

COMMUNICATION OUTSIDE OF BOARD MEETINGS

HRS 514B – 125 (a)

514B – 125

Board meetings. (a) All meetings of the board, other than executive sessions, **shall be open to all members of the association, and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions, pursuant to owner participation rules adopted by the board.**

Translation:

Any AOOU matters, except items of executive session, shall be discussed in open session during a scheduled board meeting.

This includes board meetings held via zoom, webex or any other similar type of platform.

When posting the Board meeting notice and Agenda (72 hours prior or simultaneous with notice to the board), it shall include the zoom, webex or similar type of platform web link to join the meeting. There shall also be a means to email the join link to a homeowner that requests the join link vs providing the typed link.

NOTE: often times with links, you can't manually type the link and connect.

FAQ:

Question to the Real Estate Commission – Condo Specialist (hirec@dcca.hawaii.gov)

Question:

Because “[a]ll meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board shall be permitted to participate in any deliberation or discussion, other than executive sessions,” is it proper for a property manager to send an email to the board asking the board members to address and decide a substantive issue via email and then ratify any decision made by the board via that email discussion at a subsequent board meeting?

Property managers will often email the board asking for a decision on a particular topic that they will then ratify at the next meeting.

Response:

The answer is “NO”, while property managers are not board members, they should not be asking the board members to discuss or deliberate on association business outside of a board meeting; pursuant to HRS 514B-125(a), board members are prohibited from discussing association business (other than ministerial administrative matters) with anyone, including other board members, outside of a board meeting.

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Question:

Is it proper for a property manager to email members of the board a question that would normally be addressed in executive session and ask them to provide him or her with a response via email outside of a board meeting?

Response:

The answer is “NO”; a board cannot make a decision on executive session matters outside of a board meeting.

Question:

If board members are required to not use email to discuss substantive issues, how is the board to set a date and or time for the next Board Meeting?

Response:

Establishing the date, time and place for the next board meeting is often done at the end of a board meeting; however, these decisions are ministerial in nature and thus, can be addressed in an email among the board members and the property manager. That being said, the email should not also seek to address any substantive issues that are required to be addressed at a board meeting pursuant to HRS 514B-125(a)

Example: The board is meeting on Tuesday, March 16, 2021.
Prior to the conclusion of this meeting the next meeting date should be scheduled.
Include it as an agenda item.

OR

Establish the dates in advance.
Example: 3rd Tuesday of each month.

The date of the month should take into consideration with the managing agent and if they will be able to provide the previous months financials for board discussion.

OR

Via email.
Be very clear, in the subject line and email that it is only for the arranging of the next board meeting date and time.

Question:

Can the Managing Agent communicate via email or verbally with the Board President prior to a Board meeting as to the Meeting Agenda items?



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Response:

Typically, yes, as the Board President is considered the Chief Executive Officer and has whatever authority is given the President in the Governing Documents, he or she may work with the property manager to establish the agenda for the next meeting.

Question:

We have an Owner's forum at the end of each meeting, does that satisfy the deliberation/discussion requirement in HRS 514B – 125 (a)?

Response:

An "owners forum" does not satisfy the statutory mandate as owners can address any agenda item. Corraling them into one small time period is not access to deliberation or discussion.

Setting short time period such as an owner's forum, is not access to deliberation or discussion.

****NOTE:** AOA vs AOUC = Association of Apartment Owners vs Association of Unit Owners. Statute now uses the term "unit" owner, not "apartment" owner.

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Takeway:

- 1) Any discussion/deliberation is restricted to the actual Board Meeting
- 2) Managing Agents, Resident Managers, General Managers and Site Managers (or individuals in similar positions) must also comply with the law in the same manner as Board members
- 3) When responding to an email submitted by an AOOU attorney who is seeking an answer to a question that requires a Board decision, a managing agent should respond to state that the question or topic will be discussed at the next Board meeting and once the agent has the answer, then he/she will get back to the attorney with a response.

EXAMPLE response: ... this subject matter will be added to the Board Meeting Agenda scheduled for [inset date].

By including the board's next scheduled meeting date, it will allow the attorney to put this information/date into his/her calendar for subsequent follow up.

The above verbiage can be used for AOOU vendor contractor responses, too.

- 4) Remind each other of the statute. If you receive an email asking you to make a decision via email, respond by sending a gentle reminder of the need to comply with HRS 514B – 125(a). EXAMPLE: “This decision must be addressed and discussed/deliberated at the next scheduled board meeting and not via this email communication, pursuant to HRS 514B – 125(a)”.
- 5) Prepare or create clear plans of action for decision-making.
- 6) By restricting decision-making to the board meeting, you will effectively reduce miscommunication among board members and encourage more homeowner attendance and participation in the discussion/deliberation.
- 7) Include in the 72-hour posted notice of the Meeting Agenda: “We encourage all homeowners to attend and participate in the discussion of the Agenda items.”



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Educational Videos

Condo Insider videos are short 20 minute educational videos on various topics related to Condo Association management.

Ways to find it:

Google or You tube search “Condo Insider” Think Tech Hawaii.

Link to play list:

https://www.youtube.com/playlist?list=PLQpkwcNjny6ljy0AFMzIEaxzpk_ydmpe

Why Email Board Meetings Are Invalid (Condo Insider)

<https://www.youtube.com/watch?v=BGSK4WsXKQE>

Open Board Meetings (Condo Insider)

https://www.youtube.com/watch?v=HLsTi6fM_Zk

