[](https://newenglandcondo.com/)

Top of Form

Bottom of Form

[Everybody Out! Closed-Door Meetings Should Be Used Sparingly](https://newenglandcondo.com/article/everybody-out#:~:text=Under%20Robert's%20Rules%20of%20Order,and%20keep%20the%20proceedings%20secret.)

BY MARIE N. AUGER   [2010 OCT](https://newenglandcondo.com/issue/2010-oct)[BOARD OPERATIONS](https://newenglandcondo.com/category/board-operations)

 At a Planning Board meeting in a small Massachusetts town, the members reached  an agenda item pertaining to a rather complicated land deal that involved the  purchase of hundreds of acres of lakefront property.

 The Planning Board chairman called for a roll-call vote [required by state law]  to go into executive session and those visitors attending the meeting were  asked to leave. After the vote, a local environmental activist loudly proclaimed she was not pleased at having to leave the meeting – and within days, individual board members were contacted by the state attorney general’s office. In the end, it was determined that no violations of state law had occurred, but the ordeal left Planning Board members shaken.

 So what does this have to do with community associations, which are private entities, and their board meetings?

 Two New England states have adopted rules regarding open meetings at community associations, one very recently, making it more difficult to use these types of sessions.

 In addition, political resistance to closed meetings is growing, along with advice that boards use them sparingly, or face an unwelcome response from unit owners.

 In Connecticut, political opposition to closed sessions resulted in new legislation that puts strict limits on when they may be used, explains Attorney Gregory W. McCracken of the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut.

 Laws Cover Executive Sessions

 “As of July 1,” McCracken explains, “rules for executive sessions have been added to the Connecticut Common Ownership Act – Connecticut’s state statute for condominiums. Now, community association meetings in Connecticut must conform to regulations dictating specific reasons for which executive sessions can be held [see sidebar].”

 He adds that “the state of Vermont also has adopted similar regulations” regarding open meetings and executive sessions. The remaining New England states do not address open meeting requirements in relation to community associations, he says.

 Under Robert’s Rules of Order, the common format for many association meetings, standard procedure is that a board may meet in “executive session” to exclude anyone who is not a board member and keep the proceedings secret. It’s appropriate when issues at hand may compromise the right to privacy of individuals, contracts under negotiation, or lawsuits against the condo. In a typical community association it’s most often used when the board is meeting with an attorney to seek legal  advice with respect to proposed or pending litigation.

 McCracken notes that “oftentimes, [executive session] is misunderstood or misapplied. Some boards may be inclined to use it too often.” He adds that the opposite is seldom a problem – of boards tending to be too transparent.

 When there’s a perception of too much secrecy at board meetings, he continues, “It’s more of a political issue… it undermines trust.” When complaints about particular directors reach critical mass, the major recourse for unit owners has been “to recall them from office,” states McCracken.

 Now, with open meeting laws in Connecticut, “if a board does violate the law, unit owners have 60 days to bring a lawsuit,” he adds. “It’s a major change.”

 Legislation May be Spreading

 Legal experts agree that this quest for transparency may spread to neighboring states. In Massachusetts, says attorney Henry Goodman, “There have been attempts to make all meetings open… but so far, they’ve all failed.”

 He notes that Massachusetts “does its own thing” with condominium legislation. “There are no laws in Massachusetts dealing with executive sessions for condominium associations,” says Goodman, a principal at Goodman, Shapiro, & Lombardi, LLC, a law firm with offices in Dedham, Massachusetts and Providence, Rhode Island.

 “While well-meaning board members or legislators are trying to require all meetings to be open [through legislation] they may be doing a disservice. Due process must be used when boards act, and a measure of [a board’s] privacy is protected… an example is [discussions about] the Fair Debt Collection Practices Act.”

 “Boards generally determine their own meeting procedures,” Goodman continues. “With attorney/client privilege… it may be necessary to meet in executive session.”

 He points out that the need for discretion and privacy may not be obvious immediately. “What if, for example, an owner’s fee payments are in arrears, or something illegal is going on in Unit X? Maybe the board wants to proceed with litigation but… are they sure who the right owner is? There needs to be an executive session to talk about these things, when [discussions] may violate somebody’s rights.

 “Everything else,” says Goodman, “should be in open session, only because it makes sense… Rumors can run riot in communities [so] it’s wise to avoid that possibility.” Frequent closed sessions may result in “residents spreading rumors that directors are hiding something. Open meetings are preferred… if they are practical, with unit owners invited. They are not always possible, however, such as whenmeetings [for small communities] are held in someone’s home.

 “In most states,” he continues, “there is a requirement for at least one unit owners’ meeting annually and one financial or business meeting annually. Condo docs typically provide for two types of meetings: boards of directors as  well as unit owners with directors meeting together. For practical purposes, most condo boards meet monthly for ongoing business decisions.”

 Maintaining Trust

 To maintain the trust of unit owners, Goodman suggests “part of every regular board meeting could be set aside for the participation of  unit owners.” This format could ensure transparencyat meetings without compromising individuals’ privacy.

 Another model for balancing transparency and privacy at meetings is described by  James Shope, PCAM, property manager at the 277-unit Village of Nagog Woods in  Acton, Massachusetts. He states, “Our board meets every month for business matters. We invite the participation of unit owners, in an open meeting format, onalternating months.” Consequently, he reports that potential rumors or mistrust from the use of  executive sessions are not an issue.

 Attorney Stephen Marcus, a partner with Marcus, Errico, Emmer & Brooks, PC, in Braintree, Massachusetts, agrees that executive session “should only be used sparingly… for subjects of a confidential nature. While Massachu-setts has no requirement  for open meetings, we advise board members to go into executive session for personnelissues, delinquencies, pending litigation… The reason [for secrecy] is often a judgment call. I think it has its purpose.

 “Occasionally we have to urge our clients about keeping their meetings open. You’re not required to do it but we’d recommend it,” says Marcus. “In 31 years of [our firm] servicing community associations across Southern New England, I haven’t heard about complaints towards any board for using executive session… that’s a pretty goodtrack record.”

 It’s evident that there is a groundswell of support for open meetings – even in the context of a private residential community. While complaints about overuse of executive session seem to be rare at condominium board meetings, advocates continue to push for legislation to guarantee open meetings and limit the reasons for executive session. So whether a condo board is subject to state law or just Robert’s Rules of Order, reasons for any closed-door sessions always need serious consideration.

*Marie Auger is a freelance writer and a frequent contributor to New England Condominium magazine.*