

Sunshine Law; homeowners' associations

Number: INFORMAL

Date: June 18, 1996

Subject:
Sunshine Law; homeowners' associations

The Honorable Mike Fasano
Representative, District 45
8217 Massachusetts Avenue
New Port Richey, Florida 34653

Dear Representative Fasano:

Thank you for considering this office as a source for assistance regarding the interpretation of section 617.303, Florida Statutes.

You ask how the Sunshine Law applies to homeowners' association board meetings and whether there is a difference between a workshop and a meeting. Section 286.011, Florida Statutes, the Government in the Sunshine Law, applies to meetings of public boards or commissions. It provides that meetings or discussions between two or more members of a public board on a matter which will foreseeably come before the board for action must be open to the public. The Sunshine Law, however, is not generally applicable to a private association unless the association has been delegated the authority to perform some governmental function. Thus, the Sunshine Law would not generally apply to meetings of a homeowners' association.

Section 617.303(2), Florida Statutes, however, does require that all meetings of the board of directors of a homeowners' association be open to all members of the association. A limited exception is recognized for meetings between the board and its attorneys to discuss proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Pursuant to section 617.303(2), a meeting of the board occurs whenever a quorum of the board gathers to conduct association business. The statute further prescribes the notice to be given for meetings. Notwithstanding the general notice requirements prescribed in the statute, section 617.303(2) recognizes that communities with more than 100 members may provide in the association's bylaws for a reasonable alternative to posting or mailing of notice for each board meeting. Section 617.303(3) provides for minutes to be taken.

You also ask whether section 617.303(6), Florida Statutes, permits an annual budget to be revised once it is finalized. That subsection requires the association to prepare an annual budget:

"The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written

notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5)."

While this office is not aware of any appellate decision specifically addressing an association's authority to revise its budget, I would note that the budget prepared pursuant to section 617.303(6) reflects estimated revenues and expenses for the year. If revenues received or expenses incurred by the association are greater or less than anticipated, it may be necessary to modify the budget.

I trust the above informal comments may be of some assistance. If this office can be of assistance in the future, please let us know.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk