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Going into Executive Session

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EXECUTIVE SESSION



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The sunshine laws in Virginia require that all meetings of Boards be **open to the members** with limited exceptions



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Legislatures recognized that there are certain topics that if discussed in open session could **harm** the association or **violate privacy** of a member





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THE BALANCING ACT

Keeping Board meetings OPEN **vs.**
protecting sensitive information that
could harm Association or a member





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EXAMPLE *of* POSSIBLE HARM to the ASSOCIATION:

Association has been sued. Association counsel request authority from Board to settle for no more than \$5000 but direct counsel to start negotiations at \$3000. What if member who sued Association is sitting at meeting?

Initial offer of \$3000 probably won't fly.



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Every executive session must **START**
with an open meeting and **END** with
an open meeting.





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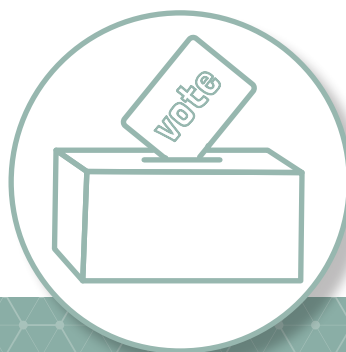
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Two important votes must be in open session:

Vote 1: Board's vote to go into executive session.

Vote 2: Board's vote to take action as discussed
in executive session.

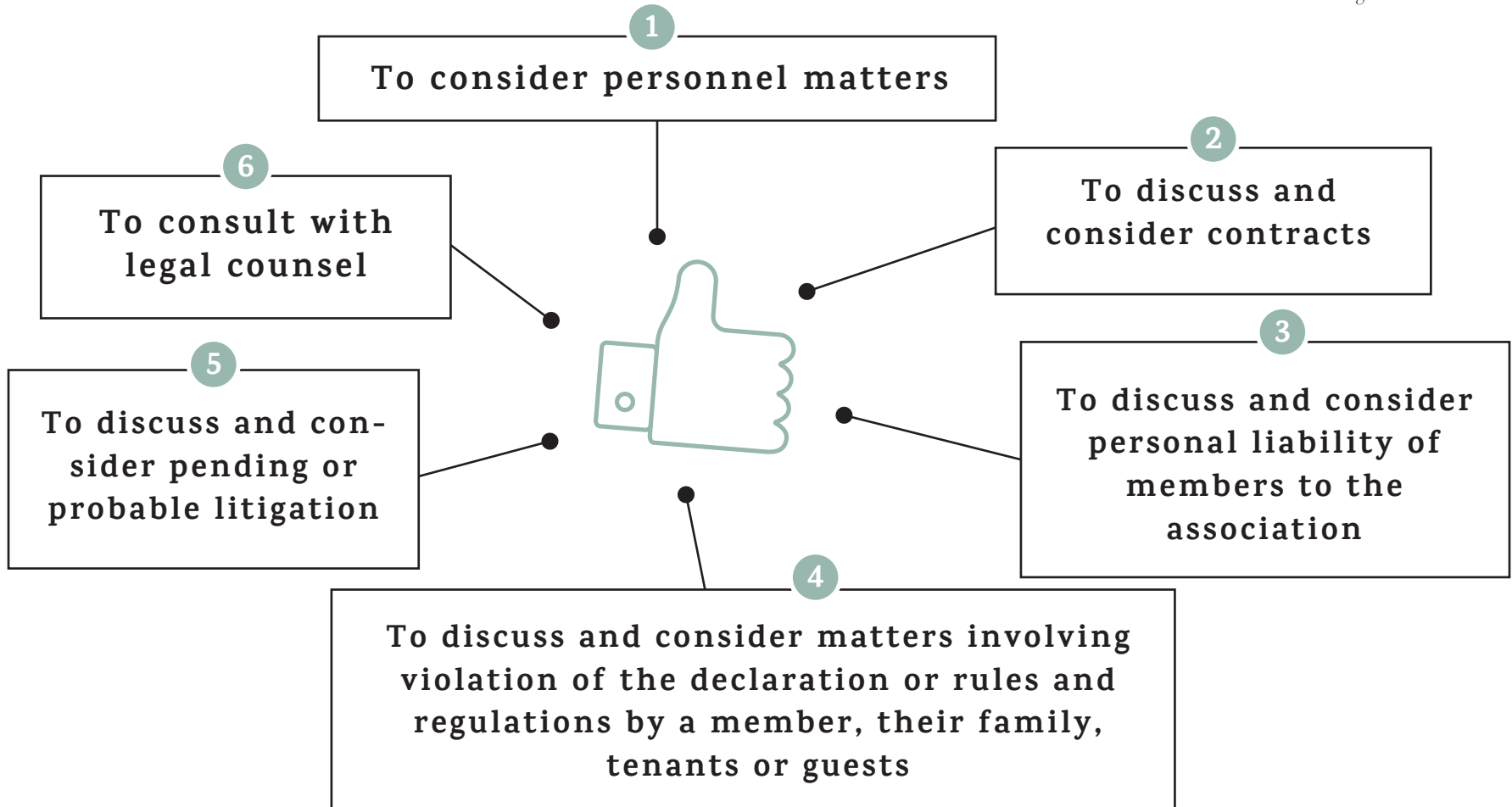


6 REASONS A BOARD *can go into* EXECUTIVE SESSION



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As the saying goes...
“the devil is in the detail”
so, let’s carefully look at each step to
properly go into executive session.





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STEP #1

Board member must make a motion in open session to go into executive session and state which six permissible reasons will be discussed. It CAN be more than 1.

SAMPLE MOTION:

“I hereby move that the Board go into executive session for the purpose of discussing and considering (insert one or more of the 6 permitted topics of discussion)”

STEP #2



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Motion must be seconded, passed,
recorded in minutes of open session



DON'T FORGET TO...

Record in minutes why the Board went into
executive session. That's important!

STEP #3



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Discussion in executive session is limited
to the topic(s) covered by the motion

IS THIS CORRECT?

*Board's motion stated purpose of executive session is to discuss
pending contract with landscaping company. Board discusses
landscaping contract AND pending lawsuit with delinquent
owner account*



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IS THAT OKAY?

Nope. To discuss both – Motion would be...

“I hereby move that the Board go into executive session for the purpose of discussing and considering contracts AND pending litigation”.





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Can the **BOARD VOTE** *in* **EXECUTIVE SESSION?**

Nope – Board can only vote in open session.
Executive session is so Board can freely
discuss topic.



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*How do you preserve **SENSITIVE INFO** if **BOARD** has to **VOTE IN OPEN SESSION?***

By wording the motion V E R Y carefully.

In executive session, Board discussed an owner's delinquency. In open session, Motion will refer to the owner by "manager or attorney account number" that members could not associate with individual.

Motion would look like this: Board member "moves to file suit as recommended by legal counsel for Member Account No. 1294."



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PRACTICE TIPS!

Don't try to craft motion in open session. Draft motion in executive session to make sure properly preserves sensitive information.

Don't forget to record the motion and vote in the minutes of the open session





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WHAT ABOUT MINUTES *for* EXECUTIVE SESSION?

No requirement for minutes to be taken unless
Board wants documentation of the discussion

DON'T WORRY

Members are not entitled to copies of minutes
from executive session when making a books and
records request (*if you did it right!*)