

Definition per Wikipedia – note comment regarding minutes:

## Executive session

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An executive session is a term for any block within an otherwise open meeting (often of a [board of directors](#) or other [deliberative assembly](#)) in which [minutes](#) are taken separately, outsiders are not present, and the contents of the discussion are treated as [confidential](#) (see *in camera*).<sup>[1]</sup> In a [deliberative assembly](#), an executive session has come to mean that the proceedings are secret and members could be punished for violating the secrecy.<sup>[2]</sup>

Depending on the organization or governmental body involved, business that is conducted in executive session could include legal issues, discussion on contracts (such as to purchase land, or offer tax incentives to a corporation moving to an area), and personnel issues (such as hiring and firing).<sup>[3][4][5]</sup>

**Please note the following Oregon Law stating minutes shall be taken of all meetings of the Board of directors. This was updated in May of last year.**

<https://www.oregonlaws.org/ors/65.771>

## Corporate records

- [Text](#)
- News
- Annotations
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This section is amended  
Effective May 24, 2019

[Chapter 174 Oregon Laws 2019 \(SB 360\)](#)

**Relating to nonprofit corporations; creating new provisions;** amending ORS 65.001, 65.004, 65.014, 65.017, 65.021, 65.024, 65.027, 65.031, 65.034, 65.038, 65.040, 65.047, 65.057, 65.061, 65.064, 65.074, 65.094, 65.097, 65.101, 65.114, 65.117, 65.131, 65.134, 65.137, 65.144, 65.147, 65.154, 65.167, 65.171, 65.174, 65.177, 65.204, 65.207, 65.211, 65.214, 65.217, 65.222, 65.224, 65.227, 65.231, 65.241, 65.244, 65.247, 65.251, 65.301, 65.311, 65.314, 65.317, 65.324, 65.327, 65.331, 65.334, 65.335, 65.337, 65.341, 65.344, 65.347, 65.351, 65.354, 65.357, 65.361, 65.364, 65.371, 65.377, 65.381, 65.431, 65.434, 65.437, 65.441, 65.447, 65.451, 65.454, 65.461, 65.464, 65.467, 65.484, 65.487, 65.491, 65.494, 65.534, 65.554, 65.621, 65.624, 65.627, 65.631, 65.634,

65.637, 65.644, 65.661, 65.664, 65.667, 65.671, 65.707, 65.711, 65.717, 65.724, 65.727, 65.734, 65.751, 65.757, 65.771, 65.774, 65.782, 65.787, 65.990 and 271.330; repealing ORS 65.501; and declaring an emergency.

(1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all corporate action taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records for inspection:

(a) Articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

(e) Written communications required by this chapter and those regarding general membership matters made to members within the past three years;

(f) A list of the names and business or home addresses of its current directors and officers;

(g) The last three annual financial statements, if any. The statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, including a balance sheet and statement of operations, if any, for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis;

(h) The last three accountant's reports if annual financial statements are reported upon by a public accountant; and

(i) The most recent annual report delivered to the Secretary of State under ORS [65.787 \(Annual report\)](#). [1989 c.1010 §164]

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 65—Nonprofit Corporations*, [https://www.-oregonlegislature.gov/bills\\_laws/ors/ors065.html](https://www.-oregonlegislature.gov/bills_laws/ors/ors065.html) (2017) (last accessed Mar. 30, 2018).

<sup>2</sup> OregonLaws.org contains the contents of Volume 21 of the ORS, inserted alongside the pertinent statutes. See the [preface to the ORS Annotations](#) for more information.

<sup>3</sup> OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

### **Board Basics: What a non-profit board should know about meeting in executive session**

DC Bar Pro Bono Center

Pages 8 thru 14 pertain to minutes. In this section it is noted the IRS form 990 requires a yes or no check box to disclose whether we keep minutes of our board meetings. At this time would would be required to say “no”.

[https://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/1AA62DCE-BEFE-4968-A6BB-42D07A521987/executive-sessions-webinar-slides-\(2-15-2017\)-final-\(2\).pdf](https://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/1AA62DCE-BEFE-4968-A6BB-42D07A521987/executive-sessions-webinar-slides-(2-15-2017)-final-(2).pdf)

Please see the last paragraph in the following document regarding minutes.

<https://blueavocado.org/board-of-directors/should-the-board-hold-executive-sessions/?highlight=Executive%20sessions%20and%20executive%20directors>

# Should the Board Hold Executive Sessions?

by [Jan Masaoka](#) on August 1, 2008

Categories: [Board of Directors](#) | [Leadership and Management](#) Topic Tags: [Strategic Planning](#)

Nonprofit boards are often criticized for a lack of vigor, being subservient to their executive directors, and for weak evaluation of their chief executive. The need for frank and informal discussion about staff performance, and the importance of the board developing a sense of itself, are just two reasons why many boards hold executive sessions.



An executive session is a meeting (or part of a meeting) of the board without staff present. In some cases an attorney or other advisor may be present, but not staff. Executive directors are often sensitive to the idea of executive sessions because they think that important matters necessitate input from them (and they just don't like the idea—period!).

Because one of the board's chief responsibilities is to assess the performance of the agency and its executive director, boards often need to discuss sensitive issues without staff present. Some instances needing candor and confidentiality:

- Annual meeting with the auditor
- Evaluation of the executive director, and establishing the executive director's salary
- Conflicts between two board members, or serious criticism of a board member by another
- Investigation into concerns about the executive director, or a report from a management consultant
- Review of salary schedule, compensation policy, etc.

Some organizations establish a type of "semi-executive session" during which the executive director is present, but no other staff. Such sessions may include discussions concerning:

- Lawsuits, complaints, or grievances from staff or former staff;
- Individual staff situations
- Evaluation of the executive director with the executive director.

Even if the chief executive is also a board member, the board can meet without staff present.



Despite a certain awkwardness that occurs when staff are asked to leave the room, and despite the frequent need to overcome resistance on the part of the executive director, there are some discussions that are appropriately held just among board members, such as those listed above. For example, one board member might want to raise a concern about the Development Director to see whether others share the concern or whether his negative experience was the exception. Another board member might want to discuss an issue involving herself and another board member without getting staff involved. A frank discussion of the executive director's strengths and weaknesses usually results in both sides being more clear about each other's expectations.

### **Executive sessions as regular practice**

An executive session is also an important way in which a board develops a sense of itself as a body, rather than the more common feeling of being a group of individuals who listen to and advise the executive director. This "sense of self" is an intangible yet critical underpinning for board leadership.

But calling for an executive session without warning in the middle of a meeting can send any executive into paranoid shock. An effective way to avoid the feeling that "executive session means bad news for staff" is for board chairs to routinely put executive sessions on every agenda or on four agendas per year. That way, the board can meet privately without having to raise tension simply by doing so. In any case, the board should not feel uncomfortable asking staff to be excused for part of any meeting, and the executive director may even volunteer: "Would you prefer to excuse staff for this next agenda item?"

**The minutes of the meeting should indicate that the board met in executive session, and report on the topic of the discussion, although the specifics (such as the amount of a lawsuit settlement) may be confidential and appear only in a set of confidential-to-the-board minutes or other notes.**

*Special thanks to Michael Schley, pro bono attorney and Editorial Committee member of the Board Cafe, for his assistance on this article.*

Executive Director info and minutes:

<https://blueavocado.org/board-of-directors/firing-the-executive-director/?highlight=Executive%20director%20oversight>

Please note highlighted comment regarding minutes under transparency section 3<sup>rd</sup> bullet point:

<http://www.nonprofitlawblog.com/executive-session-tips/>

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By NEO Law Group

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## **Executive Session Tips**

Published on: [July 23, 2012](#) by [Emily Chan](#) Category: [BOARDS / GOVERNANCE](#)

Executive sessions are generally closed discussions of a board of directors that may include invited attendees such as an executive director or certain staff members. These sessions can occur at the end of a board meeting or separate from a board meeting if no formal actions are to be taken. Executive sessions can be a useful tool for a board for addressing sensitive and/or legal matters such as an executive director evaluation. The possibility of keeping the executive session discussions private can also be a great advantage for organizations that have voting memberships, are subject to open meeting laws, or have general board meeting minutes maintained by the staff.

When done properly, executive sessions can create a “safe space” for directors to discuss a matter openly and honestly, help to foster trust among the directors and allow for better independent decision-making. Executive sessions can, however, also be a hindrance to better board governance when used improperly or carelessly, creating distrust between the board and

staff, unnecessary secrecy, and paranoia. Below are some of the important factors a board should consider when using an executive session.

### Confidentiality

- Inform participants whether all or part of the discussion should remain confidential;
- Appropriately mark materials as confidential and determine what would be appropriate to include in the meeting minutes if they will be disclosed to members or staff;
- Limit access to executive session materials or minutes to those persons who participated in the executive session to the extent legally permissible; and
- Ensure compliance with any applicable open meeting laws.

### Transparency

- Determine what information needs to be communicated to appropriate parties after the executive session;
- Determine whether a vote, if any, should be conducted in the executive session or can be taken during the general board meeting; and
- 
- Document the reasons for or topic of the executive session in the general meeting minutes.

### Process

- Determine whether regularly scheduled or ad hoc executive sessions will better facilitate proper oversight and open discussion by the board;
- Manage clear expectations with excluded parties regarding follow-up by the board, even if there is nothing to report; and
- Ensure that the discussion remains on topic with respect to the agreed upon agenda for the executive session.

For more information about executive sessions, please read the BoardSource publication "[Executive Sessions: How to Use Them Regularly and Wisely.](#)"

More information on state open meeting laws is provided by [Sunshine Review](#).