

Executive session in nonprofit board meetings



Directors of nonprofit organizations accept substantial and serious responsibilities when they agree to serve on a governing board. In order to fulfill those responsibilities, it is important for them to understand the fundamental rules and principles that guide their meetings. We have found that there is much confusion about nonprofit boards holding meetings in executive session.

When a board meets in executive session, the proceedings are closed to outsiders. (The terms “closed session,” “closed-door session,” or “secret session” are also used.) This article describes some aspects of this issue. As always, nothing in this article constitutes legal advice.

Boards may meet privately

Robert's Rules of Order Newly Revised, 11th edition, the most widely used authority for the procedure in running meetings, states that board meetings are open by right only to the members of the board, and any staff or advisers whom they choose to invite (see excerpt below). In other words, a membership association or a charitable nonprofit organization that is governed by a board is not required to open its board meetings to members or to the public. It may meet without any observers, that is, in a closed meeting, whenever it chooses.

This appears to be the position established in most state laws as well. While some states have laws requiring that HOA and condo board meetings be open, for example, we aren't aware of similar laws for nonprofit charitable associations. Be sure to research state law regarding your organization, since state law determines what you can and cannot do

Executive session according to Robert's Rules of Order

“A deliberative assembly or committee is normally entitled to determine whether nonmembers may attend or be excluded from its meetings (even when not in executive session). Many public and semi-public bodies, however, are governed by sunshine laws—that is, their meetings must be open to the public. Normally, such laws have no application to private, nongovernmental bodies.”

Robert's Rules of Order Newly Revised, 11th edition, p. 96, ll. 21-27.



Value of transparency

It is also the case, however, that our society values openness and transparency in its institutions. Many professional and trade associations have decided that their board meetings should be open to their members, and have included this provision in their bylaws. Most charitable organizations will welcome a person interested in their affairs to attend a board meeting.

We believe that transparency and openness are the best “default” position, and should in general direct the way an organization conducts its business. We recommend therefore that organizations open their board meetings to members and, if appropriate, to the public. See our article, [What are the rights of ordinary members at nonprofit board meetings](#), for more about this.

Occasional need to discuss matters out of the public eye

At the same time, we recommend that every nonprofit organization also allow its board to meet in executive session. In our experience, any board may encounter a problem of sufficient complexity and challenge to require that the board be free to discuss it among its own members, without having outsiders in the room. Such issues could involve legal matters, negotiations, employee issues, possible fraud or embezzlement, or internal dysfunction, to name some possibilities. People are more likely to speak their true thoughts when they are among a circle of trusted fellow members. Since it is critical to get the members’ best thinking on these tough issues, sometimes it’s appropriate to create a zone of privacy for a free and frank discussion.

Role of executive director in executive session

If a nonprofit has an executive director, they should always be included in a meeting in executive session unless the meeting pertains to their salary or performance concerns. It is critical for the individual who bears staff responsibility for the organization to be fully briefed on all delicate matters. The board will benefit from their professional experience, advice, and counsel.

Avoid overuse of executive session

We also encourage boards to be thoughtful in their use of executive session and to restrict it to occasions when it is truly necessary. There can be a temptation, if members have strong feelings on a subject, to close the meeting. Wishing to hide emotional clashes is not a sufficient reason to go into executive session. A board should be ready and able to discuss difficult and emotionally challenging matters, even in the presence of others. This is part of the maturity that good board members bring to their functioning. We believe that ordinarily, your board meetings should be open, but you should be prepared to meet in executive session when circumstances genuinely require it.

Additional considerations

It’s also important to note that there are contrary views out there about the advisability of this kind of meeting.

- a) Attorneys sometimes maintain that the only legitimate reason to hold a meeting in executive session is to consider legal matters where privacy is essential, and that an attorney must be present. We beg to differ, believing as we do that the practical and emotional sides of meeting management are also highly significant.
- b) We have seen bylaws stating that “all meetings will be held in executive session unless the board determines otherwise.” This goes to the other extreme and is unduly restrictive, in our view.

- c) Of course it's essential that board members keep all information discussed in executive session confidential. If they don't, they are failing their legal and moral duties and can be sanctioned. See our article, [Sanctioning rogue board members](#).
- d) Sarah Merkle, an attorney and Professional Registered Parliamentarian who writes the "Law of Order Blog," give more details about executive session in her excellent article, [What No One Tells You About Executive Session](#).

Keeping minutes of executive session

Confusion also sometimes prevails about what record should be kept of executive session. If your nonprofit board meets in executive session only to discuss its issues, it may be enough to note in the regular minutes when the board entered into executive session and when it returned to regular session.

If decisions are made, however, it is essential to document them. These minutes are kept and approved separately from the regular meeting minutes. These should be clearly marked "Executive Session." Such minutes are also approved in executive session. Fortunately, Robert's Rules of Order considers that the minutes of a meeting held only to approve executive session minutes are automatically approved by the body, so there is no need to get into an infinite regress of meeting to approve the minutes to approve the minutes...

Does your board meet in executive session? [Share your experience with us!](#)

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