



**FLORIDA SUNSHINE LAW**  
- and -  
**EX PARTE COMMUNICATIONS**

Presented By: Natasha Lopez Perez, Esq.

# THE FLORIDA SUNSHINE LAW

Florida Statute 286.011



**General Rule:** All meetings of ANY Board or Commission of any state/county agency or authority at which official acts are to be taken, or public business is transacted or discussed shall be open to the public at ALL times.

# SCOPE OF THE FLORIDA SUNSHINE LAW



- ❑ Provides the public right of ACCESS to governmental proceedings; and
- ❑ Applies to both APPOINTED and ELECTED officials, including meetings with or attended by any person elected to the Board or Commission but who has NOT yet taken office.

1. Reasonable notice of such meeting **MUST** be given;
2. Meetings of Boards or Commissions **MUST** be open to the public at all times; and
3. Minutes of the meetings **MUST** be taken, promptly recorded and open to public inspection.



# REQUIREMENTS OF THE FLORIDA SUNSHINE LAW



## WHAT IS A “MEETING”?



Any gathering



Between two or more members of the **SAME** Board or Commission



Discussing or deliberating matters that may foreseeably come before that Board or Commission



WORKSHOPS



WRITTEN CORRESPONDENCES  
BETWEEN BOARD MEMBERS—  
E.G., EMAILS, TEXT MESSAGES,  
SOCIAL MEDIA POSTS



TELEPHONE  
CONVERSATIONS AND  
VIRTUAL MEETINGS



SOCIAL EVENTS



INFORMAL DISCUSSIONS  
OR DELIBERATIONS

**NOTE: THIS IS NOT TO SAY YOU CANNOT ENGAGE IN OR ATTEND THE LATTER; YOU JUST CANNOT DISCUSS OR DELIBERATE MATTERS THAT MAY FORESEEABLY COME BEFORE THE BOARD.**

# MEETINGS INCLUDE

# “PUBLIC” MEETINGS

Public meetings are to be held in places easily accessible to the public AND are not ones that would have a “chilling” effect upon the public’s willingness or desire to attend.

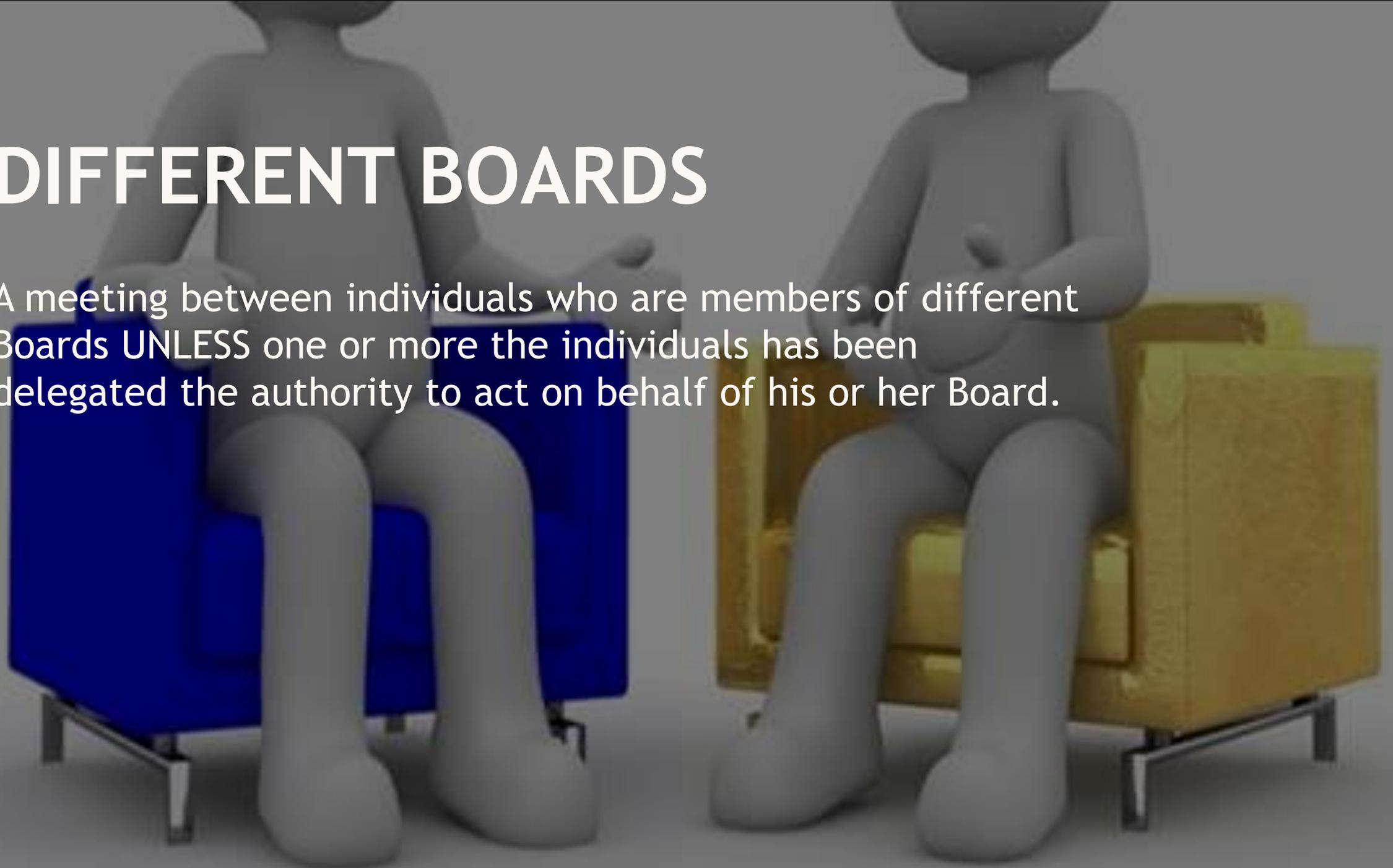
- ❑ **Luncheon meetings**—People who would otherwise attend may be unwilling or reluctant to enter a public dining without purchasing a meal or may be financially or personally unwilling to do so. See Cf. City of Miami Beach v. Berns, 245 So. 2d 38(Fla. 1971).
- ❑ **Out-of-town meetings**—The fact that its public but over 100 miles away from the board's headquarters violate the Sunshine Law. See Rhea v. School Board of Alachua County, 636 So. 2d 1383 (Fla. 1<sup>st</sup> DCA 1994).
- ❑ **Private homes**—There may be a “chilling” effect on the public’s willingness to attend if in a private home. See Inf. Op. to Galloway, August 21, 2008.
- ❑ **Police facility**—There may be a “chilling” effect on the public’s willingness to attend by requiring the public to go through certain security measures. See AGO 96-55.

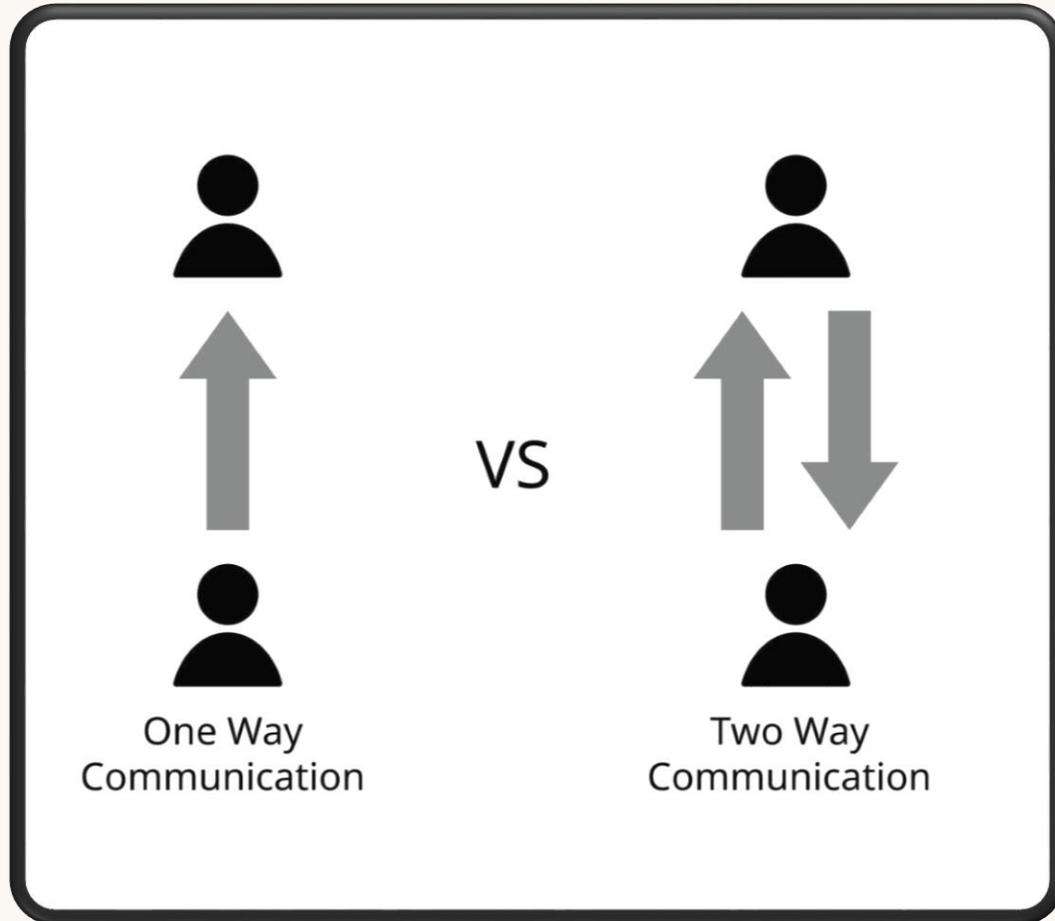
**WHEN THE  
FLORIDA  
SUNSHINE LAW  
DOES NOT APPLY**



# DIFFERENT BOARDS

A meeting between individuals who are members of different Boards UNLESS one or more the individuals has been delegated the authority to act on behalf of his or her Board.





## ONE-WAY COMMUNICATIONS

This is okay; however, the receiving member should not offer a response.

Communication  
One Way

Communication  
Two Way



# SHADE MEETINGS

These are meetings in private with the entity's attorney. *See Fla. Stat. 286.011(8).*

- ▶ **Reasonable Notice:** Reasonable notice must be provided to the public about the attorney meeting.
- ▶ **Recorded:** Must be recorded by a court reporter, which will be released upon the conclusion of litigation.
- ▶ **Certain Discussions:** Can only discuss settlement, mediation, or strategy purposes.

Section 119.011(12), F.S., defines “public records” to include:

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.

**It’s not just traditional notes and letters; emails, text messages, and social media postings are included.**



## SUBJECT TO PUBLIC RECORDS

### Florida Statute 119.011

- ❑ The public has a right to access the records of the state and local governments as well as private entities acting on its behalf.
- ❑ In the *absence of a statutory exemption*, this right to access **applies to ALL materials made or received** by an agency in connection with the transaction of official business used to perpetuate, communicate, or formalize knowledge.

# UNSURE IF PUBLIC MEETING APPLIES?



▶ “The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.” Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

# VIOLATION OF THE FLORIDA SUNSHINE LAW

Florida Statute 286.011

Rule	Infraction v. Crime	Subject to
Any public officer who <b>violates ANY provision</b> of this section is guilty of →	Non-Criminal Infraction	Not Exceeding \$500 Fine
Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who <b>KNOWINGLY violates</b> the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of →	Criminal Offense	2 <sup>nd</sup> Degree Misdemeanor
Conduct which occurs <b>outside the state</b> which would constitute a <b>knowing violation</b> of this section is →	Criminal Offense	2 <sup>nd</sup> Degree Misdemeanor



ex parte

## EX PARTE COMMUNICATION

Occurs when a party to an application, or someone involved with a party, talks or writes to or otherwise communicates directly with a Board member about the issues involved with the application, without the public present.

General Rule: Board members may NOT use information obtained from ex parte communications at a hearing as the basis for, or to affect or influence, their vote at the hearing.

# EX PARTE COMMUNICATIONS

# EX PARTE COMMUNICATION

Florida Statute 286.0115

- ❑ Ex parte communications are presumed prejudicial!
- ❑ Ex parte communications are NOT presumed to be prejudicial to actions taken by the Board or Commission as long as the proper disclosure is made BEFORE or DURING the hearing.



# HOW TO CURE EX PARTE COMMUNICATIONS



## WRITTEN COMMUNICATION

A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall **not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.**



## COMMUNICATIONS

The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is **not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.**



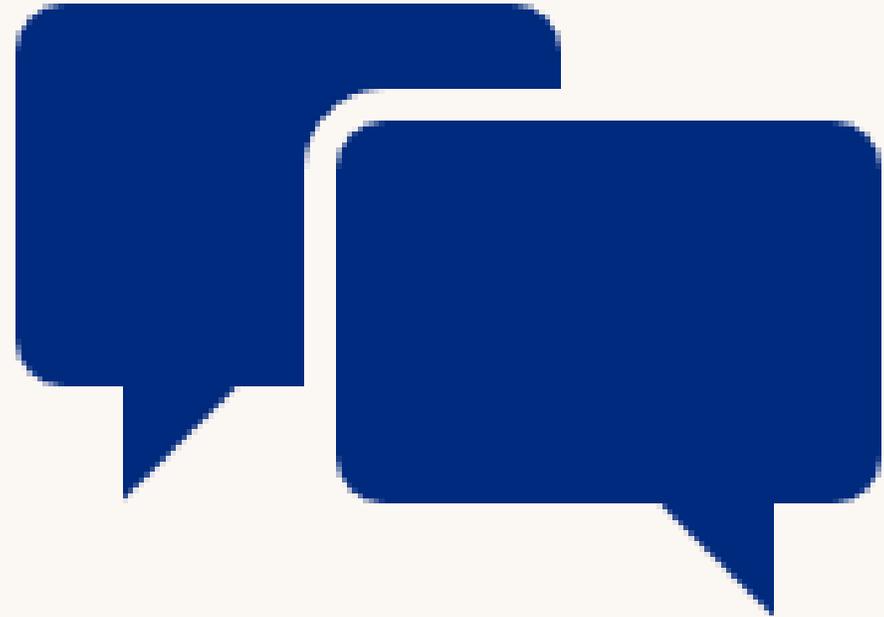
## INVESTIGATIONS AND SITE VISITS OR EXPERT OPINION

Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.



# WHAT IS THE REASON FOR DISCLOSURE?

Allows persons who have opinions contrary to those expressed in the ex parte communication a reasonable opportunity to refute or respond to the communication.



In a QUASI-JUDICIAL PROCEEDING ON LOCAL GOVERNMENT LAND USE MATTERS, are persons precluded from communicating directly with a member of the decision-making body pursuant to ex parte communication prohibitions?



Short Answer: No.



If an ex parte communication is received, disclosure of such communications is NOT required, and such disclosures are NOT presumed prejudicial.



“All decisions of the decisionmaking body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.” Fla. Stat. 286.0115(2)(c). (*emphasis added*).



# THANK YOU!

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