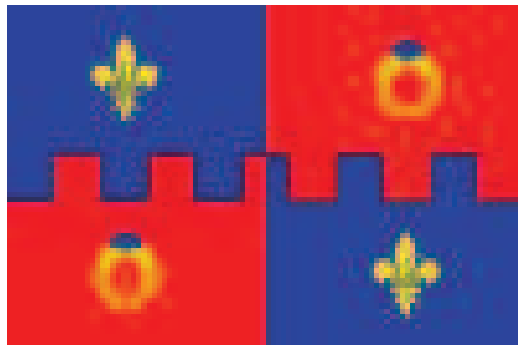


The Staff's
**GUIDE TO THE PROCEDURES
AND DECISIONS**
of the
**MONTGOMERY COUNTY
COMMISSION ON COMMON
OWNERSHIP COMMUNITIES**



Prepared by the Commission's Staff
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F. Meetings and Elections

1. The “open meetings” laws

The meeting of part of the board with its auditor or manager is not a meeting of the board and is not covered by the open meetings act. [677]

The CCOC will not uphold decisions made by the board in closed meetings that were not properly closed. [263]

Unlike condominiums and HOAs, cooperatives are not governed by any law requiring open meetings. [314]

Meetings that do not include the board of directors or its committees are not covered by the Condominium Act’s “open meetings” law. [677]

Parties challenging a meeting as not properly conducted must prove their cases with details and evidence. [46-06, 111]

Parties challenging the board’s refusal to call a special meeting must prove that they followed the relevant rules for requesting such a meeting. [707]

Although the “open meetings” provision of the HOA Act does not require that boards give advance notice of their meetings, the lack of notice means that the members cannot attend, and that could result in what amounts to an improperly closed meeting in violation of the law. [39-09]

When an association is found to lack a procedure to notify all its members of its board meetings, the CCOC can order it to publish the meeting schedule and distribute it to all members. [557]

When the CCOC finds an association to be violating the open meetings law, it cannot only order it to change its procedures, but can require progress reports to ensure that it is complying. [631]

Minutes of properly-closed meetings do not have to be made available to the members. [557, 175]

An HOA board cannot close its meetings to discuss an architectural violation when no litigation over that violation is pending. [47-07] [Staff note: This holding does not apply to condominium boards, as the Condominium Act requires that board hearings on member violations are confidential. Section 11-113.]

Section 11-109.2 of the Condominium Act requires boards to give members at least 10 days advance notice of any meeting to amend the budget.

2. Notices and waiver

Although the board gave notice that 3 positions were available on the board at the next election, the members of the association could properly reduce the size of the board by a simple majority vote taken at the start of the election, thereby reducing the number of vacancies on the board to 1. The bylaws did not specify a fixed size of the board but only that it be no smaller than 3 directors and no larger than 9. The bylaws did not specify how the number could be changed within that range. It was a reasonable interpretation of the bylaws to allow the members to change the size of the board from 7 to 5 members by a simple majority vote, because they were not amending the bylaws. [42-09]

When the bylaws only specify a range for the size of the board of directors (not less than 3 and not more than 9), and do not say how the size is to be set within that range, but do specify that the board of directors is allowed to make all decisions not specifically given to the general membership, then the board has the right to make that decision. [35-11, Corporations & Associations Article Section 2-402(c)(2) of the Maryland Code.]

An HOA member who attends an election waives any defect in the notice of the election even if the HOA failed to give the proper amount of notice. [76-09]

When the Condominium had failed to give proper advance notice of its proposed budget two years earlier, but had since given proper notice of the proposed budget for the following year, the matter was moot because there was no effective remedy the CCOC could order. [335]

When a board adopted a special assessment for repairs but failed to give proper notices of the budget amendment and of the meeting at which the budget amendment and new assessment would be voted upon by the board, the board was ordered to stop collecting the special assessment until it gave the proper notices and voted on the assessment again. [133]

Associations should have their election rules and regulations in writing and available to the members. [707]

Bylaw amendments affecting elections which were not adopted at meetings at which there was a proper majority vote of the members, will be invalidated. [779, 215] Bylaw amendments affecting elections become effective on the date they are recorded, and cannot be retroactive and affect an election held before they are recorded. [779]

Associations must give proper advance notice of new assessments before the members can be required to pay them. [133, 112, 111, 101]

A HOA that fails to give its members notice of its meetings on architectural applications pursuant to Section 11B-111 of the HOA Act violates their right of due process. This applies not only to the homeowners whose applications are to be considered at the meeting, but to all members, because they might be affected by the board's architectural decisions. [702, 263]

If a board fails to give the proper advance notice of proposed budgets and budget hearings, the budget amendment or special assessment involved could be reversed.

[133, 101]

3. Ballots, proxies and powers of attorney

County law requires that all proxy ballots, and all powers of attorney created only for use in an association election, must be directed ballots, that is, they must name the candidates for whom they are to be voted. [Section 10B-17(b)] The Condominium Act also requires this. [Section 11-109(c)] [291] If they are not directed, they can only be used to establish a quorum and to vote on other business. Proxy ballots created only for use in association elections must also be "directed" ballots. [Section 10B-17(d)]

The board of directors can reject a member's proxy ballots for good cause under Section 10B-17(d). In this case, the proposed proxy ballots listed only one candidate out of several candidates for several positions on the board, and the proposed ballots failed to protect the identity of the proxy giver to the same extent that the board's approved proxy ballots did. [41-08]

The panel will not declare an election invalid simply because the board president went around the community soliciting proxy ballots from the members before all the candidates knew when the election would be held or that proxy ballot forms were available. The error or unfairness of the early proxy solicitation, if there was any, was mitigated by the subsequent announcement by the board secretary that the members must use the proxy forms she prepared and submit them to her instead. Any member who had given proxy ballots to the board president had the chance to reconsider his decision and change his vote before the election when he submitted the revised proxy. [42-10]

4. Quorums

Section 11-109(c) of the Condominium Act states that if a condominium association calls an election but fails to muster the necessary quorum in order to proceed, it may call a second meeting at which the members present will constitute a quorum, even if that number is less than the number required by the rules, but it must have given proper notice of this procedure in its initial notice of election, otherwise the second meeting cannot proceed. [811] [Staff comment: A similar law applies to HOAs and cooperatives: Section 5-206 of the Maryland Corporations & Associations Article.]

5. Participation when absent

6. Staggered terms

Section 10B-17(b) of the County Code requires that unless the association's rules state otherwise, the terms of the directors should be staggered so that they are not all up for election at the same time.

7. Minutes

Minutes of properly-closed meetings are confidential. [175, Section 11-116 of the Condominium Act, Section 11B-112 of the HOA Act]

If an association is found to have failed to comply with statutes on open meeting and record keeping, the CCOC can not only order it to comply but can order it to submit status reports from time to time to prove that it is bringing itself into compliance. [631]

The association cannot keep secret the fact that it closed a meeting. When a meeting is closed, the publicly-available minutes must show the reason for closing the meeting, the vote of each board member to close it, and the date, time and place it was held. [47-07]

8. Disqualification from voting

Under Section 11-104(d) of the Condominium Act, a condominium can disqualify a member from voting in an election if the association has recorded a lien against the member. Therefore, a condominium cannot disqualify a member from voting if the member is in arrears on his assessments but it has not yet filed a lien against him. [215]

9. Voting