

## **Agenda Setting: Who, When, and How?**

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Setting the agenda for a board meeting is an important parliamentary protocol as the agenda establishes what will be discussed at the upcoming meeting. Though an agenda is required by the California Civil Code, California law does not specify how to set the agenda and association governing documents are often silent on the issue.

California's Open Meeting Act ("Act") (Civ. Code §4900 et seq.) was established with the intent of increasing transparency of the conduct of board business in common interest developments in an effort to keep owners involved and aware of board business. The Act prohibits boards from discussing or acting on an item of board business outside of a board meeting (Civ. Code §4910(a)). Civil Code section 4930 also prohibits boards from discussing any board business which was not previously placed on the agenda prior to the meeting with some exceptions outlined in Civil Code section 4930 (b) through (d) and discussed below. Thus, agendas are more than just a loose guide for meetings; they restrict what boards can discuss and act on. If an item of business is not on the agenda, then generally a board cannot act on that item unless certain criteria are met.

### **Agenda Setting Protocols – Determining The Who, When and How**

#### Who May Set and Place Items on the Agenda?

Your association's governing documents may expressly provide who may place items on board meeting agendas and how. However, if your association's governing documents are silent on these issues, your board should consider adopting an agenda setting protocol. Such a protocol should provide which director sets the agenda (generally we see board presidents handling this task), who may place an item of business on the agenda, how that is accomplished, and any requisite deadlines.

Regarding who may place an item of business on the agenda, California law does not provide any guidance on this issue. However, Corporations Code section 7211(a)(1) states that meetings of the board may be called by the board president, vice president, secretary, or any two directors. If the Corporations Code gives these individuals the power to call a board meeting, then by analogy the board president, vice president, secretary, or any two directors should have the power to place an item on the agenda for that meeting. Therefore, we generally recommend that agenda setting protocols provide that the board president, vice

president, secretary or two or more directors may place items of board business on the board meeting agenda. Non-board member owners should not be given the power to place matters on the agenda.

Agenda item requests may be emailed to the association's community manager or the designated board member responsible for setting the agenda. Whatever method is used to set the agenda, be careful not to violate the Open Meeting Act by having a quorum of the board discussing or debating what to place on the agenda. Simply emailing a request for an item to be added to the agenda does not violate the Open Meeting Act.

#### When Must the Agenda be Finalized and Posted?

Agendas must be included with the notice of the meeting. Associations must give general notice of the meeting at least four days before a regular (open) session board meeting and at least two days before an executive session board meeting. (Civ. Code §4920). In order to meet these deadlines, the board adopted protocol should provide that requests for items to be added to the proposed agenda be sent to the person designated to prepare the agenda at least 24-48 hours prior to when the notice and agenda will be posted.

#### How Can Agenda Items be Added to an Agenda at a Meeting?

There are some instances where a board can add an agenda item at a meeting:

1. If the board determines that an emergency situation exists (i.e., there are circumstances that could not have been reasonably foreseen by the board, which require immediate attention and possible action by the board which make it impracticable to provide requisite notice), then the board may add that emergency issue to that meeting's agenda by a vote of the majority of the board. (Civ. Code §4930(d)(1).)
2. If the board determines that there is a need to take immediate action on issue and that need for action came to the attention of the board after the agenda was posted, the board may, by a vote of two-thirds of the directors present at the meeting (or if less than two-thirds of the total membership of the board is present at the meeting, then by unanimous vote of the directors present), add that item to that meeting's agenda. (Civ. Code §4930(d)(2).)
3. If the item appeared on the agenda for a prior meeting that occurred not more than 30 days before the date of the current meeting and at that prior meeting action on that item was continued to the current meeting. (Civ. Code §4930(d)(3).)

If the proposed agenda item does not meet one of the above, then that item cannot be added to the agenda at the meeting. However, the board can direct the community manager or director designated to set the next meeting agenda to add that item to the agenda for that future meeting.

If the proposed agenda items meet a Civil Code section 4930 exception, then the board should first vote to add the item to the agenda. Once the board votes to add the item to the agenda, then further board discussion and action may be taken on the agenda item.

In sum, if your governing documents do not address the who and how of setting board meeting agendas, your board should consider adopting a protocol in order to clearly provide a procedure as to how board meeting agendas are handled.

Be forward-thinking and consider preparing and adopting such a protocol to prevent future unnecessary strife amongst board members. Please contact our office if your association needs assistance in preparing an agenda setting protocol.

The project's main objective is to develop a system that will be able to handle the processing of the data in a way that is efficient and effective. The system will be able to handle the processing of the data in a way that is efficient and effective.

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