to make decisions or take actions without needing to submit it to a vote of the board. Oftentimes, the Architectural Review Committee may be authorized in the governing documents or by a board resolution to make decisions on its own regarding owners’ requests to make architectural changes. MCIOA also permits boards to delegate authority to a violations committee to conduct violation hearings and make decisions regarding violations, fines and other enforcement actions. The board of directors can also grant decision-making authority to a committee, usually through a board resolution or the committee charter.

A committee that is designated under the governing documents or by a board resolution as having the authority of the board is treated as the board and the committee members treated as directors for purposes of determining their standard of conduct, conflict of interest issues and the association’s obligation to indemnify them. Additionally, under the nonprofit corporations act, the statutory provisions regarding board meetings, notice of meetings, quorum, and actions of the board with or without a meeting are also deemed to apply to any committee having the authority of the board.^[3] As such, it would follow that any committee having the authority of the board in the management of the business of the association must also comply with the open meeting requirement under MCIOA. However, for any committee whose authority is limited to that of an advisory role and that does not have any independent authority to make decisions or take actions on behalf of the association, their meetings would not be deemed board meetings for purposes of MCIOA and are not required to be open to the members unless otherwise provided in the governing documents.

Associations that are not otherwise subject to MCIOA are still advised to abide by the open meeting provisions even if not required to do so under their governing documents for one simple reason: transparency. Similarly, committees that do not have the authority of the board can still have open meetings even if the governing documents do not require it. Homeowners become suspicious of boards and committees that meet and make decisions in secret. But when the board’s actions are open and transparent to the members, it reduces suspicions and accusations and helps the board focus on the business of running the association instead of wasting time having to defend its every action. Having open meetings does not mean that the members are entitled to participate in the discussions or voting process, but simply that they are entitled to observe the Board (or committee) as it carries out the business of the Association. Many associations opt to hold an open forum before or after the official meeting to allow homeowners to bring issues or concerns to the board’s attention, but once the open forum portion is done, homeowners should be quiet observers and not active participants in the remainder of the meeting.

As indicated above, MCIOA permits board meetings or portions thereof to be closed to the members to discuss the following: (1) personnel matters; (2) pending or potential litigation, arbitration or other potentially adversarial proceedings, between unit owners, between the board or association and unit owners, or other matters in which any unit owner may have an adversarial interest, if the board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the board or association or the privacy of a unit owner or occupant of a unit; or (3) criminal

ABOUT THE AUTHOR

Phaedra J. Howard
Phone: 952-746-2142
phoward@hjlawfirm.com



[VIEW BIOGRAPHY](#)

VIEW MORE POSTS BY AUTHOR

[WEBINAR REPLAY: HOA Fall Legal Updates 2022](#)

[Fun Facts About Cooperatives](#)

[Hellmuth & Johnson Attorneys Named to Best Lawyers in America® 2023 Lists](#)

[Phaedra Howard Featured in HOALeader.com](#)

[WEBINAR REPLAY: HOA Spring Legal Updates](#)

[Is there actually such thing as a No Pet Property in a Homeowners Association?](#)

[Know Your Boundaries: A Guide to Understanding Unit Boundaries in an HOA](#)

[WEBINAR REPLAY: Vendor Selection and Negotiation for Associations](#)

[WEBINAR REPLAY: Special Considerations for Real Estate Transactions](#)

[Weeding Out Marijuana in Your HOA](#)

activity arising within the common interest community if the board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize investigation



of the activity.[4] Rule violations and collection matters typically fall within the second category and therefore can and should be discussed in private and not in front of the general membership. Any matters not falling within one of the above exceptions are subject to the open meeting requirements and may not be discussed, voted on or acted on outside of an open meeting of the board. This includes, but is not limited to, contracts, budgets, maintenance or repair projects, etc. A closed meeting is still a board meeting, however, and must follow any requirements contained in the bylaws for notice to board members, quorum, voting, etc. Minutes from closed meetings are to be kept separate from regular board meeting minutes and are generally not available for members to review.

Under the Minnesota non-profit corporation statutes, Chapter 317A, a board meeting may be deemed to occur any time a quorum of board members are together discussing association matters. As indicated above, these requirements also apply to any committee having the authority of the board. Therefore, board and committee members must be careful not to conduct association business (other than matters falling within the above exceptions for closed meetings) outside of a properly noticed open meeting. This does not mean that members of the board or a committee cannot gather socially or that they cannot meet with a potential contractor or vendor in an information-gathering meeting. It does mean, however, that the board cannot vote on whether to approve a contract, budget, etc. or make any other decisions about association matters while they are gathered together for some other purpose outside of a properly noticed meeting.

The problem arises for many associations when issues come up between board meetings that require action or a decision before the next regularly scheduled meeting. It is not uncommon for board members to simply call or e-mail each other to discuss and/or decide on a matter. However, this common practice may violate the open meeting requirements under MCIOA and/or the meeting requirements of Minnesota Statutes Chapter 317A. Unlike MCIOA, Chapter 317A does not contain any requirement that board meetings be open to non-board members. However, it does require that meetings be conducted in a manner that provides for simultaneous participation and discussion between the board members.[5] This can be accomplished through an in-person meeting, a conference call, through the use of a dedicated chat room or some other web-based meeting platform, such as Zoom or GotoMeeting, or other product that permits participants to communicate live with each other, or any combination of the above. It cannot, however, be done via an e-mail discussion or vote, since regular e-mail does not permit the participants to engage in a “live” discussion. Unless otherwise provided in the bylaws, an action that is required or permitted to be taken at a board meeting (or a committee meeting that is treated as a board meeting) may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the directors. [6] Even if all of the directors consent to an action in writing or by authenticated electronic communication (note that regular e-mail may or may not qualify as an authenticated electronic communication), thereby satisfying the requirements of Ch. 317A, if done at a meeting, the board or committee may still be in violation of the open meeting requirement under MCIOA unless the matter was one of the above noted exceptions that are permitted to be discussed in a closed session.

For unexpected issues and situations that require a decision or response between regular meetings, boards should attempt to call a special board meeting in accordance with their governing documents, as it is generally easier to get a quorum of the directors together in person, by phone, in a Zoom meeting, etc. than it is to get unanimous consent in writing from all of the directors. In cases where it becomes necessary to hold a special meeting or take action by unanimous consent without a meeting on a matter other than one for which the meeting may be closed, those decisions should be brought up and reaffirmed at the next regularly scheduled board meeting so that there is transparency about what took place between meetings and there is a proper record of a decision on the matter at an open meeting.

If you have any questions about open meetings or any other matter affecting your association, please feel free to contact the author.

[1] Except for single family home associations, which are generally exempt unless they have opted into being governed by MCIOA.

[2] See Minnesota Statutes 515B.3-103 (g).

[3] Minn.Stat. 317A.241, Subd. 3

[4] Minn.Stat. 515B.3-103(g).

[5] Minn.Stat. 317A.231

[6] Minn.Stat. 317A.239. It should be noted that this is not an option if there are any unfilled vacancies on the board, since there is nobody to provide written consent for that director.

[RETURN TO THOUGHT LEADERSHIP](#)