

Association Governance Topics

Version 1.4 (January 31, 2021)

Organizational Board Meeting

The first meeting of a newly elected Board of Directors shall be held within one week of election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order to legally constitute a meeting, providing a majority of the whole Board shall be present.

Source: [EEPOA By-Laws Article III. Section 9.](#)

Open Meeting Act

Sometimes boards make decisions in closed meetings in violation of California's Open Meeting Act (Civ. Code §§4900-4955). Members can go into court for injunctive relief and civil penalties up to \$500 for each violation. (Civ. Code §5145, §4605, §4955.)

Source: <https://www.davis-stirling.com/HOME/Violation-of-Open-Meeting-Act>

In addition to executive session matters, a majority of directors can attend committee meetings, seminars or social events without violating the Davis-Stirling Open Meeting Act, provided they do not "hear, discuss, or deliberate upon any item of business that is within the authority of the board," i.e., engage in board business.

Source: <https://www.davis-stirling.com/HOME/Exceptions-to-Open-Meeting>

Allowable Email. Boards of directors are allowed to exchange emails under the following conditions:

- *Emergency Meetings. See emergency meetings.*
- *Minority of Directors. Fewer than a majority of directors may discuss or comment on an item of business so long as the email exchange does not become a "series" of emails involving a majority of the board. (Civ. Code §4910(b).)*
- *Non-Business. A majority of directors may send and receive emails between themselves if it does not involve board business as defined above. Following are examples of allowable email exchanges:*
 - *setting dates and times for meetings,*
 - *distributing information for meetings,*
 - *requesting that items be placed on the agenda (prune trees, repair streets, create committees, paint buildings, repair roofs, etc.), and*
 - *informational emails (informing directors of educational events, reporting the status of fence repairs, distributing interim financial statements, etc).*

Source: <https://www.davis-stirling.com/HOME/Email-Meetings>

Starting January 1, 2008, board meeting agendas must be posted along with the notice of meeting. (Civ. Code §4920.) With the following exceptions, boards are not allowed to discuss or take action on any item not on the agenda. As provided for in Civil Code §4930(a):

- Board members and their agents (including managers) may briefly respond to statements or questions from association members, ask clarifying questions, make brief announcements, or make brief reports on their own activities.
- Boards may refer certain informational matters and administrative tasks to its managers, agents and staff--even if these items were not listed on the agenda.
- Any subject may be discussed and acted upon if there is an emergency, if immediate action is needed on a matter which arose after the agenda was distributed, or if the item was on a recent agenda and was continued to the current meeting.

Source: <https://www.davis-stirling.com/HOME/Meeting-Agenda-Required>

To address issues between regularly scheduled board meetings, directors may do the following:

- Delegate authority to the president and/or manager,
- Call a special meeting with 4-days notice,
- Call an emergency meeting attended in person or via teleconference,
- Address emergency issues via email and circulate a required unanimous written consent, or
- Call an executive session meeting for executive session issues.

Source: <https://www.davis-stirling.com/HOME/Email-Meetings>

Emergency meetings:

- **Emergency Defined.** An "emergency" is defined as "circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice" to the membership. (Civ. Code §4923; Civ Code §4930(d)(1).)
- **Recommendation:** The conservative approach is to have unanimous consent to hold an emergency meeting by email and unanimous consent regarding any decisions made via email. However, meeting the requirement may not be possible if one or more directors are unavailable. To avoid the problem, boards can hold an emergency meeting in person or via conference call. Doing so does not require written consent. As with regular meetings, it only requires a quorum of directors to conduct business and decisions are by a majority of directors attending the meeting once quorum has been established.

- **Minutes.** *Minutes of the emergency need to be taken.* If the meeting was an executive session, the meeting must be generally noted in the next open session board meeting. For example, the Board met in executive session on [date] to discuss potential litigation.

Source: <https://www.davis-stirling.com/HOME/Emergency-Meeting>

Breaking a tie election vote

- *Governing Documents.* If the Association's governing documents specify a method for breaking a tie, then that method should be utilized (provided, of course, that the applicable provision is enforceable).
- **Flipping a Coin.** If the candidates agree, the winner of the seat can be determined by flipping a coin for two-way ties. In a three-way tie, the candidates (if they agree) can either draw straws or draw a name to determine the winner. As noted above, any such agreement by the candidates must be approved by the inspector of election.
- *Runoff Election.* A run-off election may be held between only those candidates who were tied for the open seat. Nominations are not reopened. Until the tie is resolved, the other newly elected directors should immediately begin serving their terms (if it can be determined which seats the winners are entitled to).

Source: <https://www.davis-stirling.com/HOME/Breaking-a-Tie>

Selecting Officers

"The selection of officers is done at an open meeting since it does not qualify as an executive session meeting. Accordingly, members have a right to attend the meeting and observe the process."

"The vote is frequently done by voice vote but may be done by secret ballot if one or more directors request it."

Source: <https://www.davis-stirling.com/HOME/Electing-Officers>

"Because officers serve at the pleasure of the board, the board may change officers at any time with or without cause, unless otherwise stated in the association's governing documents."

Source: <https://findhoalaw.com/selecting-changing-officers/>

Officers

President

Unless otherwise provided in the bylaws, a president's duties generally include:

- *presiding over board and membership meetings,*

- *servicing as liaison between management and the board,*
- *servicing as liaison between the association's attorney and the board,*
- *servicing as general manager and overseeing day-to-day matters, such as meeting with vendors, soliciting bids, etc. (unless a manager has been hired to handle those duties),*
- *co-signing checks with the treasurer or secretary,*
- *servicing as an ex officio member of committees.*

Source: <https://www.davis-stirling.com/HOME/Duties-of-President#axzz1RcmRmzLS>

Vice-President

- *performs the duties of the president in the president's absence; and*
- *may be called upon by the president to share some of the president's duties.*

Source: <https://www.davis-stirling.com/HOME/Duties-of-Vice-President>

Secretary

Unless the governing documents provide otherwise, a secretary's duties are as follows:

- *oversee giving notice of board and membership meetings,*
- *ensure that minutes of meetings are taken and approved (can use assistant),*
- *sign a copy of the final, approved minutes,*
- *oversee the preparation of the membership list,*
- *file appropriate documents with the Secretary of State,*
- *as custodian of records, ensure that the association's records are maintained, and*
- *frequently co-signs checks with the president or treasurer.*

Source: <https://www.davis-stirling.com/HOME/Duties-of-the-Secretary#axzz1RcmRmzLS>

Treasurer

Treasurers do not have unlimited authority over the association's monies. Unless the governing documents provide otherwise, a treasurer's duties are as follows:

- *oversee the association's operating account and reserve account,*
- *keep and maintaining the association's financial documents,*
- *oversee the deposits,*
- *oversee investments,*
- *ensure that bills are paid,*
- *oversee the preparation of the budget,*
- *ensure that a report of financial transactions are made to the board,*
- *ensure that a reserve study is prepared,*
- *serve as the board's liaison with the association's auditor,*

- review and implement safeguards to protect the association's financial assets,
- ensure that tax returns are filed on time, and
- sign bank cards and co-sign checks with the president or secretary.

Source: <https://www.davis-stirling.com/HOME/Duties-of-the-Treasurer#axzz1RcmRmzLS>

Fidelity Bonds

Unless the governing documents require greater coverage amounts, the association shall maintain fidelity bond coverage for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the association and total assessments for three months.

Source: <https://findhoalaw.com/civil-code-section-5806-fidelity-bond-coverage-requirement/>

Member Participation at board meetings

Regular and special meetings of the governing body shall be open to all members of the Association provided, however, that Association members who are not on the governing body may not participate in any deliberation [sic] or discussion unless expressly so authorized by the vote of a majority of a quorum of the governing body.

Source: [EEPOA By-Laws Article III. Section 11.](#)

Open forum requirements for associations apply to open (non- executive session) board meetings (Civ. Code §4925) and membership meetings (Civ. Code §5000(b)). It means time must be set aside for members to speak on any issue, whether on the agenda or not. (Civ. Code §4930(a).)

The Davis-Stirling Act requires that a reasonable amount of time be set aside by the board for the open forum. Members can ask questions but directors are limited in how they can answer them.

Source: <https://www.davis-stirling.com/HOME/Open-Forums>

During the open forum portion of board meetings, members may ask questions but the board's ability to answer them is limited by statute. As provided for in Civil Code §4930(b), boards may:

- (1) Briefly respond to statements made or questions posed;
- (2) Ask a question for clarification, make a brief announcement, or make a brief report on the person's own activities, whether in response to questions posed by a member or based upon the person's own initiative.

Source: <https://www.davis-stirling.com/HOME/Open-Forum-Questions#axzz3ZRvsBzDd>

Board Meeting Notice Timelines

Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, address to his residence, at least four (4) days prior to the day named for such meeting. Notice of the meeting shall also be posted in conspicuous places within the common area not less than seven days prior to the meeting.

Source: By-Laws (page 12, Article III, Section 10:

<https://www.evergreen-estates-poa.com/docs/Evergreen-Estates-Bylaws.pdf>

Unless the governing documents require longer period of notice, members must be given notice of the time and place of board meetings at least four (4) days prior to the meeting.

Source: <https://www.davis-stirling.com/HOME/Board-Meeting-Notice>

Starting January 1, 2008, board meeting agendas must be posted along with the notice of meeting.

Source: <https://www.davis-stirling.com/HOME/Meeting-Agenda-Required>

Note: The By-Laws seven-day notice overrides the Davis-Stirling four-day notice. However, as our By-Laws were written in 1980 they did not require that an agenda be included with the notice. Therefore, we must post a notice to owners at least seven days in advance and an agenda at least four days in advance.

The mailbox rule has been adopted by the Davis-Stirling Act to establish when a notice from the association is deemed delivered to members. A notice or document is deemed delivered upon deposit into the United States mail.

Source: <https://www.davis-stirling.com/HOME/Mailbox-Posting-Rule>

Board Meeting Notice Methods

Notice, which must include an agenda, may be given by any of the following methods:

- *Billing Statement.*
- *Electronic.*
- *Mail.*
- *Newsletter.*
- *Posted in Common Areas.*

Electronic. E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery.

Mail. First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be

addressed to the recipient at the address last shown on the books of the association.

Posted in Common Areas. Posting the notice in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310. (Civ. Code §4045(a)(3))

Source: <https://www.davis-stirling.com/HOME/Board-Meeting-Notice>

Allowing non-owner residents to attend board meetings

Renters. Because they are not members, renters do not have a legal right to attend board meetings. However, most boards allow tenants to attend board meetings and address the board during Open Forum, provided they are not disruptive.

Source: <https://www.davis-stirling.com/HOME/Who-May-Attend-Meetings>

Special Board Meetings

"Special meetings" of the board can be held between regular meetings to conduct business that cannot wait until the next regularly scheduled board meeting. Boards are required to give notice of special meetings and allow member attendance at such meetings. If the special meeting is an executive or emergency meeting, notice requirements are different.

Calling the Meeting. Unless otherwise provided in the articles or bylaws, board meetings may be called by the president or any vice president or the secretary or any two directors. (Corp. Code §7211(a)(1).) Email discussion of director availability for the meeting as well as the date and time for the meeting is allowed. Scheduling discussions are not deemed "board meetings" and do not violate the Davis-Stirling Act.

Source: <https://www.davis-stirling.com/HOME/Special-Board-Meetings>

Unless the governing documents require longer period of notice, members must be given notice of the time and place of board meetings at least four (4) days prior to the meeting.

Source: <https://www.davis-stirling.com/HOME/Board-Meeting-Notice>