

Private Communications Now Permitted for Board Members Outside of Open and Executive Session

July 25, 2016



On July 15, 2016, Governor Rauner signed a bill which became Public Act 99-0567. The new law amends the Illinois Condominium Property Act ("Act") and the Illinois Common Interest Community Association Act ("CICAA") to allow board members of both condominium associations and common interest community associations to meet and discuss certain association business outside of open meetings and executive session (in private gatherings, workshops or even via phone or e-mail).

Whereas boards have been restricted due to the 2014 Illinois Appellate Court *Palm II* decision, which prohibits boards from having certain discussions outside of open and executive sessions, this new law expands those topics which the board can discuss in a number of different forums, thus significantly moderating the restrictive effects of the *Palm II* decision.

By way of refresher, the *Palm II* decision prohibited "working sessions" and discussions by board members over e-mail or phone in condominium associations as well as casual

discussions where more than a quorum of board members met to discuss topics related to association governance outside of the designated executive session of a properly noticed board of directors' meeting.

Moreover, *Palm II* limited those topics which the board was permitted to discuss during executive session to: (i) pending or potential litigation, (ii) issues related to employment, and (iii) issues related to unit owners' violations of governing documents.

The amendment to the Act and CICA, which will become effective on January 1, 2017, will greatly enhance the board's ability to work effectively and efficiently outside of the confines imposed by the *Palm II* decision. After January 1, 2017, board members may privately discuss the following topics *without* providing notice to unit owners (private discussions may be conducted in person, via phone or via electronic communication):

- pending or probable litigation;
- third party contracts or information regarding appointment, employment, engagement or dismissal of any employee, independent contractor, agent or any other provider of goods and services;
- to interview any potential employee, independent contractor, agent or any other provider of goods and services;

- violations of rules and regulations of the association;
- discussion of any association members' unpaid share of common expenses; or
- consultation with the association's legal counsel.

Finally, the new law not only allows boards to meet outside of executive session or open session to discuss the above issues, but it also gives boards the power to close any portion of a noticed meeting in order to discuss the aforesaid issues. LP welcomes this change and strongly feels that these amendments will enhance the board's ability to effectively manage its association.

As always, LP is ready and available to provide any guidance to boards with regard to this or any new legislation affecting your association.

