

“IT’S A SECRET” – HOA Board Meetings

Does your Homeowners Association (HOA) conduct their board meetings in secret? Some homeowner boards do not allow fellow homeowners to attend and observe their general meetings. Why do you think they would do that? You most likely would hear that it’s just easier to conduct business without interruptions. Interruptions could be unwanted or uncomfortable questions from those they were elected to represent. But most likely, it stems from a fear of being criticized or held accountable for poor judgement, mistakes, or an inability to conduct orderly and professional meetings resulting from inexperience and lack of training. The only time there should be a closed, private meeting is during an executive session with officers only due to the sensitive nature of the issue.

Most board members have little to no experience serving on a board, or even in a nonprofit capacity at all. If they do have experience serving on a HOA board, they often bring bad habits and poor behavior along with them to new communities. Most have no de-escalation training or natural de-escalation skills. Many board members do not even read their governing documents let alone understand them. Individual board members often make decisions on their own and act independently disregarding the fact that they are simply an instrument of the board and must act with one collective voice.

Many portions of by-laws are crafted for the developer/declarants’ use during the construction and sales period and do not and should not apply once a transition has occurred. As mentioned in a previous article, the goal of the original HOA documents is to insulate and protect the developer/declarants, without homeowner interference, prior to transitioning day-to-day management and accountability to a homeowner board of directors. By-laws and other governing documents can be amended to serve the owner/members after a transition.

Excluding owner/members from attending, observing, and participating in general session board meetings has no legitimate merit and is very dangerous at its core. This practice can raise suspicion that the board is making decisions that would not sit well with the community at large. Intent may even be viewed as self-serving and create distrust resulting in calling everything a board does into question.

Neither governing documents nor state nonprofit code offer appropriate protection for owners who purchase or live in HOA governed communities. Looking out for themselves seems to be a more common attribute board members acquire rather than serving the owners who elected them. This is hard to comprehend since they are owners as well and if not serving would most likely resent their board operating in a vacuum. Amended legislation is in the works that should eliminate much of this behavior and “shine the sunlight” on HOA governance.

Owner apathy promotes these conditions. If this sounds like your HOA, and your board is resistant to consider “stepping into the light”, consider recruiting a core group of likeminded owners and consult with a knowledgeable litigation attorney for guidance. Determine how to legally force change by amending documents. Resolve to chart an effective path toward resolving your community’s issues rather than waiting for someone else to step-up and fix the problem. The court of public opinion is often more effective in creating change if a board is resistant. HOA law is very specialized so be sure you reach out to the right person. Always ask if there is any conflict of interest before you discuss your issues in case your HOA is a client.

If you feel there is discrimination in play, reach out to the Alabama Disabilities Advocacy Program (ADAP) in Tuscaloosa and consider filing an ADA HUD complaint. Unfortunately, Civil Rights protection does not appear to be an option for most HOA issues. Of course, there’s always mediation, arbitration, or possibly as a last result, litigation.

Many owners who sit on HOA boards are well-meaning and have a genuine desire to serve in the best interests of their community. The root of the problem stems from the state’s reluctance to provide any type of statutory legislation or effective mandated training.

“Buckle up” because doing the right thing is very foreign to many of these boards. Boards seem to have no issue spending HOA money (*your money*) on attorneys to protect themselves. Don’t be fooled: They will try to blame the complainant or label them as troublemakers as a diversionary tactic for spending HOA funds for legal representation. Don’t let apathy overshadow your actions.

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(No portion to be considered legal advice)