

WENDY EHRLICH, ATTORNEY PLLC

9671 N. Horizon Vista Place | Oro Valley, Arizona 85704 | 520-229-1947 | wehrlich@comcast.net
Admitted in AZ, MD and DC

IMPORTANT NEW LAW GOVERNING BOARD MEETINGS

On April 28, 2026, the Arizona Court of Appeals issued an opinion that impacts all planned communities and condominium associations with respect to board meetings held in executive session.¹ Unless this decision is appealed and reversed by the Arizona Supreme Court, or the legislature amends the open meeting statutes in the future, this opinion constitutes binding Arizona law.

The case involved a homeowner's challenge to several decisions that an HOA's board of directors had made in executive session, including whether to approve a \$917,000 budget item and to increase the property manager's discretionary spending to \$7,000. There is an old adage among attorneys - "bad facts make bad law" - and this opinion is an example of that. The HOA's board was likely using executive sessions to make controversial or unpopular decisions that did not fall within the open meeting exceptions, and in reaction to that, the Court issued a sweeping opinion that will negatively impact community associations in a variety of ways.

The issues that the Court addressed in its opinion are the following:

1. Whether a board may take action (vote on matters) in an executive session;
2. Whether the notice and agenda for an executive session must provide more information than just the applicable open meeting exception; and
3. Whether the board must decide in an open meeting which matters will be discussed in executive session.

1. Voting in executive session:

The Court agreed with the trial judge and held that boards may not vote on any matters in executive session. The Court focused this decision primarily on one word in the statute: that a meeting may be closed for "consideration" of certain matters.² While noting the ambiguity of the word, the Court held that it must be interpreted in a manner consistent with the statute's stated policy in favor of open meetings,³ and a member's right to speak before the board takes action

¹ A Z N H Revocable Trust v. Sunland Springs Village Homeowners Association (No. 1 CA-CV 25-0424).

² The relevant portion of the statute is on page 3.

³ In section (F) of the statutes.

on a matter,⁴ and under that analysis, "consideration" is limited to "thoughts and discussion" and does not include voting.

2. Notice and agendas for executive sessions:

The Court agreed with the trial judge that the notice of an executive session is sufficient if it states the date, time, and place of the meeting, and cites the applicable paragraph in the statute that provides the exception for a closed meeting (e.g., §33-1804(A)(3): matters relating to the job performance of an employee).

With respect to agendas for closed meetings, the Court held that unlike the notice, they must provide more than a reference to the statutory exception and advise members "about the items being addressed." The Court did not provide clear guidance on the information required, but did hold that associations do not have "to reveal any personally identifying information or attorney-client privileged information."

3. Determining which matters will be addressed in executive session:

The Court held that while the statute requires that the "board" determine whether certain matters be addressed in executive session, it need not do so in an open meeting and may choose to delegate that authority to the association president.

IMPORTANT NOTE:

While the written opinion included the entirety of the provisions addressing closed meetings, the Court inexplicably failed to address language in section (A)(1) concerning the open meeting exceptions for "legal advice and pending or contemplated litigation." This particular provision (see page 3) includes an entire sentence that implies that not only may the Board vote in an executive session on one of these matters, it may keep such decisions confidential. Arguably, this sentence negates *any* ambiguity about the word "consideration," at least with respect to matters concerning legal advice and litigation, as any "final resolution" necessarily includes some action or decision by the board.

This oversight by the Court of Appeals may provide a sufficient basis for the Supreme Court of Arizona to take the matter up on appeal, and could form the basis for that court to reverse the Court of Appeals' decision. Even if the Supreme Court agrees to hear the matter, however, it will likely not issue its opinion until 2027.

The summary and discussion of the Court's opinion contained herein is provided for informational purposes only and does not constitute legal advice. Each association should discuss how to implement this new law with its own attorney.

⁴ In the first paragraph of section A of the statute.

Portion of Open Meeting Statutes Concerning Closed Sessions:⁵

"Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.

2. Pending or contemplated litigation.

3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

⁵ A.R.S. §33-1804 (for planned communities) and A.R.S. §33-1248 (for condominiums).