

The Maryland Open Meetings Act: An Overview

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Background & Purpose

- The Maryland Open Meetings Act (“OMA”) is codified under Title 3 of the General Provisions Article of the Maryland Annotated Code.
- Purpose of the OMA: public business should be conducted openly as the public has a right to observe its public officials and their deliberations and decision-making; “the conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.”
- Policy: whenever possible, all meetings should be open to the public as the public has a right to observe its government at work.

Application

- Law applies to “public bodies” – an entity consisting of at least 2 persons created by Maryland law, regulation, executive order, or resolution.
- Law applies whenever a “quorum” of the public body meets to conduct “public business.”
- “Quorum” – a majority of the members present unless otherwise defined.
 - Includes face-to-face meetings and electronic gatherings.
- “Public business” – broadly construed.
 - Need to be careful with impromptu gatherings or social events.

Procedures

- A public body must publish written notice of its meetings including date, time, location, and whether all or part of the meeting will be conducted in Closed Session.
 - Location of the meeting must be adequate to accommodate the public anticipated to attend.
 - Reasonable advance notice of the meeting must be provided.
 - An “emergency” meeting may be held after giving as much notice as possible.
- An agenda of known items to be discussed at the meeting, including whether open or closed sessions will be held, must be provided. (Exception exists for emergency meetings.)
- Minutes of open and closed sessions must be kept. Minutes are public records open to public inspection.

Closed Session

- Procedure: before going into a “closed” session, the presiding officer must read a statement citing to the law allowing the closed session and state for the record the specific topics to be discussed in closed session (the Closing Statement).
- The public body must vote to go into closed session.
- Only those topics announced in the open session may be discussed in closed session.
- Any actions taken in closed session must be ratified in the next open session.
- Minutes must be kept of all discussions in closed session including a list of all persons attending the closed session. Minutes are confidential and “sealed” unless the public body specifically votes to release them.

Closed Session – cont'd.

- A closed session may only be held for specific exceptions listed in law, which exceptions are to be narrowly construed.
- Examples include:
 - Personnel matters – discussion of specific issues related to an individual
 - Acquisition of real property
 - Consultation with counsel to obtain legal advice
 - Discussion of pending or potential litigation
 - Discussion of matters related to collective bargaining negotiations
 - Discussion of public security where the discussion would constitute a risk to the public or public security including the deployment of police resources or development of emergency plans
 - Discussion of a procurement prior to contract award

Training Requirements

- A public body may not go into closed session unless the public body has designated at least one of its members to receive specified training regarding the OMA and the member has taken the training.
- Once designated, the member(s) has 90 days to complete the training. (Training is available online on the OAG website.)
- The officially designated member(s) must be present at future closed sessions; however, if they are unavailable, then the public body must complete a specific mandated Compliance Checklist in addition to the required Closing Statement.
- The Closing Statement and Compliance Checklist must be kept with the official minutes of the open session.

Compliance

- Complaints may be filed with the Open Meetings Compliance Board.
 - Public body is entitled to file a written response.
 - Compliance Board will review and issue an advisory opinion.
 - Compliance Board is required to issue an annual report identifying each public body that has been found to have violated the law and post all violations online.
- If the Compliance Board finds that the public body violated the Act:
 - At the next open meeting of the public body, a member of the public body must announce the violation and verbally summarize the opinion; and
 - A majority of the public body must sign a copy of the opinion and return the signed copy to the Compliance Board.
 - The Compliance Board will also post notice of the violation on the Maryland Open Meetings Act page of the OAG naming the public body and attaching the opinion that describes the violation.

Compliance – cont'd

- Complainant may file suit in Circuit Court.
- Court may void the action taken by the public body; issue an injunction; assess attorneys' fees and costs; and grant any other appropriate relief.
- Willful violation: may incur a civil penalty of \$250 for the first violation, and \$1,000 for subsequent violations

Resources

- Kimberly A. Millender, Assistant Attorney General & Principal Counsel, OAG - MDTA
 - 410-537-1012
 - kmillender@mdta.state.md.us
- OAG website:
 - Forms
 - Open Meetings Act Manual
 - Compliance Board Annual Report
 - Compliance Board Opinions
 - <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>