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Getting to Your HOA's Executive Session, Step by Step

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We hear this complaint frequently: Our board all of the sudden announced it was going into executive session, and they asked us to leave the room. Can they do that?

Your right to adjourn a board meeting and then to reconvene in private in an executive session depend on your state's law. Here, we offer up a sampling of the laws in three states to explain who can call an [executive session meeting](#), when can it be done, and how, including on what [type of notice](#).

Florida—Florida's open meetings rules would prohibit boards from announcing on the spot the need to go into executive session. "Executive sessions are really contrary to all the rules of transparency we have here," says Alessandra Stivelman, an associate attorney who specializes in community association law at Eisinger Brown Lewis Frankel & Chalet in Hollywood, Fla. "Under Florida statute 718.112, all board and committee meetings must be open except if the board meets with its attorney with respect to potential or pending litigation, to seek [litigation advice](#), and to discuss [personnel matters](#)."

"For an executive session, boards would still have to provide notice pursuant to the statutory requirements," adds Stivelman. "That means 48 hours notice for condo board meetings, and notice must be posted in a conspicuous place. The notice would also have to say there will be a closed meeting. I tell people to say as little as possible, so they should say something like, 'to discuss proposed or pending litigation' or 'to discuss personnel matters.'"

Stivelman says it's possible a board could plan a regular meeting and include notice that a portion will be closed. But she's never seen that happen. "I suppose you could have a regular board meeting and could figure out a way to put a closed item on the agenda," she explains. "And then you could continue the board meeting without the owners. But I've never seen it done that way. It's always, 'We're having a special meeting to discuss this pending or proposed litigation.' That way, you don't have owners there you have to remove."

Illinois—"Yes, boards can do a spontaneous executive session in Illinois," says Barry Kreisler, founder of Kreisler PLLC, a Chicago law firm that represents 70-100 associations, most of which are condos. "Executive session is a private meeting of board members. Boards are supposed to give 48 hours notice of a board of managers meeting and, if you know, you should tell people the agenda. But frequently, executive sessions are just part of a board meeting. The board will say, 'We want to discuss this employment matter, so we're going into executive session. Then they'll come back in 10 minutes."

"But executive sessions can be held only to discuss things," adds Kreisler. "Boards can't vote. For [any vote](#), they have to go back out into the public meeting and do that in public."

Texas—"In Texas, boards have pretty limited rights to go into executive session," says Gregory S. Cagle, a partner at Savrick Schumann Johnson McGarr Kaminski & Shirley in Austin, Texas, and author of *Texas Homeowners Association Law*, written for homeowners and association leaders. "All board meetings are required to be open public meetings, and there's a narrow scope of topics boards can use to adjourn into executive session."

"That said, condo boards can spontaneously decide to go into executive session," adds Cagle. "Condos are required to make their meetings public. But they aren't required to give owners advance written notice of meetings and tell you in advance when they're going to go into executive session except to announce it at the meeting."

"HOAs, or what I call subdivision associations, are required to provide written notice of every board meeting," says Cagle. "They're required to give owners the general subject of each topic they'll address and a general description of what they're going to meet in executive session about."

Texas is like Illinois in that no voting should take place during executive session. "Once the board reopens the meeting, you can make a motion and vote on the issue you discussed in executive session," says Cagle. "You don't discuss the motion. You just vote on it. The board also has to give a summary of [financial decisions](#) made in executive session. They should say something like, 'The board agreed to spend up to \$10,000 on this litigation.' I tell my clients that executive session isn't for voting. It's for discussing. It's to facilitate the communication of matters that are sensitive and not to be out in the open. You discuss them, but you don't take a vote."