

Owners' Right to Attend. The PCA and the OCA require that board of directors meetings must be open to all owners except for matters noted below that, in the discretion of the board, may be considered in executive session. However, no owner has the right to participate in a meeting of the board of directors unless the owner is a member of the board. The presiding officer has the authority to exclude from the meeting an owner who disrupts the proceedings at a board meeting.

Executive Session. The PCA and OCA permit the following matters, in the discretion of the board, to be considered in executive session:

1. Consultation with legal counsel concerning the rights and duties of the association regarding existing or potential litigation, or criminal matters;
2. Personnel matters, including salary negotiations and employee discipline; and
3. The negotiation of contracts with third parties;
4. Collection of unpaid assessments.

The PCA and OCA further provide that, except in the case of an emergency, the board of directors of an association must vote in an open meeting whether or not to meet in executive session. If the board votes to meet in executive session, the presiding officer of the board shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberation can be disclosed to owners. The motion or decision to hold an executive meeting must be included in the minutes of the meeting. It is important to note that any actions or contracts considered during an executive session do not become effective unless the board later reconvenes in an open meeting and votes on the action or contract.

Records of Meetings and Actions. Minutes should be taken at each board meeting and should be published in such a manner that ensures that each member of the association is made aware of the board's activities. The secretary is usually charged with taking the minutes, but the responsibility may be delegated to a property manager or some other designated person.

Conflicts of Interest. Because board members are, in most cases, also unit owners, actual and potential conflicts of interest are not uncommon. Even if the board member honestly feels he or she can be objective, it may be best to withdraw to avoid the perception of bias when a potential conflict arises. Failure of a potentially biased director to withdraw from a particular decision may support an argument that the decision is invalid.

Directors must share all relevant information with the board. Directors may not disclose information that he or she may have obtained as a director or use such information to their benefit. If a director has personal information that is relevant to a

decision of the association but fails to disclose it because it would be to his or her detriment or benefit to remain silent, then the director has a conflict. This is a common problem for the developer until turnover.

A common problem involves contracting for goods or services with a board member or a family member of a board member. These conflicts should be avoided as it almost always results in confrontations among association members.

The OCA and PCA provide that in the performance of their duties, directors shall be governed by the conflict of interest provisions of the NCA. In some circumstances, it may be sufficient to disclose or otherwise make known a direct or indirect interest of a director.⁷

LaRue LePeu, an owner at Cajun Capers Condominium, is seeking a variance from the board of directors so that he may install a fence which exceeds the standard height limitation. The fence is opposed by his next door neighbor, Jock Jested, who also happens to be a board member. Jock, naturally opposing the proposed variance, should not participate in the board's decision because his perspective may not be objective. Even if he *promises* to and actually achieves some level of objectivity, it could still be argued by LaRue that the decision is flawed. In other words, the board has failed to ensure objectivity by avoiding the perception of bias.

**SOLUTION:
JOCK NEEDS TO TAKE HIMSELF OUT
OF THE VOTE - IF HE WON'T, THE
BOARD SHOULD!**