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# ***Sunshine Law Work Session***

**Orange County Board of  
County Commissioners**

**Orange County Attorney's Office  
February 21, 2017**



# Sunshine Law

- **Overview of Sunshine Law**
- **Exceptions**
- **Potential Pit Falls**
- **Violations**
- **Enforcement**



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# **SUNSHINE LAW OVERVIEW**

- **Provides right of access to governmental proceedings**
- **Applies to both elected and appointed boards**
- **General Rule – All meetings at which official acts are taken or public business is transacted or discussed shall be open and noticed to the public**



# **SUNSHINE LAW OVERVIEW**

- **Sunshine Law applies to:**
  - Any meeting
  - Between two or more members of the same board
  - When discussing matters that may foreseeably come before that board
  
- **“Meeting” includes:**
  - BCC, advisory board, work group meetings
  - Telephone calls, text messages
  - Emails, other written correspondence
  - Informal discussions or deliberations
  - Intermediaries/liaisons/conduits



# **SUNSHINE LAW OVERVIEW**

- **Sunshine Law meetings are subject to three basic requirements:**
  - **Meeting must be noticed to public**
  - **Meeting must be open to public**
  - **Minutes must be recorded**



# SUNSHINE LAW OVERVIEW

- **“Reasonable notice”**
  - **Not defined by statute**
  - **Notice given at such time and in such manner that media and general public may attend meeting**
  - **Dependent on circumstances and type of meeting**



# **SUNSHINE LAW OVERVIEW**

- **Meetings must be open to public**
  - **Location easily accessible to public**
  - **Adequate size**
  - **May not discriminate against or restrict access to public**





# **SUNSHINE LAW OVERVIEW**

- **Minutes**

- **Promptly recorded in writing**
- **Available and open to public for inspection and copying**
- **Consist of brief notes reflecting events of meeting**
- **Audio recording permitted but not required**



# **SUNSHINE LAW OVERVIEW**

- **County Administrative Regulations address “Noticed Meetings” and require:**
  - **Notice – Agenda Development Office generates meeting notice and provides at least 2 working days notice**
  - **Open to Public – Meeting held in County meeting room or a meeting room at a governmental building where public may freely attend**
  - **Minutes – Minutes taken by County Comptroller staff and audio recorded**



# **SUNSHINE LAW OVERVIEW**

**Florida Statutes**

**Orange County  
Regulation 2.09  
(BCC)**

## **Notice**

**Reasonable  
Notice**

**At least 2  
working days**

## **Location**

**Accessible  
to the public**

**County meeting  
room/  
governmental  
building**



# **SUNSHINE LAW OVERVIEW**

- **Court Interpretations of Sunshine Law:**
  - **Construed so as to frustrate all evasive devices**
  - **Construed liberally to give meaning to its public purpose**
  - **Exemptions should be narrowly construed**
  - **Each step in the decision making process is an official act**



# SUNSHINE LAW OVERVIEW

- ***Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010)**
  - Board entered into a MOU with a professional baseball team
  - Prior to the public hearing, private staff meetings were held with each commissioner
  - Meetings were informational briefings regarding contents of the MOU
  - No evidence that staff communicated information from one commissioner to the other
  - Court found no violation of Sunshine Law



# SUNSHINE LAW OVERVIEW

- ***Blackford v. School Board of Orange County, 375 So. 2d 578 (Fla. 5th DCA 1979)***
  - Superintendent held a series of successive one on one meetings with individual members of the School Board to discuss several options to solve a redistricting problem
  - After meetings, staff put together a plan which was adopted at a public meeting
  - Court found that Sunshine Law had been violated because the circumstances amounted to *de facto* meetings at which official acts were taken



# SUNSHINE LAW OVERVIEW

- ***Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5<sup>th</sup> DCA 2008)**
  - Board members went on “fact-finding” tour of neighborhoods affected by proposed rezoning
  - Court found bus tour violated the Sunshine Law because Board convened in a confined space and had opportunity to make decisions outside of public scrutiny
  - Violation not egregious and was corrected by subsequent meetings and discussions open to the public



# SUNSHINE LAW

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# **SUNSHINE LAW**

## **Exceptions**

- **Fact-Finding Committees**
  - Only applies to information gathering and reporting
  - If committee authorized to make recommendations, Sunshine Law applies
  
- **Litigation Discussions**
  - Settlement or litigation strategy discussions
  - Discussions regarding evaluation of risk management claims
  - Exempt from Sunshine Law and minutes exempt from public records laws until end of litigation



# **SUNSHINE LAW**

## **Exceptions (Con't)**

- **Labor**

- **Collective bargaining negotiations with bargaining agent are subject to Sunshine Law**
- **Discussions between County Administrator and Board are exempt – §447.605, Fla. Stat.**

- **Security**

- **Discussion and records concerning security systems and public property are exempt from Sunshine – §286.0113(1), Fla. Stat.**



# Sunshine Law

## Potential Pit Falls

- Overview of Sunshine Law
- Exceptions
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# **Sunshine Law**

## **Potential Pit Falls**

- **Speaking Engagements**
  - **Two or more Board members in attendance**
  - **One or more Board members may be a speaker**
  - **More than one Board member may give an opinion**
  - **But cannot engage in discourse between each other**



# **Sunshine Law**

## **Potential Pit Falls (Con't)**

- **Social Media**

- **AGO 2009-19**
- **Communications on government Facebook page may be subject to government in the Sunshine Law**
- **Board members may not use government's Facebook page in discussion of matters that foreseeably will come before the Board**



# **Sunshine Law**

## **Potential Pit Falls (Con't)**

- **Conduits/Intermediaries/Liaisons**
  - **Board members may not have staff or non-board members act as liaisons between board members**
  - **Communication with a private citizen whom board member knew or should have known was acting as a conduit**



# Sunshine Law

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# **Sunshine Law Violations**

- **Action taken is void**
  - Can be cured by subsequent Sunshine meetings
- **Attorney's fees recoverable**
- **Unknown violation**
  - Non-criminal infraction \$500 fine
- **Known violation**
  - \$500 fine and/or 60 days in jail
- **Removal from office by Governor – extraordinary**





# Sunshine Law

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# **Sunshine Law Enforcement**

- **Sunshine violations are normally investigated by Law Enforcement**
- **Prosecuted by State Attorneys**



# SUNSHINE LAW

**Questions?**

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