Florida’s
Government in the Sunshine
& Ethics Laws

Presented by:
Volusia County Attorney’s Office
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Florida's Government in the Sunshine Law

- The 3 Basic Requirements of § 286.011, Florida Statutes:
  1) Meetings of public boards or commissions must be open to the public;
  2) Reasonable notice of such meetings must be given; and
  3) Minutes of the meetings must be taken and promptly recorded.
Florida’s Government in the Sunshine Law

Meetings

• A “meeting” occurs when there is ANY gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission.

• A “gathering” may include meetings of board or commission members via telephone or other electronic means.
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What Kinds of Discussions Are Covered?

Any of the following types of discussions of any matter that may foreseeably come before the board.

- Email discussions between any two or more board members.
- Telephone conversations between any two or more board members.
- Internet discussions between any two or more board members (e.g., chat rooms, blogs, comments, etc.).
- Text messages!
Florida’s Government in the Sunshine Law
What Kinds of Discussions Are Covered?

(Continued)

Any of the following types of discussions of any matter that may foreseeably come before the board.

- Inaudible discussions (discussions that occur between board members in an open meeting that cannot be heard by others violate the Sunshine Law).

- Discussions during recess or after adjournment (when the public meeting is not in session, board members must refrain from discussing board matters until the next meeting or until the current meeting is recommenced).
Florida’s Government in the Sunshine Law

**Liaison Rule**

- Generally, individual board members may call upon staff members for factual information and advice without being subject to the Sunshine Law. Staff members are not members of a collegial board.

- However, the Sunshine Law applies if a board member begins to use one or more staff members as an intermediary or “go between” such that the board members are essentially discussing matters that may foreseeably come before the board via third parties.
Florida’s Government in the Sunshine Law

Notice of Meetings

- Notice must be “reasonable,” but is not otherwise defined (though your agency may have adopted specific notice requirements).
Florida’s Government in the Sunshine Law

- The Florida Attorney General has recommended the following guidelines:
  - **Time, Place, and Subject Matter.** Notice should provide time and place of meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
  - **Prominently Displayed.** Notice should be prominently displayed in an area of the agency’s offices set aside for that purpose (e.g., main office and website).
Florida’s Government in the Sunshine Law

- The Florida Attorney General has recommended the following guidelines *(Continued from Previous Slide)*:
  - Notice Provided at Least 7 Days Prior to the Meeting. Except that emergency meetings should be noticed in the most appropriate and effective manner under the circumstances.
  - Notice for Special Meetings. Should be provided no less than 24 and preferably at least 72 hours prior to the meeting.
  - Notice by Other Means. The use of press releases, email, and faxes to spread notice of a meeting is encouraged.
Florida’s Government in the Sunshine Law

Minutes of Meetings

• All meetings require recorded minutes, including workshops.
• Minutes are intended as a brief summary of notes or memoranda reflecting the events of the meeting; a verbatim transcript is not required.
• Minutes must be in written format (audio recordings are optional).
Florida’s Government in the Sunshine Law

Right of Public Participation

• Members of the public must be given a reasonable opportunity to be heard on a proposition before a board or commission.

• The opportunity to be heard need not occur at the same meeting at which the board takes official action if the opportunity occurs at a meeting that is during the decision making process and occurs within reasonable proximity in time before the meeting at which the board takes official action.

• The statute does not prohibit the board from maintaining standards of conduct and decorum.
Florida’s Public Records Law

A Constitutional Right

• “Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.”

- Article I, § 24(a), Fla. Const.
Florida’s Public Records Law

Legislative Mandate

• “It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.” - § 119.01(1), Fla. Stat.
Florida’s Public Records Law

What is a Public Record?

- All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission;

- Made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
Florida’s Public Records Law

What is a Public Record?

- The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which materials are used to perpetuate, communicate, or formalize knowledge.
Florida’s Public Records Law

What is a Public Record?

Location is Irrelevant. Public records are identified based upon whether they are made or received in the transaction of county business or pursuant to law.

Records pertaining to County business do not lose their public records status merely because they are not stored in or on County property.
Florida’s Public Records Law

- Generally, any communications pertaining to County business that are reduced to a recorded medium in the course of County business, whether it be on paper, tape, compact disc, or other format, regardless of location, are public records.
Florida’s Ethics Laws

Misuse of Public Position

- No public officer shall corruptly use or attempt to use his/her official position or any property or resource which may be within his/her trust or perform his/her official duties to secure a special privilege, benefit, or exemption for him/herself or others.
Florida’s Ethics Laws

Misuse of Public Position

- Corruptly means:
  - Engaging in conduct that is inconsistent with proper performance of duties;
  - Knowing that the conduct is wrong; AND
  - Intending to gain a personal privilege, benefit, or exemption.
Florida’s Ethics Laws
Voting Conflicts

- No appointed public officer shall participate without first disclosing the nature of his/her interest in any matter which would inure to the special private gain or loss of:
  - The officer;
  - A principal of the officer’s employer;
  - The parent organization or subsidiary of a corporate principal by whom the officer is retained;
  - The officer’s relative; or
  - A business associate of the officer.
Florida’s Government in the Sunshine and Ethics Laws

Recommendations

• Remember NOT to talk to, email, text, or correspond with fellow board or commission members about any matters that may foreseeably come before the board for discussion or decision outside the confines of a duly noticed and open public meeting.
Florida’s Government in the Sunshine and Ethics Laws

Recommendations

- Keep business endeavors separate from public responsibilities.
- Never assert a public position for a special benefit.
Florida’s Government in the Sunshine and Ethics Laws

Recommendations

• When in doubt, please contact your board or commission’s county legal representative at (386) 736-5950, or at their appropriate email address.