

CHAPTER 7
OPEN MEETINGS

Table of Contents

Section 7.1	Scope of this Chapter
Section 7.2	Arizona's Open Meeting Law
7.2.1	History of Arizona's Open Meeting Law
7.2.2	Legislative Intent
Section 7.3	Government Bodies Covered by the Open Meeting Law
7.3.1	Generally
7.3.2	Boards and Commissions
7.3.3	Quasi-Governmental Corporations
7.3.4	Quasi-Judicial Bodies
7.3.5	Advisory Committees
7.3.6	Special and Standing Committees and Subcommittees
Section 7.4	Government Bodies and Proceedings Not Covered by the Open Meeting Law
7.4.1	Judicial Appointment Commissions
7.4.2	Proceedings Before Courts
7.4.3	The Legislature
7.4.4	Student Disciplinary Proceedings
7.4.5	Insurance Guaranty Fund Boards
7.4.6	Hearings Held in Prison Facilities
7.4.7	Board of Fingerprinting

- 7.4.8 Homeowners Associations
- Section 7.5 Actions and Activities Covered by the Open Meeting Law
 - 7.5.1 Generally
 - 7.5.2 Circumventing the Open Meeting Law
 - 7.5.3 Applicability to Staff Members and Others
- Section 7.6 Notice of Meetings
 - 7.6.1 Generally
 - 7.6.2 Notice to Members of the Public Body
 - 7.6.3 Notice to the Public
 - 7.6.3.1 Disclosure Statement
 - 7.6.3.2 Public Notice of Meetings
 - 7.6.4 Contents of the Notice
 - 7.6.5 Time for Giving Notice
 - 7.6.6 Notice of Regular Meetings
 - 7.6.7 Notice of Executive Sessions
 - 7.6.8 Maintaining Records of Notice Given
- Section 7.7 Agendas
 - 7.7.1 Generally
 - 7.7.2 Contents of the Agenda - Public Meeting
 - 7.7.3 Contents of the Agenda - Executive Session
 - 7.7.4 Distribution of the Agenda
 - 7.7.5 Consent Agendas
 - 7.7.6 Discussing and Deciding Matters Not Listed on the Agenda

	7.7.7	Calls to the Public
	7.7.8	Current Event Summaries
	7.7.9	Emergencies
	7.7.10	Changes to the Agenda
Section 7.8		Minutes
	7.8.1	Form of and Access to the Minutes
	7.8.2	Contents of the Minutes of Public Meetings
	7.8.3	Contents of the Minutes of Executive Sessions
Section 7.9		Executive Sessions
	7.9.1	Deciding to Go Into Executive Session
	7.9.2	Executive Session Requirements
	7.9.3	Taking Legal Action
	7.9.4	Confidentiality of Executive Session Minutes
	7.9.5	Authorized Executive Sessions
	7.9.5.1	Personnel Matters
	7.9.5.2	Confidential Records
	7.9.5.3	Legal Advice
	7.9.5.4	Litigation, Contract Negotiations and Settlement Discussions
	7.9.5.5	Discussions with Designated Representatives Regarding Salary Negotiations
	7.9.5.6	International, Interstate, and Tribal Negotiations
	7.9.5.7	Purchase, Sale or Lease of Real Property
Section 7.10		Public Participation and Access to Meetings

	7.10.1	Public Participation
	7.10.2	Public Access
	7.10.3	Remote Conferencing
Section	7.11	Quorum
Section	7.12	Ratification
	7.12.1	Generally
	7.12.2	Procedure for Ratification
Section	7.13	Sanctions for Violations of the Open Meeting Law
	7.13.1	Nullification
	7.13.2	Investigation and Enforcement
	7.13.3	Civil Penalties
	7.13.4	Attorney's Fees
	7.13.5	Expenditure for Legal Services by Public Body Relating to the Open Meeting Law
	7.13.6	Removal From Office
Form	7.1	Disclosure Statement
Form	7.2	Notice of Public Meeting of a Public Body
Form	7.3	Notice of Public Meeting of a Subcommittee or Advisory Committee of a Public Body
Form	7.4	Notice of Regular Meetings of a Public Body
Form	7.5	Notice of Meeting and Possible Executive Session of a Public Body
Form	7.6	Notice of Combined Public Meeting and Executive Session
Form	7.7	Sample Notice and Agenda of Public Meeting and Executive Session
Form	7.8	Certification of Posting of Notice

Form	7.9	Special Notice of Emergency Meeting
Form	7.10	Minutes of Public Meeting
Form	7.11	Minutes of Executive Session
Form	7.12	Notice of Action to be Ratified
Form	7.13	Employee Notice of Executive Session

CHAPTER 7

OPEN MEETINGS

7.1 Scope of this Chapter. This Chapter discusses Arizona's Open Meeting Law, A.R.S. §§ 38-431 to -431.09, with particular emphasis on the application of the Open Meeting Law to the day-to-day operations of state officers, bodies, and agencies. This Chapter shall be conspicuously posted on the Secretary of State's website for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies. A.R.S. § 38-431.01(G). Individuals elected or appointed to a public body shall review this Chapter at least one day before taking office. *Id.*

This Chapter does not resolve all issues that may arise under the Open Meeting Law, but rather is intended to serve as a reference for public officials who must comply with the Open Meeting Law. Officials faced with a situation not specifically addressed in this Chapter should consult their legal counsel before proceeding.

7.2 Arizona's Open Meeting Law.

7.2.1 History of Arizona's Open Meeting Law. All fifty states have enacted some type of legislation providing the public with a statutory right to openness in government. In addition, in 1976 the United States Congress enacted the Federal Open Meeting Act, 5 U.S.C. § 552b. Arizona enacted its Open Meeting Law in 1962 and has since amended it several times. For a detailed discussion of the early history of the Open Meeting Law through 1975, see Ariz. Att'y Gen. Op. 75-7.

7.2.2 Legislative Intent. The Legislature has repeatedly expressed its intent that the Open Meeting Law be construed to maximize public access to the governmental process. In first enacting the Open Meeting Law in 1962, the Legislature declared that: "It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly."

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09(A). That statute now provides:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or

entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.

A.R.S. § 38-431.09(A).

In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of openness in government. Any question whether the Open Meeting Law applies to a certain public body likewise should be resolved in favor of applying the law.

7.3 Government Bodies Covered by the Open Meeting Law.

7.3.1 Generally. The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows:

“Public body” means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or a political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

This definition specifically includes public bodies of all political subdivisions. A political subdivision is defined in A.R.S. § 38-431(5) to include "all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts."

The definition encompasses five basic categories of public bodies: 1) boards, commissions, and other multimember governing bodies, including those “established by the Arizona Constitution or by way of ballot initiative;” 2) quasi-governmental corporations; 3) quasi-judicial bodies; 4) advisory committees; and 5) standing and special committees and subcommittees of any of the above. See A.R.S. § 38-431(6).

7.3.2 Boards and Commissions. The Open Meeting Law covers all boards and commissions and other multimember governing bodies of the state or its political

subdivisions or of the departments, agencies, institutions, and instrumentalities of the state or its political subdivisions. See A.R.S. § 38-431(6). The multimember governing body must be created by law or by an official act pursuant to some legal authority. See *id.* Examples of public bodies created by law include the Arizona Legislature, county boards of supervisors, city and town councils, school boards, the governing boards of special districts, and all state, county, and municipal licensing and regulatory boards. See, e.g., Ariz. Att’y Gen. Op. 107-001 (Open Meeting Law applies to board appointed by governing bodies of various political subdivisions to administer employee benefits program). Ariz. Att’y Gen. Op. 104-001 (Open Meeting Law applies to joint underwriting association because it’s a multimember governing body created by statute). In addition, the Legislature amended the definition of public body specifically to include “all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.” A.R.S. § 38-431(6).

The Open Meeting Law applies only to multimember bodies and does not apply to the deliberations and meetings conducted by the single head of an agency. See Ariz. Att’y Gen. Ops. 192-007, 75-7. Accordingly, the director of a department or state agency is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.

7.3.3 Quasi-Governmental Corporations. The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. See A.R.S. § 38-431(5), (6). In order to determine whether a quasi-governmental corporation or other entity is an “instrumentality,” and thus a “public body,” under the Open Meeting Law, one should consider the following factors that indicate the degree to which governmental interests dominate the nature of the entity. See Ariz. Att’y Gen. Op. 107-001.

1. The entity's origin (whether it was created by the government or independently of the government). For example, the Open Meeting Law does not apply to a private non-profit hospital association that has a board of directors elected by the electorate of the hospital district. *Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass'n*, 163 Ariz. 33, 785 P.2d 1221 (App. 1989). See Ariz. Att’y Gen. Op. 107-001.
2. The nature of the function assigned to and performed by the entity, *i.e.*, whether that function is one traditionally associated with government or is one commonly performed by private entities. For example, the board of trustees of a trust formed by several public bodies to administer employee benefit programs on their behalf would have a governmental function that supports a finding that the board is a public body.

3. The scope of authority granted to and exercised by the entity, *i.e.*, whether the entity has authority to make binding governmental decisions or is it limited to making nonbinding recommendations.
4. The nature and level of government financial involvement with the entity.
5. The nature and scope of government control over the entity's operation.
6. The status of the entity's officers and employees, *i.e.*, whether the officers and employees are government officials or government employees.

7.3.4 Quasi-Judicial Bodies. The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." A.R.S. § 38-431(7). The legislature added this definition in 1978 to reverse the Arizona Supreme Court's decision in *Ariz. Press Club, Inc. v. Ariz. Bd. of Tax Appeals*, 113 Ariz. 545, 558 P.2d 697 (1976), which held that the Open Meeting Law did not apply to bodies conducting quasi-judicial functions, such as license revocation proceedings. See Ariz. Att'y Gen. Op. 78-245. The Arizona Board of Tax Appeals and similar quasi-judicial bodies are now covered by the Open Meeting Law. A.R.S. § 38-431(6), (7).

Contested case proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law. *Rosenberg v. Ariz. Bd. of Regents*, 118 Ariz. 489, 578 P.2d 168 (1978); *City of Flagstaff v. Bleeker*, 123 Ariz. 436, 600 P.2d 49 (App. 1979); Ariz. Att'y Gen. Op. 75-7.

7.3.5 Advisory Committees. Advisory committees are subject to all of the requirements of the Open Meeting Law. A.R.S. § 38-431(6). An advisory committee is defined as

any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

A.R.S. § 38-431(1).

This definition does not include advisory groups established by the single head of an agency unless they are created pursuant to a statute, city charter, or other provision of law or by an official act pursuant to some legal authority. See Ariz. Att'y Gen. Op. 192-007; Section 7.3.2.

7.3.6 Special and Standing Committees and Subcommittees. Special and standing committees and subcommittees of, or appointed by, any of the public bodies described above are also covered by the Open Meeting Law. A.R.S. § 38-431 (6). A special or standing committee may consist of members of the public body who have been appointed by or authorized to act for the public body. A.R.S. § 38-431(6). The fact that a committee consists, in whole or in part, of persons who are not members of the public body does not affect its status as a public body subject to the Open Meeting Law. See Ariz. Att'y Gen. Op. 180-202.

7.4 Government Bodies and Proceedings Not Covered by the Open Meeting Law. Certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

7.4.1 Judicial Appointment Commissions. The Commissions on Appellate and Trial Court Appointments and the Commission on Judicial Qualifications are expressly exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(3).

7.4.2 Proceedings Before Courts. The Open Meeting Law does not apply to judicial proceedings of courts within the judicial branch of government. A.R.S. §§ 38-431(7), -431.08(A)(1).

7.4.3 The Legislature. Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. A.R.S. § 38-431.08(A)(2). The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. *Id.* § (A)(1); *cf.* Ariz. Att'y Gen. Op. 183-128. The Open Meeting Law permits either house of the Legislature to adopt a rule or procedure exempting itself from the notice and agenda requirements of the Open Meeting Law or to allow standing or conference committees to meet through technological devices rather than in person. A.R.S. § 38-431.08(D).

7.4.4 Student Disciplinary Proceedings. Actions concerning the "discipline, suspension or expulsion of a pupil" are not subject to the Open Meeting Law. A.R.S. § 15-843(A). This same statute, however, prescribes the procedures that the school board must follow in handling these matters.

7.4.5 Insurance Guaranty Fund Boards. Special meetings of the property and casualty insurance guaranty fund in which the financial condition of any member insurer is discussed are exempt from the Open Meeting Law. A.R.S. § 20-671.

7.4.6 Hearings Held in Prison Facilities. Hearings held by the Board of Pardons and Paroles in a prison facility are subject to the Open Meeting Law, but the Director of the State Department of Corrections may prohibit certain individuals from attending such hearings because they pose a serious threat to the safety and security of others or the prison. Other conditions on attendance, such as signing an attendance log and submitting to a reasonable search, may be imposed as well. A.R.S. § 38-431.08(B).

7.4.7 Board of Fingerprinting. Good cause exception hearings conducted by the Board of Fingerprinting pursuant to A.R.S. § 41-619.55 are exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(4).

7.4.8 Homeowners Associations. Because they are not governmental "public bodies," homeowners associations are not covered by the Open Meeting Law. Ariz. Att'y Gen. Op. 97-012. They must, however, comply with separate notification requirements. *Id.* Those requirements must be enforced privately because the Attorney General and County Attorneys have no jurisdiction over such matters. For more information on the requirements of homeowners associations, see A.R.S. § 33-1801 *et seq.*

7.5 Actions and Activities Covered by the Open Meeting Law.

7.5.1 Generally. All meetings of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. A.R.S. § 38-431.01(A). All legal action of public bodies shall occur during a public meeting. *Id.* A meeting is defined as "the gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to that action." A.R.S. § 38-431(4). It does not matter what label is placed on a gathering; it may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. 179-4.

Put simply, all discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, 179-4. See also A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att'y Gen. Op. 105-004. The key to this inquiry is whether the matter to be discussed may foreseeably require final action. It is difficult to say precisely when this foreseeability test has been met. Each case should be viewed on its own merits with doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to assume the Open Meeting Law applies whenever a majority of the body discusses the business of the public body.

"Even if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a 'meeting.'" See *Del Papa v. Bd. of Regents of Univ. and Cmty. Coll. Sys. Of Nev.*, 114 Nev. 388, 393, 956 P.2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place). Accordingly, the definition of meeting was modified by the Arizona Legislature in 2000 to prohibit a quorum of a public body from secretly communicating through technological devices (including, for example, facsimile machines, telephones, texting, and e-mail), and further modified in 2018 in order to provide additional guidance on electronic

communications. The following instances of electronic communication are now expressly considered “meetings” under the Open Meeting Law:

1. “A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action.”
2. “An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action.”

A.R.S. § 38-431(4)(b). If an electronic communication from one member of the public body proposes legal action and is sent to enough members of the public to form a quorum, a violation occurs even if no member of the public body responds to the electronic communication. A.R.S. § 38-431(4)(b)(i). However, other one-way communications, with no further exchanges, are not *per se* violations, and further examination of the facts and circumstances would be necessary to determine if a violation occurred. Ariz. Att’y Gen. Op. I05-004.

While discussion of the public body's business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law, the Open Meeting Law does not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue other than a public meeting of the body, or through media outlets or other public broadcast communications or technological means, so long as the "opinion or discussion is not principally directed at or directly given to another member of the public body," and "there is no concerted plan to engage in collective deliberation to take legal action." A.R.S. § 38-431.09(B); Ariz. Att’y Gen. Op I07-013.

7.5.2 Circumventing the Open Meeting Law. Discussions and deliberations (in person or otherwise) between less than a majority of the members of a governing body, violate the Open Meeting Law when used to circumvent the purposes of the Open Meeting Law. See Ariz. Att’y Gen. Op. 75-8; *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that has been or later may be presented to the public body for a decision. Public officials should refrain from any activities that may undermine public confidence in the public decision making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.

7.5.3 Applicability to Staff Members and Others. The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to

communicate in violation of the Open Meeting Law. A.R.S. § 38-431.01(I). People knowingly aiding, agreeing to aid or attempting to aid another person in violating the Open Meeting Law can be liable for civil penalties, attorneys' fees, and costs pursuant to A.R.S. § 38-431.07(A). See Sections 7.13.3 and 7.13.4. Splintering a quorum may also occur when members of a public body share their positions and proposals with other public body members through staff members or other non-members. For example, a staff member who meets with each member individually regarding official business and then shares the comments made by other members would violate the Open Meeting Law. Although a staff member may provide information to members separately (see Ariz. Att'y Gen. Op. 105-004 at 9), that person must be careful not to facilitate a discussion or deliberation by a quorum through sharing information with other members in subsequent meetings.

7.6 Notice of Meetings.

7.6.1 Generally. The Open Meeting Law generally requires at least twenty-four hour advance notice of all meetings to the public body and to the general public. A.R.S. § 38-431.02(C). Notice enables members of the public to attend public meetings by informing them of when and where to go, and how to get information regarding the matters under consideration. Arizona courts have emphasized the importance of sufficient notice. The Arizona Court of Appeals explained, "[t]he notice provisions in the open meeting law are obviously designed to give meaningful effect to provisions such as A.R.S. §§ 38-431.01(A) and 38-431.09. The goal of exposing the public decision-making process to the public itself could be significantly, if not totally thwarted, in the absence of mandatory notice provisions and their enforcement." *Carefree Improvement Ass'n v. City of Scottsdale*, 133 Ariz. 106, 111, 649 P.2d 985, 990 (App. 1982).

7.6.2 Notice to Members of the Public Body. Notice of all meetings, including executive sessions, must be given to the members of the public body. A.R.S. § 38-431.02(B), (C).

7.6.3 Notice to the Public. Notice of all meetings, including executive sessions, must be given to the public. A.R.S. § 38-431.02. Giving public notice is a two-step process. *Id.*

7.6.3.1 Disclosure Statement. The first step is for the public body to conspicuously post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed. A.R.S. § 38-431.02(A). See Form 7.1. Public bodies of the State, counties, school districts, and governing bodies of charter schools must post the disclosure statement on their websites. *Id.* § (A)(1)-(2). Special districts governed by Title 48, A.R.S., must post the required disclosure statement on their own website or may file it with the Clerk of the Board of Supervisors. *Id.* § (A)(3). Public bodies of cities and towns must post the required information on their own websites or on the website of an association of towns and cities. *Id.* § (4). The notification location identified in the statement must be a place to which the public has reasonable access.

Carefree Improvement Ass'n v. City of Scottsdale, 133 Ariz. 106, 111, 649 P.2d 985, 990 (App. 1982). The location should have normal business hours, should not be geographically isolated, should not have limited access, and should not be difficult to find.

7.6.3.2 Public Notice of Meetings. Once the disclosure statement has been filed or posted, the second step is for the public body to give notice of each of its meetings by posting a copy of the notice on its website as well as at the location identified in the disclosure statement. A.R.S. § 38-431.02(A). See Forms 7.2, 7.3, 7.4. Public bodies shall also give "additional public notice as is reasonable and practicable as to all meetings." *Id.* § (A)(1)(a).

If there is a "technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website" and all other public notice requirements are met, then the meeting can convene as scheduled. *Id.* § (A)(1)(b). Given the possibility of complaints or litigation in such situations, the public body should document the nature and duration of the technological problem or failure along with an explanation of how it affected the ability of the public body to post proper notice of the public meeting.

In addition to complying with the requirements of the Open Meeting Law, the notice should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213. See Section 15.27. This may include the addition of a statement such as the following in any notices that the public body issue: "Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name of designated agency contact person] at [telephone number and TDD telephone number]. Requests should be made as early as possible to allow time to arrange the accommodation."

7.6.4 Contents of the Notice. Generally, the notice should include information identifying the public body and the date, time, and place of the meeting. See Forms 7.2, 7.3. In identifying the place of the meeting, the notice should specify the street address of the building and the room number or other information identifying the specific room in which the meeting will be held. See Form 7.7 (Sample Notice and Agenda).

In addition, notices of public meetings and notices of executive sessions must contain an agenda of the matters to be considered by the public body at the meeting or information on how the public may obtain a copy of such an agenda. A.R.S. § 38-431.02(G). For a complete discussion of the agenda requirements, see Section 7.7. Notice of a public meeting at which the public body intends to ratify a prior act must contain additional specific information. See Section 7.12; Form 7.12.

7.6.5 Time for Giving Notice. As a general rule, a meeting may not be held without giving the required notice at least twenty-four hours before the meeting. A.R.S. § 38-431.02(C). For purposes of the statute, the twenty-four hour period excludes Sundays and holidays. *Id.* Saturdays are included in the period if the public has access to

the physical and electronic posted locations. *Id.* Of course, the best practice is for public bodies to give as much notice as possible. The public body may consider including with the notice a certification by the person responsible for posting the notice that states the time and location that the notice was posted. See Form 7.8 below.

There are three exceptions to the twenty-four hour notice requirement.

First, in the case of an "actual emergency," the meeting may be held upon such shorter notice as is "appropriate to the circumstances." § 38-431.02(D). An actual emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. See *Carefree Improvement Ass'n v. City of Scottsdale*, 133 Ariz. 106, 113, 649 P.2d 985, 992 (App. 1982). The existence of an actual emergency does not dispense with the need to give twenty-four hours written notice to an employee who is to be discussed in executive session. A.R.S. § 38-431.03(A)(1); Ariz. Att'y Gen. Op. I90-19; see Sections 7.7.9 and 7.9.5.1.

Second, notice of a meeting at which the public body will consider ratifying a prior act taken in violation of the Open Meeting Law must be given seventy-two hours in advance of the meeting. A.R.S. § 38-431.05(B)(4); see Section 7.12.

Finally, less than twenty-four hours notice may be given when a properly noticed meeting is recessed to the next day. A.R.S. § 38-431.02(E). A meeting may be recessed and resumed with less than twenty-four hour notice if public notice of the initial session of the meeting is given and, if before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given. *Id.* Notice of the resumption of a meeting must comply with the agenda requirements respecting the matters to be addressed when resumed. *Id.* § (G). This may be accomplished by the presiding officer of the public body either stating at the meeting the time, place, and agenda of the resumed meeting or stating where a written notice and agenda of the resumed meeting will be posted. If an executive session is to be recessed and resumed with less than twenty-four hour notice, the time, place, and agenda of the resumed meeting should be communicated to the members of the public body and to the public by reconvening in public session and following one of the two steps described above. If the meeting will not reconvene for more than twenty-four hours, a new meeting notice and agenda is recommended.

7.6.6 Notice of Regular Meetings. A public body that intends to meet for a specified calendar period on a regular day or date during the calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period and need not post additional notices for each meeting. A.R.S. § 38-431.02(F); see Form 7.4. The notice must specify the applicable notice period. *Id.* However, this method of posting notice will not satisfy the agenda requirements unless the notice also contains a clear statement that the agenda for any such meeting will be available at least twenty-four

hours in advance of the meeting and a statement as to where and how the public may obtain a copy of the agenda. A.R.S. § 38-431.02(G).

7.6.7 Notice of Executive Sessions. When a public body intends to conduct an executive session, the notice must state the specific provision of law authorizing the executive session. A.R.S. § 38-431.02(B); see Form 7.5. This provision requires that the notice specify the numbered paragraph of subsection (A) of A.R.S. § 38-431.03 that authorizes the executive session. A general citation to A.R.S. § 38-431.03 or subsection (A) of that section is insufficient. For example, a public body intending to meet in executive session for purposes of discussing the purchase or lease of real property must cite in its notice "A.R.S. § 38-431.03(A)(7)." The public body must cite only the paragraphs applicable to the matters to be discussed and cannot issue a standardized form notice that cites all executive session provisions. In addition, an agenda is required for an executive session and must contain only a "general description of the matters to be considered." A.R.S. § 38-431.02(I); see Section 7.7.3.

In the case of an executive session concerning personnel matters, the public body must give written notice to the affected officer, appointee, or employee in addition to the public notice described above. A.R.S. § 38-431.03(A)(1); see Section 7.9.5.1; Form 7.13. Such written notice must be provided not less than twenty-four hours before the scheduled meeting. A.R.S. § 38-431.03(A)(1).

Many public bodies do not know whether they will have any legal questions regarding matters on the agenda until the discussion occurs. The Attorney General previously opined that public bodies may provide with their notices and agendas a statement that matters on the public meeting agenda may be discussed in executive session for the purpose of obtaining legal advice thereon, pursuant to A.R.S. § 38-431.03(A)(3). Ariz. Att'y Gen. Op. I90-19. An example of such a statement is "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3)." Similar statements are not sufficient for other types of executive sessions. See Section 7.7 for further discussion.

7.6.8 Maintaining Records of Notice Given. Best practice provides that each public body keep a record of its notices, including a copy of each notice that was posted and information regarding the date, time, and place of posting. A suggested procedure is to file in the records of the public body a copy of the notice and a certification in a form similar to Form 7.8.

7.7 Agendas.

7.7.1 Generally. In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G).

Although this Section provides guidelines for the preparation of agendas, it does not answer every question that may arise. Specific problems should be discussed with the public body's legal counsel. As a general rule, public bodies should always be mindful of the Legislature's declaration of policy that agendas "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.09(A). When in doubt, resolve questions in favor of greater disclosure of information.

7.7.2 Contents of the Agenda -- Public Meeting. The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-431.02(H). This requirement does not permit the use of generic agenda items such as "personnel," "new business," "old business," "reports," or "other matters" unless the specific matters or items to be discussed are separately identified in conjunction with the general terms. See *Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). The degree of specificity depends on the circumstances. See Form 7.7 (Sample Notice and Agenda). Consider the following examples:

- "Discussion and possible action to approve the application of pesticides within 1/4 mile of a school" if an environmental board is going to consider whether to approve the application of any pesticide within 1/4 mile of a school;
- "Discussion and possible action to remove Pesticide-A from list of approved pesticides" if the environmental board is going to consider removing a specific pesticide from an approved list;
- "Discussion and possible action regarding budget priorities and revisions for upcoming fiscal year" if a board intends to generate and discuss a number of different options for managing its budget;
- "Discussion and possible action regarding elimination of funding from budget for travel reimbursements, computer upgrades, and laptops for board members" if a board intends to only focus on specific options to revise a budget.

If it is likely that the public body will find it necessary to discuss any particular agenda item in executive session with the public body's attorney, the agenda should plainly state so, even if the general notice of executive session for legal advice is on the agenda. For example, the agenda might include a provision stating "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on the approval of pesticides for application within ¼ mile of a school pursuant to A.R.S. § 38-431.03(A)(3)."

7.7.3 Contents of the Agenda -- Executive Session. The agenda for an executive session must contain a "general description of the matters to be considered." A.R.S. § 38-431.02(l). The description must amount to more than just a recital of the statutory provisions authorizing the executive session, but should not contain any information that "would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege." *Id.*

In preparing executive session agenda items, the public body must weigh the legislative policy favoring public disclosure and the legitimate confidentiality concerns underlying the executive session provision. For example, if a board desires to consider the possible dismissal of its executive director, the board may list on the agenda "Personnel matter - consideration of continued employment of the board's executive director." However, when the public disclosure of the board's consideration of charges against an employee might needlessly harm the employee's reputation or compromise the employee's privacy interests, the board may eliminate from the agenda a description of the identity of the employee being considered, but must still indicate on the agenda that an employee of the public body is the subject of the executive session. If it is already publicly known that the board is considering charges against the employee, disclosure of the employee's identity in the agenda would not defeat the purpose of the executive session.

7.7.4 Distribution of the Agenda. The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed. A.R.S. § 38-431.02(G); see Forms 7.2 - 7.4, 7.6, 7.7. Because both the public notice and the agenda must be available at least twenty-four hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice. See Form 7.7 (Sample Notice and Agenda). However, when issuing public notice well in advance of a meeting, as in the case of notice of regularly scheduled meetings, see Section 7.6.6, it may be more appropriate to state how the public may obtain a copy of the agenda and distribute it accordingly.

7.7.5 Consent Agendas. Public bodies may use "consent agendas" if they meet certain requirements. Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are ministerial in nature. Some examples are approval of travel requests and approval of minutes. Public bodies often take one vote to approve or disapprove the consent agenda as a whole. When using a consent agenda format for some of the items on a meeting agenda, public bodies should fully describe the matters on the agenda and inform the public where more information can be obtained. A good practice is to require the removal of an item from the consent agenda upon the request of any member of the public body. See Form 7.7 (Sample Notice and Agenda).

Public bodies should exercise caution when using consent agendas. The Arizona Supreme Court previously held that taking legal action, taken after an executive session,

must be preceded by a disclosure of "that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting." *Karol v. Bd. of Educ. Trustees*, 122 Ariz. 95, 98, 593 P.2d 649, 652 (1979). The Court also condemned the practice of voting on matters designated only by number, thereby effectively hiding actions from public examination. *Id.*

7.7.6 Discussing and Deciding Matters Not Listed on the Agenda. The public body may discuss, consider, or decide only those matters listed on the agenda and "other matters related thereto." A.R.S. § 38-431.02(H). The "other matters" clause provides some flexibility to a public body but should be construed narrowly. The "other matters" must in some reasonable manner be "related" to an item specifically listed on the agenda. *Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988).

If a matter not specifically listed on the agenda is brought up during a meeting, the better practice, and the one that will minimize subsequent litigation, is to defer discussion and decision on the matter until a later meeting so that the item can be specifically listed on the agenda. If the matter demands immediate attention and is a true emergency, the public body should consider using the emergency exception described in Section 7.7.9.

However, if action is taken at a meeting on an item not properly noticed, then that particular action violates the Open Meeting Law and is null and void. *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001); A.R.S. § 38-431.05(A). The public body may ratify the action pursuant to A.R.S. § 38-431.05(B), although the violation may still subject the public body to the penalties described in A.R.S. § 38-431.07(A). Any other actions that were taken at the meeting and were properly noticed are not void. *Karol v. Bd. of Educ. Trustees*, 122 Ariz. 95, 98, 593 P.2d 649, 652 (1979); Ariz. Att'y Gen. Op. 108-001.

7.7.7 Calls to the Public. A public body may include a call to the public on a meeting agenda. A.R.S. § 38-431.01(H); see also Section 7.10.1 for more discussion on public participation. Should a public body include a call to the public during a public meeting, members of the public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. A.R.S. § 38-431.01(H). Individual public body members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. *Id.*; see also Ariz. Att'y Gen. Op. 199-006.

The best practice is to include language similar to the following on the agenda to explain in advance the reason members of the public body cannot respond to topics brought up during the call to the public that are not on the agenda: "Call to the Public: This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to

directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date."

7.7.8 Current Event Summaries. The Open Meeting Law allows the chief administrator, presiding officer or a member of a public body to present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that the summary is listed on the agenda and that the public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action. A.R.S. § 38-431.02(K). Thus, the summary of current events consists merely of one of the above-referenced people summarizing recent occurrences without any discussion or feedback from the remainder of the public body. The agenda should specifically list "Summary of Current Events" as an agenda item and identify who will present the summary.

Reports that address matters other than a summary of current events or that are delivered by someone other than a proper official with the public body do not come within the provision authorizing current events summaries and must comply with the agenda requirements of the Open Meeting Law. The only report that can be given without listing the contents of the presentation is the brief summary of current events by the chief administrator, the presiding officer of the Council, or a member under A.R.S. § 38-431.02(K). As to other reports presented to a public body, the agenda must list descriptions of the topics that will be presented and state whether the public body will discuss or take action on such matters. A generic agenda item, such as "Police Department Report," "Fire Department Report," or "Executive Director Report" does not satisfy the requirement that the agenda provide information that is "reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.02(H). Public bodies should limit the use of the current events summary provision to appropriate situations and should strive to provide as much advance information as possible to the public.

7.7.9 Emergencies. A public body may discuss, consider, and decide a matter not on the agenda when an actual emergency exists requiring that the body dispense with the advance notice and agenda requirements. A.R.S. § 38-431.02(D). See Section 7.6.5 for a discussion of what constitutes an actual emergency.

To use the emergency exception, the public body must do several things. First, the public body must give "such notice as is appropriate to the circumstances." A.R.S. § 38-431.02(D). Next, prior to the emergency discussion, consideration, or decision, the public body must announce in a public meeting the reasons necessitating the emergency action. A.R.S. § 38-431.02(J). If the emergency discussion or consideration is to take place in an executive session, this public announcement must occur at a public meeting prior to the executive session. *Id.*

After the emergency exception has been used, "the public body must post a public notice within twenty-four hours declaring that an emergency session has been held," which sets forth the same information required in an agenda for a regular meeting. A.R.S. § 38-431.02(D); see Form 7.9.

Additionally, the public body must place in the minutes of the meeting a statement that sets forth the reasons necessitating the emergency discussion, consideration, or decision. A.R.S. § 38-431.02(J). In the case of an executive session, this statement will appear twice, once in the minutes of the public meeting where the reasons were publicly announced, and again in the minutes of the executive session where the emergency discussion or consideration took place. See Sections 7.8.2(8) and 7.8.3(5).

7.7.10 Changes to the Agenda. If a public body finds it necessary to change an agenda by modifying the listed matters or adding new ones, a new agenda must be prepared and distributed in the same manner as the original agenda, at least twenty-four hours in advance of the meeting. Ariz. Att'y Gen. Op. 179-45. Changes in the agenda within twenty-four hours of the meeting may be made only in case of emergency. Ariz. Att'y Gen. Op. 179-192; see Section 7.7.9. However, the public body is not required to discuss or act on an item that appears on the agenda for the meeting and can vote at the meeting to remove agenda items from consideration without violating the Open Meeting Law.

7.8 Minutes. Minutes must be taken of all public meetings and executive sessions. A.R.S. § 38-431.01(B)

7.8.1 Form of and Access to the Minutes. Minutes may be taken in writing or may be recorded by an audio or video recorder. A.R.S. § 38-431.01(B); see Forms 7.10, 7.11. Written minutes or a recording of a public meeting must be available for public inspection within three working days after the meeting. A.R.S. § 38-431.01(D). Public bodies concerned about distributing minutes before they have been officially approved at a subsequent meeting should mark the minutes "draft" or "unapproved" and make them available within three working days of the meeting. If the minutes have been recorded by an audio or video recorder, allowing the public to have access to that recording is sufficient. However, if the minutes were taken in shorthand, those minutes must be typed or written out in longhand in order to comply with this requirement. See Form 7.10. The minutes of an executive session are confidential and may not be disclosed except to certain authorized persons. A.R.S. § 38-431.03(B); see Section 7.9.4. To ensure confidentiality and avoid inadvertent disclosure, minutes of executive sessions should be stored separately from regular session minutes.

The approved minutes of council meetings for cities or towns with a population of more than 2,500 persons must be posted on the city's website within two working days of their approval. A.R.S. § 38-431.01(E)(2). Minutes must be reduced to a form that is readily accessible to the public. See A.R.S. § 38-431.01(D). Additionally, a public body of a city or a town with a population exceeding 2,500 people shall, within three working days

after any meeting, post on its website a statement showing legal actions taken by the public body or any recordings made during the meeting. A.R.S. § 38-431.01(E)(1). Subcommittees and advisory committees of such public bodies have ten working days after the meeting to post the recording or statement. A.R.S. § 38-431.01(E)(3), (J). Such posted minutes, statements, and recordings shall remain accessible on the website for at least one year after the meeting. *Id.* § (J). In addition, any recordings and minutes are public records subject to record retention requirements.

7.8.2 Contents of the Minutes of Public Meetings. The minutes of a public meeting must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1).
2. "The members of the public body recorded as either present or absent." *Id.* § (B)(2).
3. "A general description of the matters [discussed or] considered." *Id.* § (B)(3). Minutes must contain information regarding matters considered or discussed at the meeting even though no formal action or vote was taken with respect to the matter. *See id.* § (B)(4). Although the minutes do not need to be a verbatim transcript of the meeting to satisfy this requirement, they must summarize the discussion, including the topics addressed, and identify all speakers who participated in the discussion, including members of the public body.
4. "An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted." *Id.* Best practice includes roll call votes in most circumstances, as this encourages open government. However, for voice votes, minutes should still include a record of how each member voted, which includes noting abstentions, recusals, or those otherwise not voting. This could be accomplished in several ways. One way of ensuring such a recording would be to follow any voice vote for which no dissent or disagreement was noted with a request that any member who abstained or otherwise did not vote identify themselves; this would ensure the ability to record in detail how each member voted.
5. "[T]he names of the members who propose each motion[.]" *Id.*
6. "[T]he names of the persons, as given, who make statements or present material to the public body and a [specific] reference to the legal action," (see item 4) to which the statement or presentation relates. *Id.*
7. If the discussion in the public session did not adequately disclose the subject matter and specifics of the action taken (such as an action to approve matters on a consent agenda), the minutes of the public meeting at which

such action was taken should contain sufficient information to permit the public to investigate further the background or specific facts of the decision. See Section 7.7.5; *Karol v. Bd. Of Educ. Trustees*, 122 Ariz. 95, 98, 593 P.2d 649, 652 (1979).

8. If matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a full description of the nature of the emergency. A.R.S. § 38-431.02(J); see Sections 7.6.5 and 7.7.9.
9. If a prior act was ratified, the minutes must contain a copy of the disclosure statement required for ratification. A.R.S. § 38-431.05(B)(3); see Section 7.12.2; Form 7.10.

7.8.3 Contents of the Minutes of Executive Sessions. The minutes of executive sessions must remain confidential, except as provided in Section 7.9.4, and must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1), (C).
2. "The members of the public body recorded as either present or absent." *Id.* § (B)(2), (C).
3. "A general description of the matters considered." *Id.* § (B)(3), (C); see Section 7.8.2(3). Like the minutes for a public session of the public body, the minutes must summarize the discussion, including the topics addressed, and identify all speakers who participated in the discussion, including members of the public body.
4. An accurate description of all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7). See Sections 7.9.5.4, 7.9.5.5 and 7.9.5.7.
5. A statement of the reasons for emergency consideration of any matters not on the agenda. See A.R.S. § 38-431.02(J); Section 7.8.2(8).
6. Such other information as the public body deems appropriate. For example, the public body might record in its minutes that those present were advised that the information discussed in the session and the session minutes are confidential. See Form 7.11.

"A party who asserts that a public body violated the open meeting laws has the burden of proving that assertion." *Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 205, 76 P.3d 874, 879 (App. 2003). However, Arizona courts have held that once a complainant alleges facts from which a reasonable inference may be

drawn supporting an Open Meeting Law violation, the burden of proof immediately shifts to a public body to prove that an affirmative defense or exception to the Open Meeting Law authorized an allegedly inappropriate executive session. *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 122, 912 P.2d 1345, 1351 (App. 1995); *see also Tanque Verde*, 206 Ariz. at 205, 76 P.3d at 881. The best practice is for public bodies to keep an audio or video recording of the executive session or to transcribe the executive session to ensure that they are prepared to meet their burden of proof in the event a complaint is filed.

7.9 Executive Sessions. A.R.S. Section 38-431.03 contains an exception to the general requirement that all meetings must be open to the public. That exception is for an executive session, which is defined as "a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in [A.R.S.] § 38-431.03." A.R.S. § 38-431(2); *see* Sections 7.9.5.1 - 7.9.5.7.

While the Open Meeting Law does permit executive sessions for discussing certain matters, it does not require that these discussions take place in executive session. If public disclosure of the public body's discussion is not prohibited by any other statutory provision and government interests are not threatened, a public body may choose to conduct all of its discussions in a public setting.

7.9.1 Deciding to Go Into Executive Session. Before a public body may go into an executive session, proper notice must be provided. *See* Section 7.6.7 for a discussion of the notice required for an executive session; *see also* section 7.7.9. Once the public body is satisfied that notice requirements have been met, a majority of the members constituting a quorum must vote in a public meeting to hold the executive session. A.R.S. § 38-431.03(A). The motion must state the ground(s) for the executive session so that the public understands why the public body is entering executive session. For example, a member of the public body may make the following motion: "I move to enter executive session for the purpose of receiving legal advice on [agenda topic]." Generally, the vote will be taken immediately before going into executive session.

7.9.2 Executive Session Requirements. Once the majority of members of a public body votes to hold an executive session, the chairman of the public body should ask the public to leave and to take with them all materials such as briefcases and backpacks to ensure that no recording devices are left in the room. In the alternative, the public body can move to a separate room to conduct the executive session. Only members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its executive session responsibilities may attend the executive session. A.R.S. § 38-431(2). The chairman should remind all present that the business conducted in executive sessions is confidential pursuant to A.R.S. § 38-431.03(C).

7.9.3 Taking Legal Action. In an executive session, the public body may discuss and consider only the specific matters authorized by the statute. These specific authorizations are discussed in Sections 7.9.5.1 – 7.9.5.7. Furthermore, the public body may not take a vote or make a final decision in the executive session, but rather must

reconvene in a public meeting for purposes of taking the binding vote or making final decisions. See A.R.S. § 38-431.03(D). For example, "[a] decision to appeal transcends 'discussion or consultation' and entails a 'commitment' of public funds. Therefore, once [a] Board [has] finished privately discussing the merits of appealing, the open meeting statutes require[] that board members meet in public for the final decision to appeal." *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001). Taking a straw poll or informal or preliminary vote in executive session is unlawful under the Open Meeting Law. See A.R.S. § 38-431.03(D). No motion or vote is taken to adjourn the executive session; the chair is responsible for adjourning the executive session and reconvening the public session.

7.9.4 Confidentiality of Executive Sessions. The minutes of and discussions that take place during an executive session are confidential under A.R.S. § 38-431.03(B) and may not be disclosed to anyone except the following people:

1. Any member of the public body, regardless of whether he or she attended the executive session. A.R.S. § 38-431.03(B)(1); *Picture Rocks Fire Dist. v. Updike*, 145 Ariz. 79, 81, 699 P.2d 1310, 1312 (App. 1985).
2. Any officer, appointee, or employee who was the subject of discussion at an executive session authorized by A.R.S. § 38-431.03(A)(1) may see those portions of the minutes directly pertaining to them. A.R.S. § 38-431.03(B)(2); see Section 7.9.4.
3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.
5. The Auditor General in connection with the lawful performance of its duty to audit the finances or performance of the public body. A.R.S. § 38-431.03(B)(3); Ariz. Att'y Gen. Op. 179-130.
6. The Attorney General or County Attorney when investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4).
7. The court, for purposes of a confidential inspection where an open meeting violation has been alleged. A.R.S. § 38-431.07(C).

The Open Meeting Law requires a public body to advise all persons attending an executive session that such minutes and information are confidential. A.R.S. § 38-431.03(C). Members of a public body and others attending the executive session must ensure that the information remains confidential. In addition to violating the Open Meeting Law, criminal charges may arise from a release of confidential information

from executive session. “A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.” A.R.S. § 38-504(B). The law designates a knowing or intentional violation of this provision as a Class 6 felony and a reckless or negligent violation as a Class 1 misdemeanor. A.R.S. § 38-510(A). Either type of violation could lead to criminal penalties in addition to forfeiture of office or employment. A.R.S. § 38-510(B).

7.9.5 Authorized Executive Sessions. The Open Meeting Law identifies seven specific instances in which a public body may discuss matters in an executive session. A.R.S. § 38-431.03(A); see Sections 7.9.5.1 – 7.9.5.7. In addition, the Legislature may create specific authority for executive sessions in other statutes. See A.R.S. § 38-797.03(B) (authorizing the Arizona State Retirement System Board to hold hearings or to consider administrative law judge decisions involving long term disability benefits in executive session).

Arizona courts have strictly construed the authorized executive session topics because their legislative charge is to "promote openness in government, not to expand exceptions which could be used to obviate the rule." See *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 124, 912 P.2d 1345, 1353 (App. 1995). Thus, unless the proposed discussion plainly falls within one of the Open Meeting Law's executive session topics or is specifically authorized by the public body's enabling legislation, discussion should take place only in a public meeting.

7.9.5.1 Personnel Matters. The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body may take place in an executive session. A.R.S. § 38-431.03(A)(1); *City of Flagstaff v. Bleeker*, 123 Ariz. 436, 438 n.2, 600 P.2d 49, 51 n.2 (App. 1979). This authorization for an executive session applies only to discussions concerning specific officers, appointees, and employees. This provision permits discussion in executive session of applicants for employment or appointment even though the applicants may not be currently employed by the public body. See Ariz. Att'y Gen. Op. 183-050.

If the public body proposes to discuss a personnel matter in an executive session, and the affected officer, appointee, or employee requests that the discussion occur in a public meeting instead, then these discussions must be conducted in a public meeting and not in an executive session. A.R.S. § 38-431.03(A)(1). Accordingly, the Open Meeting Law requires that an officer, appointee, or employee who is the subject of the discussion in executive session must be given advance written notice of the proposed executive session. *Id.* The notice given to the officer, appointee, or employee must describe the matters to be considered by the public body in a manner sufficient to enable the employee to make the initial decision whether to have the matters discussed in a public meeting. *Id.* In addition, the written notice must be given sufficiently in advance of the proposed meeting, and in no event less than twenty-four hours prior to the meeting, to enable the employee to make the

foregoing determination and to prepare an appropriate request for a public meeting. *Id.*; see Ariz. Att'y Gen. Op. 179-49. See also Form 7.13. There is no emergency exception to the requirement that an affected officer, appointee, or employee receive at least twenty-four hours' notice. See Ariz. Att'y Gen. Op. 190-19. However, the public body can discuss personnel matters in a public meeting with less than twenty-four hours' notice if an actual emergency exists. A.R.S. § 38-431.02(D). See Sections 7.6.5 and 7.7.9. There is no requirement to provide advance written notice directly to the affected officer, appointee, or employee when the public body proposes to discuss a personnel matter in a public session and not in an executive session.

Although the public body may *permit* the public officer, appointee, or employee who is the subject of discussion to attend the executive session, the Open Meeting Law does not specify whether that person has the right to attend. Whether he attends or not, the public body must make the minutes of the executive session available to the public officer, appointee, or employee who was the subject of discussion in the executive session. A.R.S. § 38-431.03(B)(2).

A public body may consider several persons for appointment to a position or consider several employees for possible disciplinary action. In such cases, the public body may consider the matter in executive session provided all those being considered are given the required notice. If some, but not all of those given notice request a public meeting, the public body has two options: the public body may limit the public discussion to those persons filing the request and discuss the remaining persons in an executive session; or, because the Open Meeting Law does not require the public body to discuss personnel matters in executive session, the public body may discuss the entire matter in a public meeting.

Public bodies should take care to ensure they limit the scope of executive sessions for personnel discussions to true personnel matters. The Attorney General opined that the Open Meeting Law prohibits public bodies from conducting in executive sessions lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation. Only the actual evaluation - discussion or consideration of the performance of the employee - may take place in an executive session. See Ariz. Att'y Gen. Op. 196-012. A public body wishing to discuss or consider an employee's evaluation in executive session, pursuant to A.R.S. § 38-431.03(A)(1), should adopt a bifurcated process permitting the public body to gather information about public programs at a public meeting, while allowing the public body to enter executive session to discuss or consider the actual evaluation. Ariz. Att'y Gen. Op. 196-012.

Similarly, a public body may not discuss a class of persons in executive session under the Personnel Matters provision. For instance, a public body may not use this executive session provision to discuss a potential reduction in force. Each employee who will be discussed in executive session must get the notice as required by A.R.S. § 38-431.03(A)(1).

7.9.5.2 Confidential Records. An executive session may be held when the public body considers or discusses "records exempt by law from public inspection." A.R.S. § 38-431.03(A)(2). This specifically includes situations in which the public body receives or discusses "information or testimony that is specifically required to be maintained as confidential by state or federal law." *Id.* This provision allows the use of an executive session whenever the public body intends to discuss or consider matters contained in records that are confidential by law. See Ariz. Att'y Gen. Ops. 190-058, 187-131. However, when confidential matters can be adequately safeguarded, the discussion may take place during a public meeting. *Cf.* Ariz. Att'y Gen. Op. 187-038 (medical records).

The record under consideration need not be expressly made confidential by statute, but rather may fall within the category of confidential records discussed in Chapter 6 of this handbook. For example, to preserve confidentiality, preliminary audit reports of state agencies prepared by the Auditor General are confidential and should be discussed by the public body in executive session. Ariz. Att'y Gen. Op. 180-035. Similarly, complaints against licensees investigated by a public body may be discussed in executive session. Ariz. Att'y Gen. Op. 183-006. In 2000, the Legislature revised the statute to allow public bodies to take testimony in executive sessions in certain situations. Public bodies should ensure that state or federal law requires that the public body maintain confidentiality of the information it receives before convening an executive session under A.R.S. § 38-431.03(A)(2). Written materials, however, do not become confidential merely because they are discussed in executive session.

7.9.5.3 Legal Advice. A public body may also go into executive session for the purposes of "discussion or consultation for legal advice with the attorney or attorneys of the public body." A.R.S. § 38-431.03(A)(3). For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. *Id.* For purposes of this discussion, the "attorney for the public body" means a licensed attorney representing the public body, whether that attorney is a full-time employee of the body, the attorney general or county, city, or town attorney responsible for representing the public body, an attorney hired on contract, or an attorney provided by an insurance carrier to represent the public body.

This provision authorizes consultations between a public body and its attorney. Accordingly, the only persons allowed to attend this executive session are the members of the public body, the public body's attorney, and those employees and agents of both whose presence is necessary to obtain the legal advice. See A.R.S. § 38-431(2). An attorney may attend in person or through other telecommunications technology, such as by telephone or video-conferencing. The mere presence of an attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. *City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 485, 803 P.2d 891, 896 (1990). This provision can only be used for the purpose of obtaining "legal advice," which involves the exchange of communications between lawyer and client. Once the public body obtains the legal advice, the public body must go back into public session unless another executive

session provision applies and has been identified in the notice and motion for executive session. See *Id.* at 486, 803 P.2d at 897. Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.

7.9.5.4 Litigation, Contract Negotiations, and Settlement Discussions. A public body may hold an executive session for the purpose of "[d]iscussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation." A.R.S. § 38-431.03(A)(4). This provision allows consideration and instruction only—it does *not* allow a public body to conduct contract negotiations or settlement discussions in an executive session.

This provision is unique in that it permits a public body to give its attorneys instructions on how they should proceed in contract negotiations, pending or contemplated litigation involving the public body, and settlement discussions. In these limited situations, the public body must be able to discuss and arrive at some consensus on its position before it instructs its legal counsel. Executive session minutes must contain an accurate description of all instructions given. A.R.S. § 38-431.01(C). For example, the public body might authorize its attorney to settle a lawsuit on the most favorable terms possible up to a certain amount. Of course, if the attorney were to obtain an agreed settlement, the public body must formally approve it at a public meeting.

If legal action is necessary by the public body before its representative can take the directed action, the public body must vote on the matter in public session and cannot do so in executive session. See *Johnson v. Tempe Elementary School Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2000) (concluding that Board was required to vote in public session to authorize attorney to file notice of appeal). In order to preserve the confidentiality afforded by the Open Meeting Law, the best practice is for the public body, upon return to the open session, to vote to authorize its attorney to “proceed as instructed in the executive session.” The public body should provide more information when it is possible to do so without risking the confidentiality of the matter (such as instructing an attorney to file an appeal). For example, the public body could move for its attorney “to file a notice of appeal on the grounds specified in executive session” or “to make an offer for settlement of the claim in Case X within the parameters specified in executive session.” The public body should consult with legal counsel to determine the specificity required in such motions.

Like the provision that allows legal advice to be given in executive session, this provision requires that the attorney of the public body be present at the executive session. The attorney may attend in person or through other telecommunications technology, such as by telephone or video-conferencing. Similarly, the discussion in Section 7.9.5.3 of the definition of “attorney for the public body” also applies to this Section.

7.9.5.5 Discussions with Designated Representatives Regarding Salary Negotiations. A public body may hold an executive session for the purpose of "[d]iscussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body." A.R.S. § 38-431.03(A)(5). This provision permits a public body, in executive session, to consult and discuss with its representatives its position on negotiating salaries or compensation paid in the form of fringe benefits and to instruct representatives on how they should deal with the employee organizations. It does not authorize an executive session for purposes of meeting with the employees' representative. If the public body or any standing, special, or advisory committee or subcommittee of the public body conducts the negotiations, those negotiations must be conducted in a public meeting.

This provision also allows the public body to "instruct" its representatives. The discussion in Section 7.9.5.4 of the practice of confirming instructions in public session and the minute-taking requirements applies with equal force to this Section.

7.9.5.6 International, Interstate, and Tribal Negotiations. A public body may go into executive session for the purpose of "[d]iscussion, consultation, or consideration for international and interstate negotiations." A.R.S. § 38-431.03(A)(6). This provision does not apply to meetings at which the public body receives recommendations from representatives of federal agencies. Ariz. Att'y Gen. Op. 180-159.

This provision also permits a city or town, or its designated representatives, to enter into executive session with "members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town." A.R.S. § 38-431.03(A)(6). This is the only type of executive session in which negotiations with another party can take place.

7.9.5.7 Purchase, Sale or Lease of Real Property. A public body may meet in executive session to discuss and consult with its representatives concerning negotiations for the purchase, sale, or lease of real property. A.R.S. § 38-431.03(A)(7). This provision does not authorize an executive session for the purpose of meeting with representatives of the party with whom the public body is negotiating. For example, a school district violates open meeting laws by choosing a site for a proposed high school in executive session. *Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 208, 76 P.3d 874, 882 (App. 2003). This provision permits the public body to instruct its representatives regarding the purchase, sale or lease of real property. For example, the public body can authorize its representative to negotiate up to a certain amount. Of course, the final contract must be approved by the public body in a public meeting.

This provision also allows the public body to "instruct" its representatives. The discussion in Section 7.9.5.4 of the practice of confirming instructions in public session and the minute-taking requirements also applies to this Section.

7.10 Public Participation and Access to Meetings.

7.10.1 Public Participation. While the public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings, A.R.S. § 38-431.01(A), the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body. Ariz. Att'y Gen. Op. 78-1. Other statutes may, however, require public participation or public hearings. For example, before promulgating rules, state agencies must permit public participation in the rule making process, including the opportunity to present oral or written statements on the proposed rule. See Chapter 11. See *also* Section 7.7.7 for a discussion of the authorization (but not requirement) for public bodies to use an open call to the public.

The Open Meeting Law does not prevent a public body from requiring persons who intend to speak at the meeting to sign a register so as to permit the public body to comply with the minute-taking requirements. See Section 7.8.2(6).

7.10.2 Public Access. The public body must provide public access to public meetings. See A.R.S. § 38-431.01(A). This requirement is not met if the public body uses any procedure or device that obstructs or inhibits public attendance at public meetings, such as holding the meeting in a geographically isolated location, in a room too small to accommodate the reasonably anticipated number of observers, in a place to which the public does not have access, such as private clubs, or at an unreasonable time. Relatedly, the public body must ensure that the public can observe and listen to the full contours of public meetings. For example, a public meeting in which the public cannot hear discussions by members of the public body because of the low volume of the microphone or speaker systems would likely violate the Open Meeting Law.

"All or any part of a public meeting . . . may be recorded by any person in attendance by means of a tape recorder or camera or other means of sonic reproduction." A.R.S. § 38-431.01(F). A public body may prohibit or restrict such recordings only if they actively interfere with the conduct of the meeting. *Id.*

In addition to complying with the Open Meeting Law, the notice and accommodations should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213. See Section 15.27; see *also* section 7.6.3.2 (notice requirements relating to reasonable accommodations).

7.10.3 Remote Conferencing. If members of a public body are unable to be present in person at a public meeting, they may participate by telephone or video or internet conference if the practice is not prohibited by statutes applicable to meetings of the public body. Ariz. Att'y Gen. Ops. I08-008, I91-033, I83-135. In addition, nothing prohibits the public body from allowing people to attend meetings or to address the public body by telephone or through other telecommunications technology. See A.R.S. § 38-431(4). In order to comply with the requirements of the Open Meeting Law, the members of the public

body and the public must be able to hear the member of the public body that is attending by telephone or other technological device. The public body must also ensure that the members attending by telephone or other technological device can hear any discussion from the public body and other persons making statements to the body.

A public body should consider the following guidelines to minimize any difficulties arising from remote conferencing.

1. Notify the public body and the public by including a statement on the notice and the agenda that one or more members of the public body may participate by telephonic, video or internet communications. In the appropriate notice, insert the following after the first sentence: "Members of the [name of public body] may attend either in person or by telephone, video or internet conferencing."
2. Ensure that the public meeting place where the public body normally meets has facilities that permit the public to observe and hear all telephone, video or online communications.
3. Develop procedures to clearly identify members that are participating by telephonic, video or internet communications.
4. Identify in the minutes of the meeting the members who participated by telephonic or video communications.

7.11 Quorum. Arizona statutes generally define a quorum as a majority of the members of a board or commission. A.R.S. § 1-216(B). In applying the Open Meeting Law, this definition applies in the absence of a more specific definition.

7.12 Ratification. A public body may ratify action previously taken in violation of the Open Meeting Law. See A.R.S. § 38-431.05(B). Ratification is appropriate when the public body needs to retroactively validate a prior act in order to preserve the earlier effective date of the action. For example, a public body may be required by law to approve its budget by a certain date. If the public body discovered after the statutory deadline that its earlier approval violated the Open Meeting Law, it could face serious legal problems. Even if the body met quickly to properly approve the budget, the approval would not have been made prior to the statutory deadline. Accordingly, the 1982 amendments permit the public body to meet and approve retroactively the action previously taken—that is, to ratify its prior action.

7.12.1 Generally.

Ratification must take place “within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.” A.R.S. § 38-431.05(B)(1). This can be triggered in different ways. A judicial determination

that the public body took legal action in violation of public meeting laws triggers the thirty-day period. *Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 208-210, 76 P.3d 874, 882-884 (App. 2003). However, it is not triggered by letters from attorneys notifying the board of their intent to challenge the legal action or by filing a lawsuit. *Id.* at 209, 76 P.3d at 883.

Ratification merely validates the prior action; it does not eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees. Moreover, ratification under the Open Meeting Law may well fail to resolve other notice failure. For example, ratification under the Open Meeting Law may not resolve the specific notice requirements of a zoning or taxation statute.

A public body can take the same legal action at a subsequent properly noticed public meeting without following the ratification procedure, but the action will not have the earlier effective date. See *Cooper v. Arizona Western Coll. Dist. Governing Bd.*, 125 Ariz. 463, 468-469, 610 P.2d 465, 470-71 (App. 1980) (“We find no provision in the Arizona statutes relating to public meetings which precludes a public body from adopting at a subsequent public meeting action which was legally ineffective from a previous meeting of the public body.”)

7.12.2 Procedure for Ratification. The Open Meeting Law provides the following detailed procedure for ratification under A.R.S. § 38-431.05(B):

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.
2. Ratification must take place within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law, see Sections 7.6 and 7.7, must include (a) a description of the action to be ratified, (b) a clear statement that the public body proposes to ratify a prior action, and (c) information on how the public may obtain a written description of the action to be ratified. See Form 7.12.
4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by members of the public body related to the action to be ratified.
5. The description required under paragraph 4 must be included as part of the minutes of the meeting at which the decision to ratify was made.

6. The public notice, agenda, and written description discussed in paragraphs 3 and 4 must be made available to the public at least seventy-two hours prior to the public meeting.

7.13 Sanctions for Violations of the Open Meeting Law.

7.13.1 Nullification. All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law is null and void unless subsequently ratified. A.R.S. § 38-431.05(A). The procedures for ratification are described in Section 7.12.2. However, the Open Meeting Law does not render null and void all legal action taken at a meeting at which a violation occurs with respect to a single improperly noticed agenda item. Ariz. Att'y Gen. Op. I08-001.

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. *Karol v. Bd. Of Educ. Trustees*, 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979). In *Karol*, the court held that "a technical violation having no demonstrated prejudicial effect on the complaining party does not nullify all the business in a public meeting when to conclude otherwise would be inequitable, so long as the meeting complies with the intent of the legislature." *Id.* at 98, 593 P.2d at 652. This decision imposes a substantial compliance test and requires a weighing of the equities before a court will declare an action void. The decision, however, preceded the 1982 amendment to the Open Meeting Law which specifically authorized a procedure for ratification. It remains to be seen whether this change will cause the court to follow the literal language of the Open Meeting Law. Nevertheless, serious consequences flow from having an action of a public body declared void, and the public body should take every precaution to avoid even technical violations of the Open Meeting Law.

In some cases, the public body may have discussed a matter at an unlawful meeting, but thereafter met in a lawful open meeting at which it took a formal vote as its "final action." The Arizona Court of Appeals has held that the subsequent final action taken at a lawful meeting is not void. *Cooper v. Arizona Western Coll. Dist. Governing Bd.*, 125 Ariz. 463, 468-469, 610 P.2d 465, 470-71 (App. 1980); *Valencia v. Cota*, 126 Ariz. 555, 617 P.2d 63 (App. 1980). The public body taking the final action at the subsequent lawful meeting should make available at that time the substance of all discussions that took place at the earlier unlawful meeting. If the public body wishes to preserve the effective date of the earlier action rather than simply redecide the matter, it must go through the ratification process. See Section 7.12.

7.13.2 Investigation and Enforcement. The 2000 Legislature enacted substantial revisions to the Open Meeting Law, including extensive changes to the investigation and enforcement provisions. The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations and enforce the Open Meeting Law. A.R.S. § 38-431.06.

The Open Meeting Law specifically provides that the Attorney General and County Attorneys shall have access to executive session minutes when they are investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4). The Open Meeting Law also provides that disclosure of executive session information (such as disclosure to the Attorney General) does not constitute a waiver of the attorney-client privilege and directs courts reviewing executive session information to protect privileged information. *Id.* § (F).

The investigative authority of the Attorney General and County Attorneys was strengthened by the 2000 Legislature. The Attorney General and County Attorneys may issue written investigative demands to any person, administer oaths or affirmations to any person for the purpose of taking testimony, conduct examinations under oath, examine accounts, books, computers, documents, minutes, papers and recordings, and require people to file written statements, under oath, of all the facts and circumstances requested by the Attorney General or County Attorney. A.R.S. § 38-431.06(B). If a person fails to comply with a civil investigative demand, the Attorney General or County Attorney may seek enforcement of the demand in Superior Court.

“Any person affected by an alleged violation of [the Open Meeting Law], the Attorney General or the County Attorney for the county in which the alleged violation ... occurred,” may file suit in superior court against a public body as a whole to require compliance with or prevent violations of the Open Meeting Law or to determine whether the law is applicable to certain matters or legal actions of the public body. A.R.S. § 38-431.07.

Additionally, when the provisions of the Open Meeting Law have been violated, a court of competent jurisdiction may issue a writ of mandamus requiring a meeting to be open to the public. A.R.S. § 38-431.04. A writ of mandamus is an order of the court compelling a public officer to comply with certain mandatory responsibilities imposed by law.

In 2007, in an effort to increase government awareness and provide the citizens of Arizona an effective and efficient means to get answers and resolve public access disputes, legislation expanded the Arizona Ombudsman-Citizens' Aide Office to provide free services to citizens and public officials regarding public access issues. The duties of the Ombudsman include: preparing materials on public access laws, training public officials, coaching, assisting and educating citizens, investigating complaints, requesting testimony or evidence, conducting hearings, making recommendations, and reporting misconduct. A.R.S. § 41-1376.01.

7.13.3 Civil Penalties. In addition to suits brought in order to require compliance with, prevent violations of, or determine the applicability of the Open Meeting Law, “[t]he attorney general may also commence a suit . . . against an individual member of a public body for a knowing violation of [the Open Meeting Law].” A.R.S. § 38-431.07(A). In such a suit, the court may impose a civil penalty not exceeding five hundred dollars for a second offense, and not exceeding two thousand five hundred dollars for third or subsequent offenses against each person who knowingly violates the Open Meeting Law. *Id.* This

penalty can also be assessed against a person who knowingly aids, agrees to aid or attempts to aid in violating the Open Meeting Law. *Id.* This penalty is assessed against the individual and not the public body, and the public body may not pay the penalty on behalf of, or otherwise reimburse, the person assessed. *Id.* If a "person who might otherwise be liable under [the Open Meeting Law] objected to the action of the public body and the objection is noted on a public record, the court may choose not to impose a civil penalty on that person." *Id.*

7.13.4 Attorney's Fees. The court may also order payment of reasonable attorney's fees to a successful plaintiff in an enforcement action brought under the Open Meeting Law. A.R.S. § 38-431.07(A). Normally those fees will be paid by the state or political subdivision of which the public body is a part or to which it reports. *Id.* However, if the court determines that a public officer knowingly violated the Open Meeting Law "with intent to deprive the public of information," the court must assess all of the costs and attorney's fees awarded to the plaintiff against that public officer or the person who knowingly aided, agreed to aid or attempted to aid the public officer in violating the Open Meeting Law. *Id.* As in the case of an award of civil penalties, the public body may not pay such an award of attorney's fees assessed against the public officer individually. *See id.*

7.13.5 Expenditure for Legal Services by Public Body Relating to the Open Meeting Law. A public body may not retain counsel or expend monies for legal services to defend an action brought under the Open Meeting Law unless the public body has legal authority to make such an expenditure pursuant to other provisions of law and it approves the expenditure at a properly noticed open meeting prior to incurring the obligation. A.R.S. § 38-431.07(B).

7.13.6 Removal From Office. If the court determines that a public officer knowingly violated the Open Meeting Law "with intent to deprive the public of information," the court may remove the public officer from office. A.R.S. § 38-431.07(A).

Form 7.1

Disclosure Statement

Section 7.6.3.1

**STATEMENT OF LOCATIONS WHERE ALL NOTICES OF THE MEETINGS
OF THE [NAME OF PUBLIC BODY] WILL BE POSTED**

Pursuant to A.R.S. § 38-431.02, the [name of public body] hereby states that all notices of the meetings of the [name of public body] and any of its committees and subcommittees will be posted [identify the location where notices will be posted and include the hours during which such locations are open to the public, for example, "in the lobby of the State Capitol located at 1700 West Washington, Phoenix, Arizona, and at the press room of the State Senate Building, 1700 West Washington, Phoenix, Arizona. Both locations are open to the public Monday through Friday from 8:00 a.m. to 5:00 p.m. except legal holidays."] Such notices will indicate the date, time, and place of the meeting and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.2

Notice of Public Meeting of a Public Body

Sections 7.6.3, 7.7.4, 7.10.1

**NOTICE OF PUBLIC MEETING OF THE
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location].

The agenda for the meeting is as follows:

[List the specific matters to be discussed, considered, or decided. See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20____.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.3

Notice of Public Meeting of a Subcommittee or Advisory Committee of a Public Body

Sections 7.6.3, 7.10.1

NOTICE OF MEETING OF THE [NAME OF SUBCOMMITTEE OR ADVISORY COMMITTEE] OF THE [NAME OF PUBLIC BODY]

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of committee] of the [name of public body] and to the general public that the [name of committee] of the [name of public body] will hold a meeting open to the public on the [date, time, and exact location].

The agenda for the meeting is as follows:

[List the specific matters to be discussed, considered or decided. See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.4

Notice of Regular Meetings of a Public Body

Sections 7.6.3, 7.6.6, 7.7.4, and 7.10.1

**NOTICE OF REGULAR MEETINGS OF THE
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02(F), notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold regular meetings on the [specific day of month] of each month during the year [year]. The meetings will begin at [time] and will be held at [exact location].

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this _____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.5

Notice of Meeting and Possible Executive Session of a Public Body

Sections 7.6.8 and 7.10.1

**NOTICE OF MEETING AND POSSIBLE EXECUTIVE SESSION OF THE
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location] for the purpose of deciding whether to go into executive session. If authorized by a majority vote of the [name of public body], the executive session will be held immediately after the vote and will not be open to the public.

The agenda for the meeting is as follows:

[Include a general description of the matters to be discussed or considered, but exclude information that would defeat the purpose of the executive session. See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), paragraph [list applicable provision].

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.6

Notice of Combined Public Meeting and Executive Session

Sections 7.6.8, 7.7.4, and 7.10.1

**NOTICE OF COMBINED PUBLIC MEETING AND EXECUTIVE SESSION OF
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location]. As indicated in the agenda, pursuant to A.R.S. § 38-431.03(A) [specific paragraph that justifies the executive session], the [name of public body] may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows:

[List the specific matter to be discussed, considered, or decided. See Form 7.7 (Sample Notice and Agenda). Identify those matters that may be discussed or considered in executive session and identify the paragraph of A.R.S. § 38 -431.03(A) authorizing the executive session, but exclude information that would defeat the purpose of the executive session.]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.7

Sample Notice and Agenda of Public Meeting and Executive Session

Sections 7.6.4, 7.6.8, 7.7.2, 7.7.4, and 7.10.1

NOTICE AND AGENDA OF MEETING OF THE ARIZONA COMMISSION ON THE ENVIRONMENT

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Arizona Commission on the Environment and to the general public that the Arizona Commission on the Environment will hold a meeting open to the public on January 21, 2000, beginning at 8:30 a.m. in Room 201, Health Building, 1740 West Adams, Phoenix, Arizona. As indicated in the following agenda, the Arizona Commission on the Environment may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows:

- I. Call to Order. (Chairman Smith)
- II. Approval of Minutes of October 19, 1999 Meeting.
- III. Committee Reports. (Oral reports of the following committees and discussion thereon.)
 1. Computer Committee. Report by the chair of the Commission's Advisory Committee on proposals for acquiring a new computer system for the Commission.
- IV. Personnel.
 1. Consideration of applicants for Director of the Commission. The Commission may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(1). The names of the applicants may be obtained by contacting the Commission's Executive Secretary.
 2. Selection of Director of the Commission. The Commission may defer a decision on this matter to a later date.
- V. Litigation.
 1. *State v. Acme Polluters*. Discussion and decision concerning possible settlement. The Commission may vote to discuss this matter with the Commission's attorneys in executive session pursuant to

A.R.S. § 38-431.03(A)(3) and (4). The Commission may decide the matter in the public meeting or defer decision to a later date.

2. Instituting Litigation. Discussion with and instruction to the Commission's attorneys concerning the filing of an enforcement action against The Brown Corporation. The Commission may discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(2), (3), and (4). The Commission may decide the matter in the public meeting or defer decision to a later date.

VI. Consent Agenda.

Approval of routine warrants, purchase orders, travel claims, employee leave and transfer requests, and employee resignations. (Documentation concerning the matters on the consent agenda may be reviewed at the Commission's office.) Any matter on the Consent Agenda will be removed from the Consent Agenda and discussed as a regular agenda item upon the request of any Commission member.

1. Approval of purchase order numbers 1204, 1205, and 1206 for purchase of computer equipment.
2. Approval of travel claims for employees John Q. Smith and Mary M. McGee.
3. Approval of resignation of Daniel Warren and resolution to thank Daniel Warren for ten years of service.

VII. Call to the Public.

This is the time for the public to comment. Members of the Board may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to directing staff to study the matter or scheduling the matter for further consideration and decision at a later date.

VIII. Summary of Current Events.

The chief administrator, presiding officer or a member of the board may present a brief summary of current events pursuant to A.R.S. § 38-431.02(K). The Board will not discuss or take action on any current event summary.

IX. Future Meeting Dates and Items for Future Agendas.

The Board may discuss future dates for meetings and direct staff to place matters on future agendas.

A copy of the agenda background material provided to Commission members (with the exception of material relating to possible executive sessions) is available for

public inspection at the Commission's office, Room 402, Health Building, 1740 West Adams, Phoenix, Arizona.

Dated this 7th day of January, 2000.

ARIZONA COMMISSION ON THE ENVIRONMENT

Chris Jones
Executive Secretary

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.8

Certification of Posting of Notice

Section 7.6.9

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the attached notice was duly posted at [place] on [date and time] in accordance with the statement filed by the [name of public body].

Dated this ____ day of _____, 20__.

[name and title of person signing the certificate]

Form 7.9

Special Notice of Emergency Meeting

Section 7.7.9

**SPECIAL NOTICE OF AN EMERGENCY MEETING OF
[NAME OF PUBLIC BODY] HELD [DATE]**

Pursuant to A.R.S. § 38-431.02(D), notice is hereby given that an emergency session of the [name of public body] was held on [date, time, and exact location].

At the emergency session the [name of public body] [describe the specific matters discussed, considered, or decided, or in the case of matters considered in an emergency executive session, a general description of the matters considered, provided that no information is included that would defeat the purpose of the executive session].

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.10

Minutes of Public Meeting

Sections 7.8.1 and 7.8.2

**MINUTES OF PUBLIC MEETING OF THE
[NAME OF PUBLIC BODY] OF MEETING HELD [DATE]**

A public meeting of the [name of public body] was convened on [date, time, and exact location]. Present at the meeting were the following members of the [name of public body]: [names of members present]. Absent were: [names of members absent]. The following matters were discussed, considered, and decided at the meeting:

1. [Generally describe all matters discussed or considered by the public body.]
2. [Describe accurately all legal actions proposed, discussed, or taken, the names of persons who proposed each motion, and a record of how each member voted].
3. [Identify each person making statements or presenting material to the public body, making specific reference to the legal action about which they made statements or presented material.]
4. [Other required information. See Section 7.8.2(7), (8), (9).]

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.11

Minutes of Executive Session

Sections 7.8.1, 7.8.3

**MINUTES OF EXECUTIVE SESSION OF THE
[NAME OF PUBLIC BODY] HELD [DATE]**

An executive session of the [name of public body] was convened on [date, time, and exact location]. The [name of public body] voted to go into executive session at a public meeting on [date, time, and exact location]. Present at the executive session were the following members of the [name of public body]: [names of members present]. Absent were: [names of members absent]. Also attending the executive session were: [names of those present including the reasons for their presence, for example, attorney for the public body, etc.]

The following matters were discussed and considered at the meeting:

1. [Generally describe the matters discussed or considered by the public body.]
2. [Describe all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7).]
3. [If the executive session is held as an emergency session, include the statement of reasons for the emergency consideration. See Section 7.8.2(7).]
4. [Include such other information as the public body deems appropriate, including information necessary to establish that executive session was proper and appropriate. See Section 7.8.3(5).]

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.12

Notice of Action to be Ratified

Sections 7.6.4, 7.10.1, and 7.12.2

**NOTICE OF PUBLIC MEETING OF THE [NAME OF PUBLIC BODY]
FOR THE PURPOSE OF RATIFYING PAST ACTION TAKEN
IN VIOLATION OF OPEN MEETING LAW**

Pursuant to A.R.S. § 38-431.05, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location].

The purpose of the meeting is to ratify an action of the [name of public body] that may have been taken in violation of the Open Meeting Law. This action involved:

[Describe the action.]

The public may obtain a detailed written description of the action to be ratified, and all deliberations, consultations, and decisions by members of the public body that preceded and relate to this action to be ratified at [identify the location and include hours] at least 72 hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.13

Employee Notice of Executive Session

Section 7.9.4

[DATE]

[Name and Address of Officer
or Employee who is the subject
of discussion at the executive
session]

Dear [Name of employee]:

This is to advise you that the [name of public body] will meet in executive session at its next meeting on [date, time, and exact location] to discuss [describe nature of matters to be discussed or considered]. You may request that the discussion take place during the [name of public body's] public meeting rather than in executive session, by contacting the undersigned not later than [date and time by which notification must be given*].

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Very truly yours,

[authorized signature]

* Since the public body must post its notice of either a public meeting or an executive session at least twenty-four hours before the meeting, the deadline for the employee to exercise his or her right to demand a public meeting must be more than twenty-four hours before the meeting.