

Sunshine Law & Public Records Training for Local Government Board Members



Presented by:

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Presentation Overview



Today, we'll be covering:

- **Government in the Sunshine (Open Meetings) Law**
- Public Records Law

Government in the Sunshine (Open Meetings) Law



Scope of the Sunshine Law



- Provides right of access to governmental proceedings
- Applies to both elected and appointed boards
- General Rule – All meetings at which official acts are taken or public business is transacted or discussed shall be open and noticed to the public

Scope of the Sunshine Law



Sunshine Law applies to:

- Any meeting
- Between two or more members of the same board
- When discussing matters that may foreseeably come before that board

“Meeting” includes:

- City Commission meetings and workshops
- Telephone calls and text messages
- Emails and other written correspondence
- Informal discussions or deliberations

Scope of the Sunshine Law



There are three basic requirements :

- (1) Meetings of public boards or commissions must be open to the public
- (2) Reasonable notice of such meetings must be given
- (3) Minutes of the meetings must be taken, promptly recorded and open to public inspection

Scope of the Sunshine Law



- Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them.

Scope of the Sunshine Law



- While a board member is not prohibited from discussing board business with staff or a nonboard member, these individuals cannot be used as a liaison to communicate information between board members.
- For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

Meetings



Meetings must be open to public:

- Location accessible to the public
- Adequate size
- May not discriminate against or restrict access to public

So, meetings subject to the Sunshine Law generally should not be held in private homes, or restaurants where an attendee may feel compelled to order a meal.

Meetings



- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings.

Meetings – Right to Public Comment



New section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.

Meetings – Right to Public Comment



New section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if:
 - The opportunity occurs at a meeting that is during the decisionmaking process, and
 - is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

Meetings – Right to Public Comment



New section of Sunshine Law enacted in 2013 - Sec. 286.0114, Fla. Stat.:

- This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

Meetings – Right to Public Comment



Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

- Provide time limits for individuals to address the board.
- Prescribe procedures for allowing representatives of groups or factions to address the board, rather than all members of such groups, at meetings in which a large number of individuals wish to be heard.
- Prescribe procedures or forms for an individual to use to inform the board of a desire to be heard.
- Designate a specified period of time for public comment.

Penalties



- Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree.
- An unintentional violation may be prosecuted as a noncriminal infraction resulting in a civil penalty up to \$500.

Penalties



- The Sunshine Law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Penalties



- Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law was void *ab initio*.

Penalties



- Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the board's decision may stand.

Presentation Overview



Today, we'll be covering:

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- **Public Records Law**

Public Records Law



Scope of the Public Records Act



- Florida's Public Records Act provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- A right of access is also recognized in Article I, section 24 of the Florida Constitution, which applies to virtually all state and governmental entities including the legislative, executive, and judicial branches of government. The only exceptions are those established by law or by the Constitution.

Scope of the Public Records Act



- Section 119.011(12), Florida Statutes, defines "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Scope of the Public Records Act



- The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.

Scope of the Public Records Act



- All such materials, **regardless of whether they are in final form**, are open for public inspection **unless the Legislature has exempted them from disclosure.**
- There is no **“This is Really Embarrassing!”** exemption from the Public Records Act.

Electronic Records



- Email messages made or received by public officers or employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption.
- The Attorney General has advised that materials placed on an agency's Facebook page presumably would be in connection with official business and thus subject to Chapter 119, Florida Statutes.

Providing Public Records



- Section 119.07(1)(a), Florida Statutes, provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records or the custodian’s designee.”

Penalties



- A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119.

Penalties



- In addition to judicial remedies, Section 119.10(1)(b), Florida Statutes, provides that a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.

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