

The background of the slide features a light blue gradient. On the left side, there is a vertical strip showing a close-up of classical architectural columns with Corinthian capitals. The main text is centered on the right side of the slide.

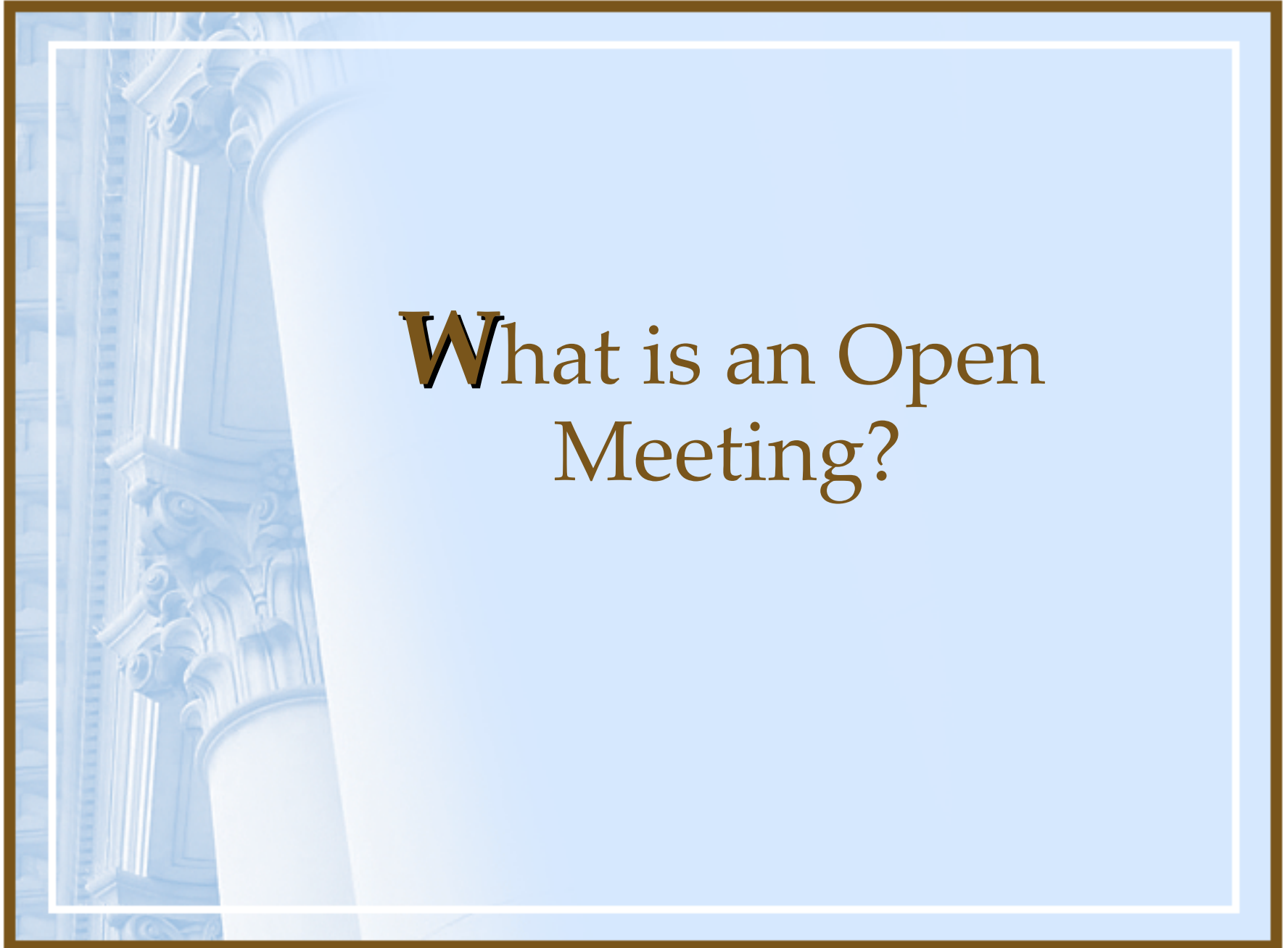
OPEN MEETINGS AND OPEN RECORDS

March 13, 2012

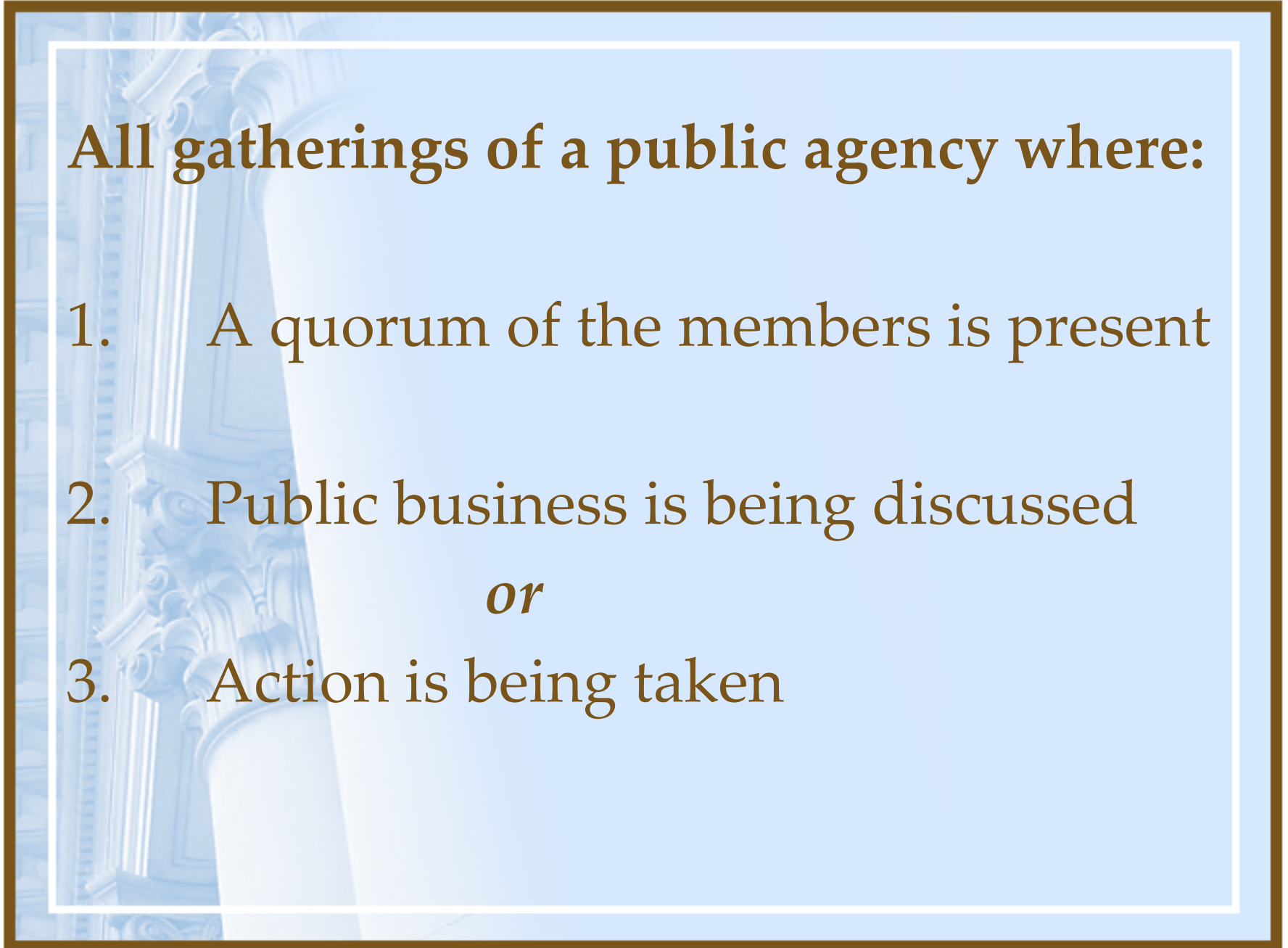
The background of the slide features a light blue gradient with a faint, semi-transparent image of classical columns on the left side. The columns are white with detailed capitals and are set against a darker blue background. The entire slide is framed by a thin brown border.

THE OPEN MEETINGS ACT

KRS 61.800 TO 61.850

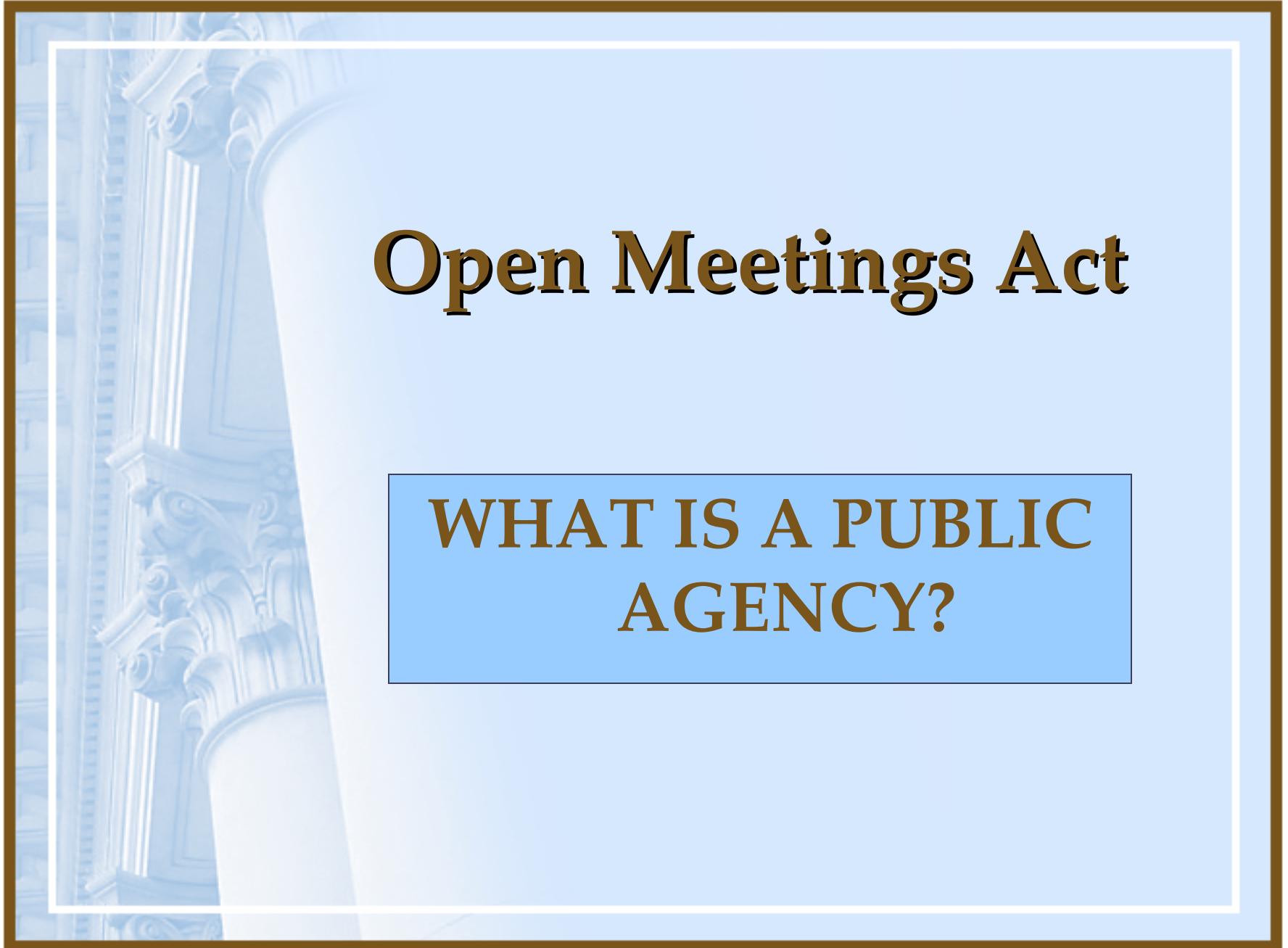
The background of the slide features a light blue gradient. On the left side, there is a vertical strip showing a close-up, low-angle view of classical architectural columns with Corinthian capitals. The columns are white and set against a slightly darker blue background. The entire slide is framed by a thin brown border.

What is an Open Meeting?

The background of the slide features a faint, blue-tinted image of classical architectural columns, likely from a government building, which are partially visible behind the text area.

All gatherings of a public agency where:

1. A quorum of the members is present
2. Public business is being discussed
or
3. Action is being taken

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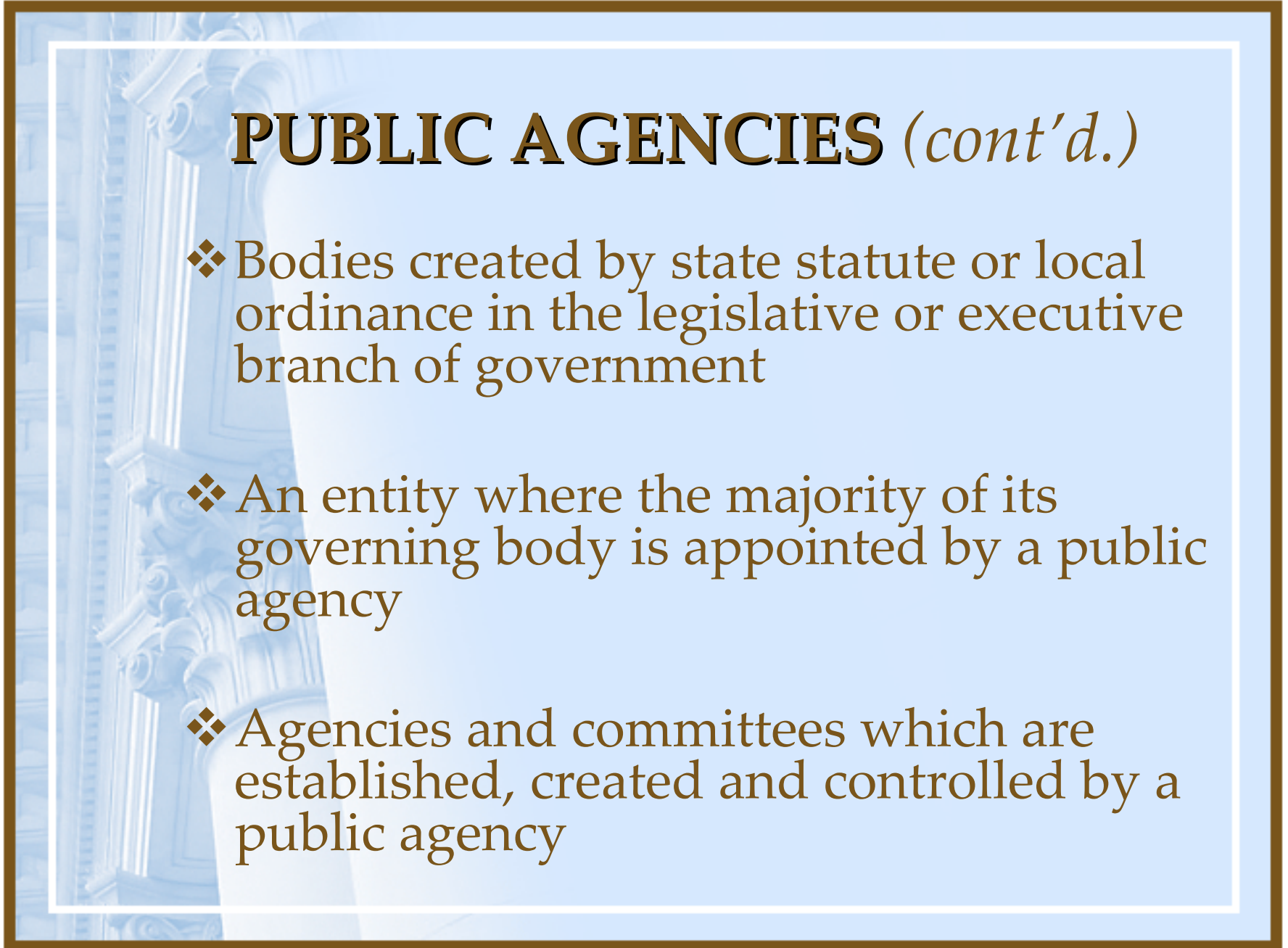
Open Meetings Act

**WHAT IS A PUBLIC
AGENCY?**

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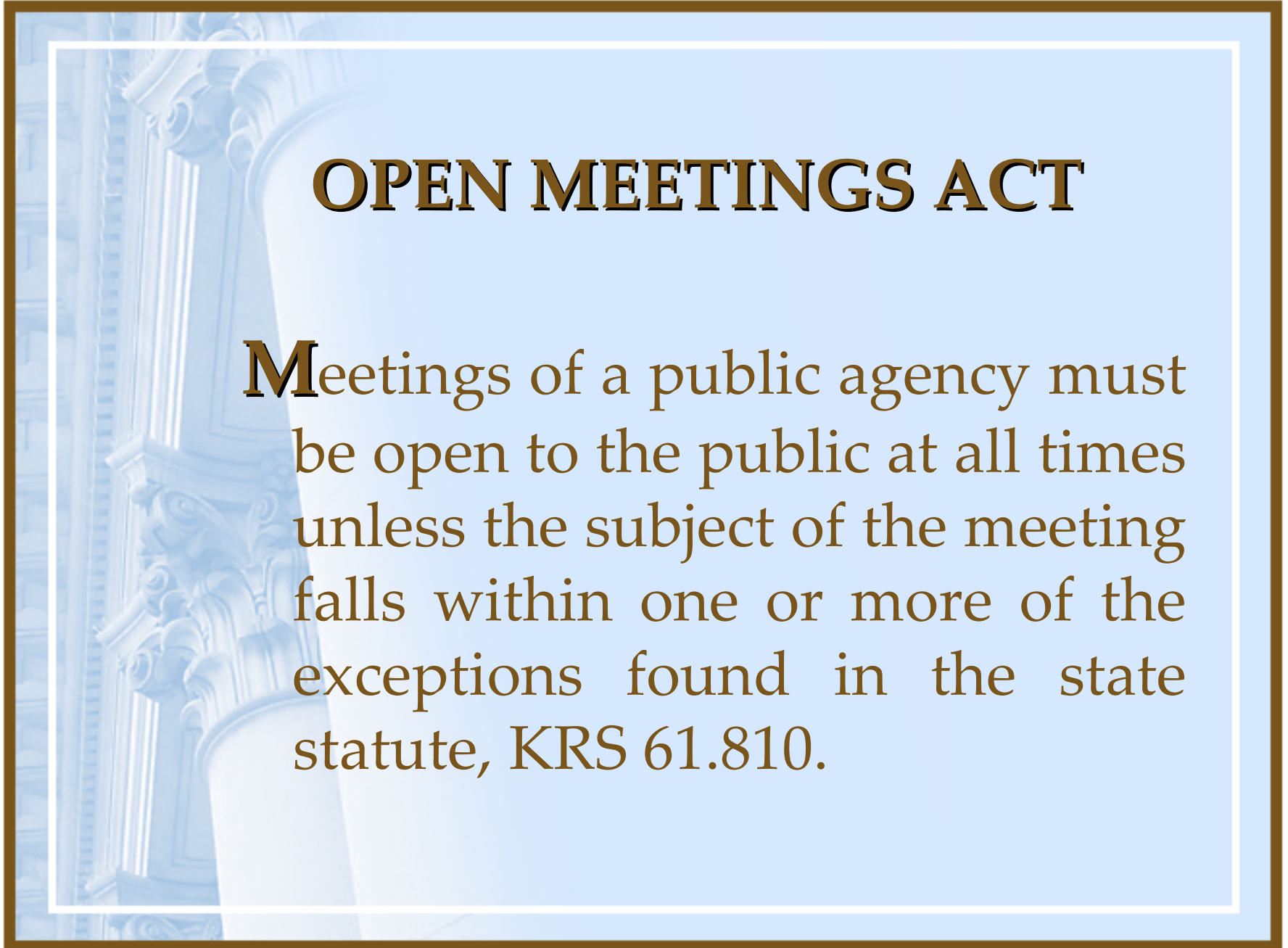
PUBLIC AGENCIES

- ❖ Local government boards and commissions and authorities
- ❖ Local legislative boards, commissions and committees
- ❖ County and city governing bodies
- ❖ Local government agencies created by state statute or local ordinance

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PUBLIC AGENCIES (*cont'd.*)

- ❖ Bodies created by state statute or local ordinance in the legislative or executive branch of government
- ❖ An entity where the majority of its governing body is appointed by a public agency
- ❖ Agencies and committees which are established, created and controlled by a public agency

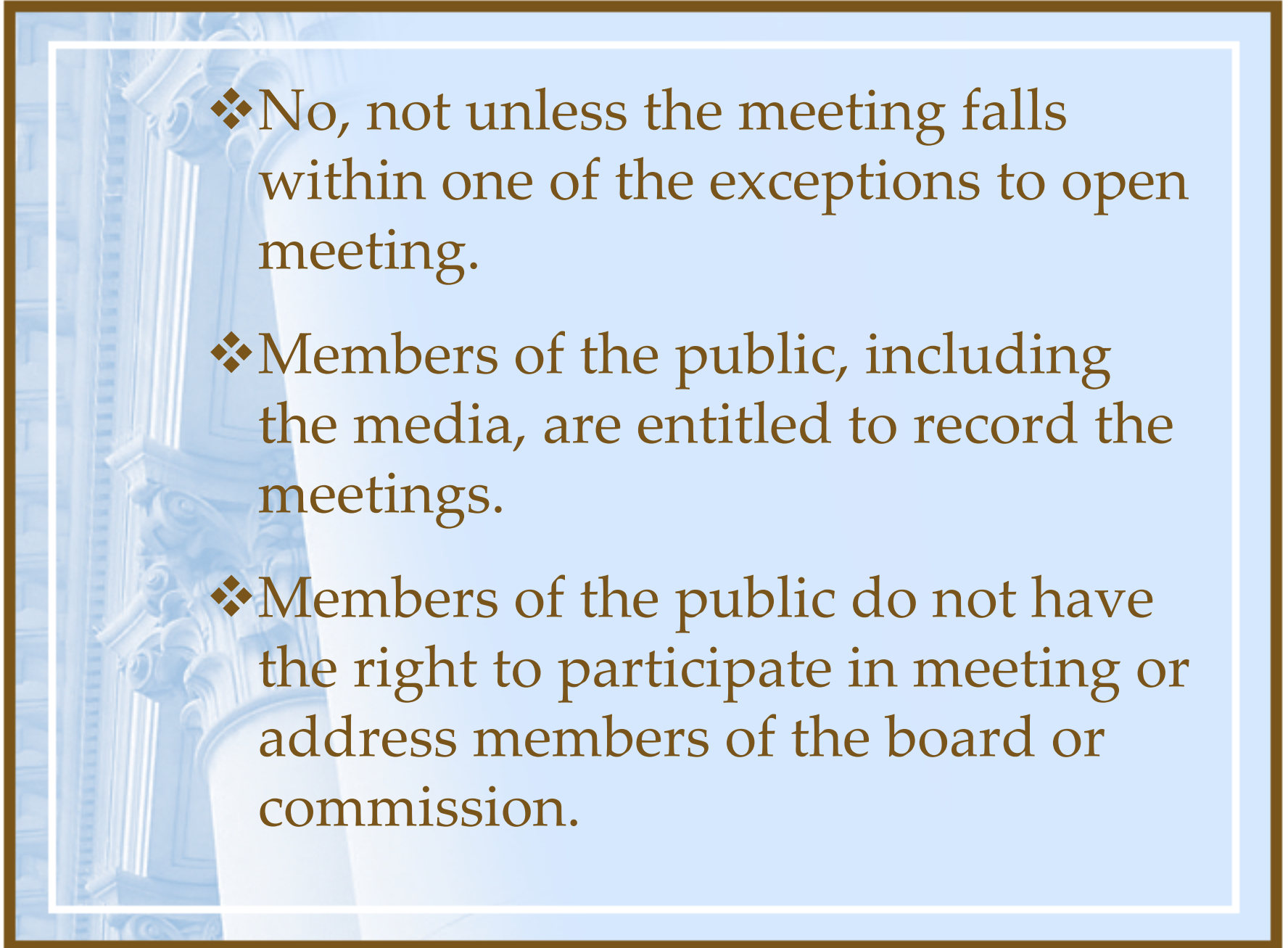
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OPEN MEETINGS ACT

Meetings of a public agency must be open to the public at all times unless the subject of the meeting falls within one or more of the exceptions found in the state statute, KRS 61.810.

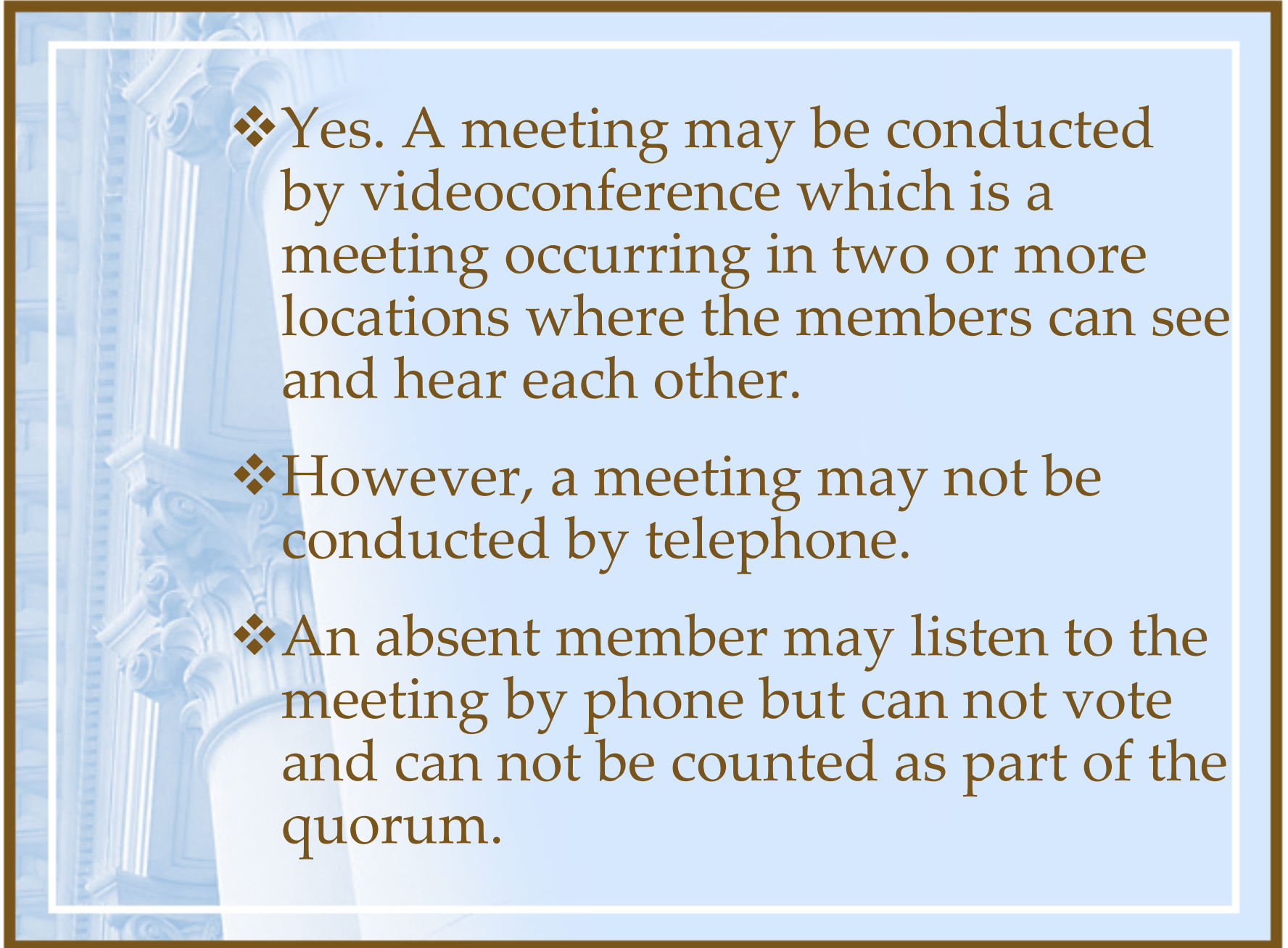
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May my board or
commission keep the
news media or members
of the public out of our
meeting?

- 
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- ❖ No, not unless the meeting falls within one of the exceptions to open meeting.
 - ❖ Members of the public, including the media, are entitled to record the meetings.
 - ❖ Members of the public do not have the right to participate in meeting or address members of the board or commission.

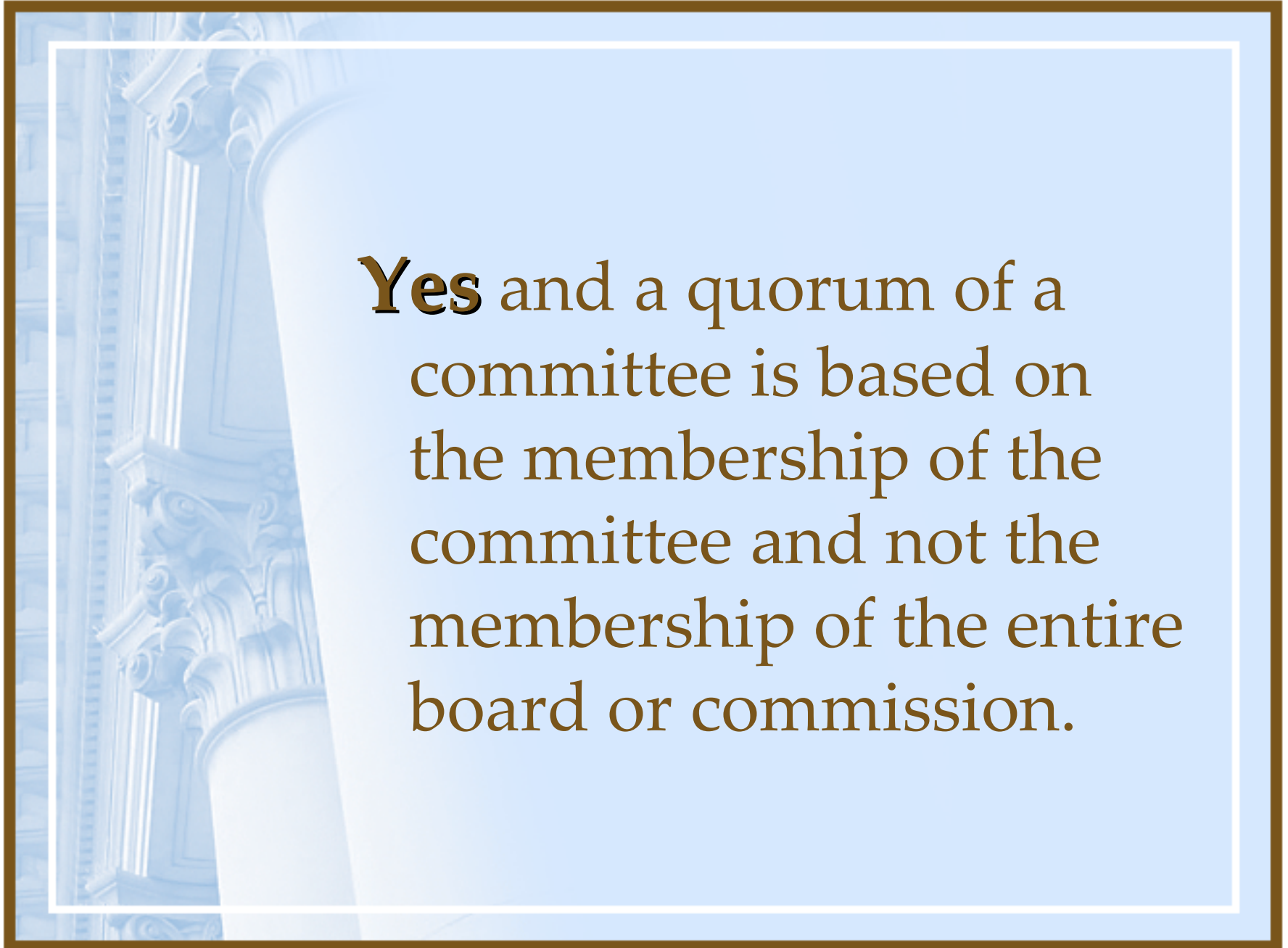
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May a board or
commission conduct a
meeting by telephone or
by videoconference?

- 
- The background of the slide features a faint, blue-tinted image of classical architectural columns, likely from a government building, which adds a formal and official feel to the presentation.
- ❖ Yes. A meeting may be conducted by videoconference which is a meeting occurring in two or more locations where the members can see and hear each other.
 - ❖ However, a meeting may not be conducted by telephone.
 - ❖ An absent member may listen to the meeting by phone but can not vote and can not be counted as part of the quorum.

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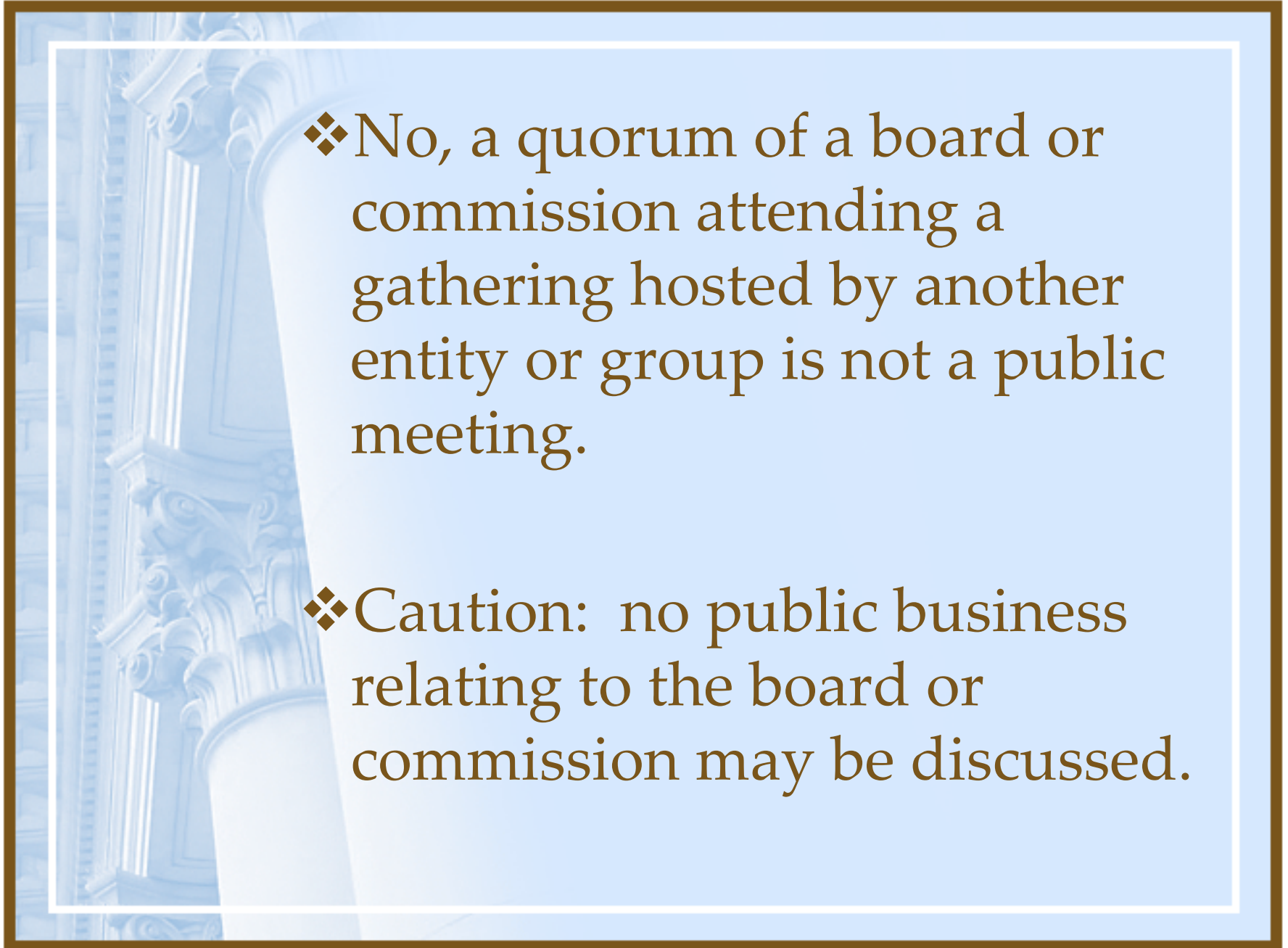
Are committees subject
to the Open Meetings
Act?

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Yes and a quorum of a committee is based on the membership of the committee and not the membership of the entire board or commission.

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What if my board or commission is invited to attend a social gathering or sporting event and a quorum of the members will be at the event? Is that an open meeting?

- 
- The background of the slide features a light blue gradient with a faint, semi-transparent image of classical architectural columns on the left side. The entire content is framed by a thin brown border.
- ❖ No, a quorum of a board or commission attending a gathering hosted by another entity or group is not a public meeting.
 - ❖ Caution: no public business relating to the board or commission may be discussed.

Time and Place of Meetings

- ❖ All meetings must be held at a specified time and place that is convenient to the public.
- ❖ Boards and Commissions should adopt a schedule of meetings by ordinance, order, resolution, bylaws, etc.
- ❖ Schedule of meetings **MUST** be made available to the public.

The background of the slide features a light blue gradient. On the left side, there is a vertical image of classical architectural columns, rendered in a semi-transparent, light blue color that blends with the background. The columns have ornate capitals and fluted shafts.

Is my board or
commission required
to keep minutes?

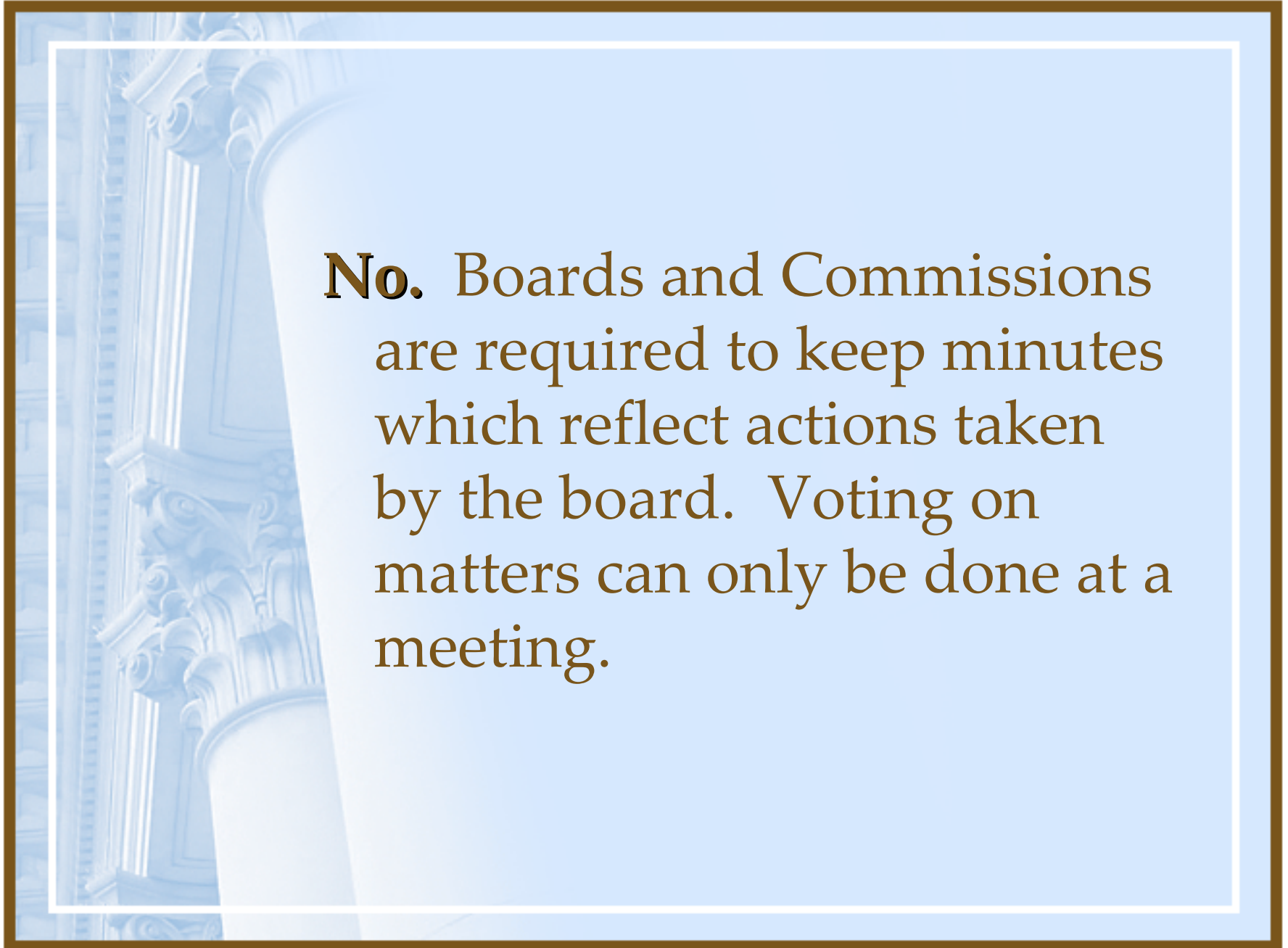
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❖ Yes, Boards and Commissions must take minutes of action taken at every meeting and keep an accurate record of votes and action taken.

❖ The minutes must be available for public inspection no later than the conclusion of the board or commission's next public meeting.

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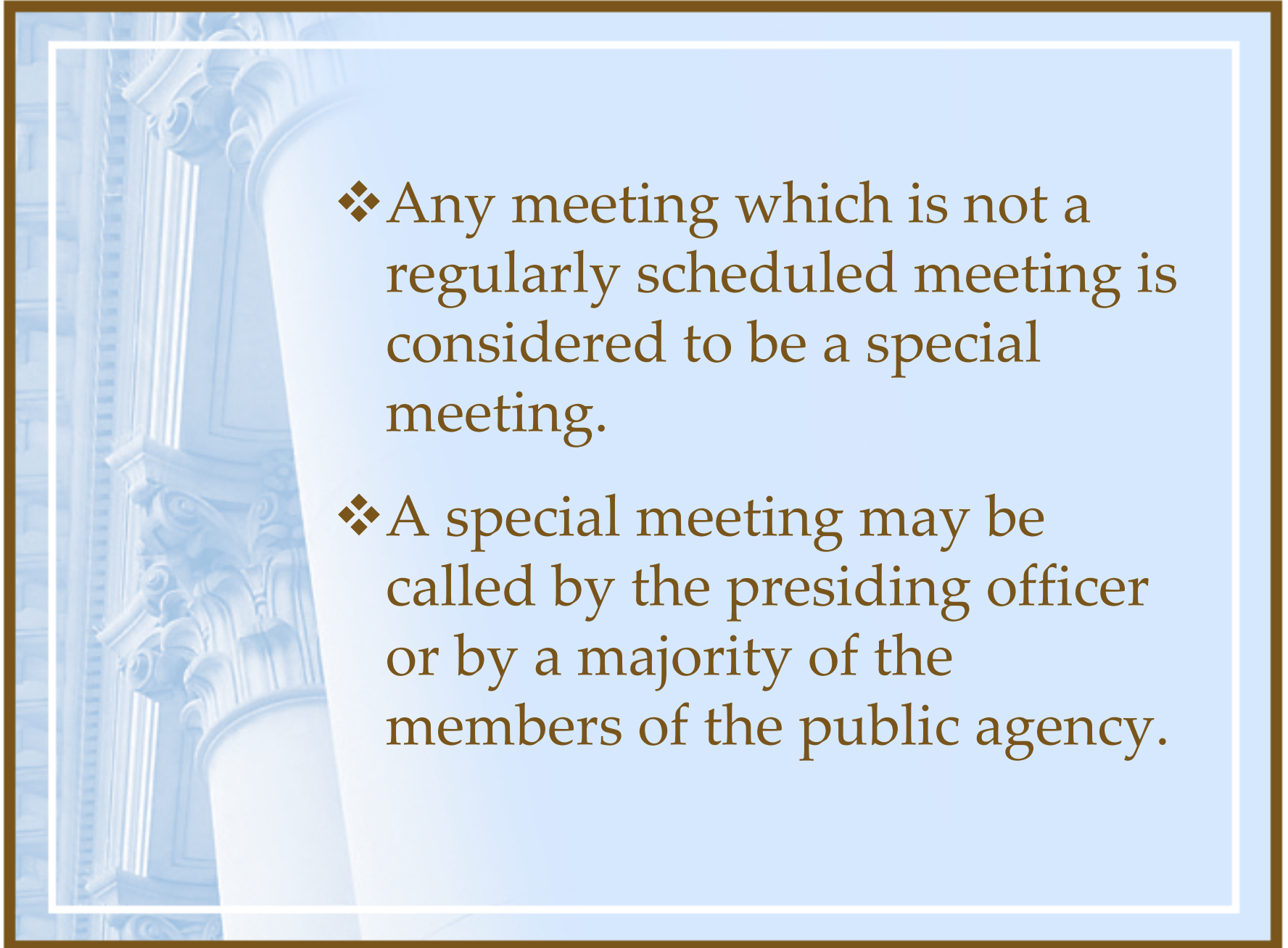
May we vote on a
matter by e-mail?

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No. Boards and Commissions are required to keep minutes which reflect actions taken by the board. Voting on matters can only be done at a meeting.

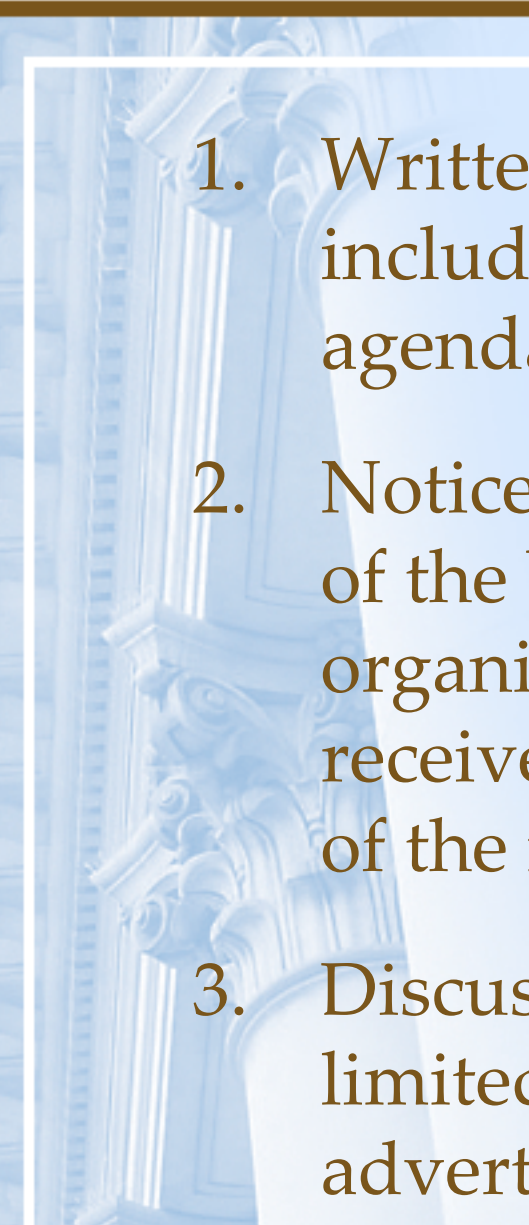
A faint, blue-tinted background image of classical columns with Corinthian capitals, positioned on the left side of the slide.

What if my board or
commission needs to
change our monthly
meeting?

- 
- The background of the slide features a light blue gradient with a faint, semi-transparent image of classical architectural columns on the left side. The columns are white with detailed capitals and are set against a darker blue background. The entire slide is framed by a thin brown border.
- ❖ Any meeting which is not a regularly scheduled meeting is considered to be a special meeting.
 - ❖ A special meeting may be called by the presiding officer or by a majority of the members of the public agency.

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What are the
requirements for calling
a special meeting?

- 
1. Written notice of the meeting which includes the date, time, place and agenda of the meeting.
 2. Notice must be given to the members of the board or commission and media organizations which have requested to receive written notice within 24 hours of the meeting.
 3. Discussions at a special meeting are limited to the items listed on the advertised agenda.

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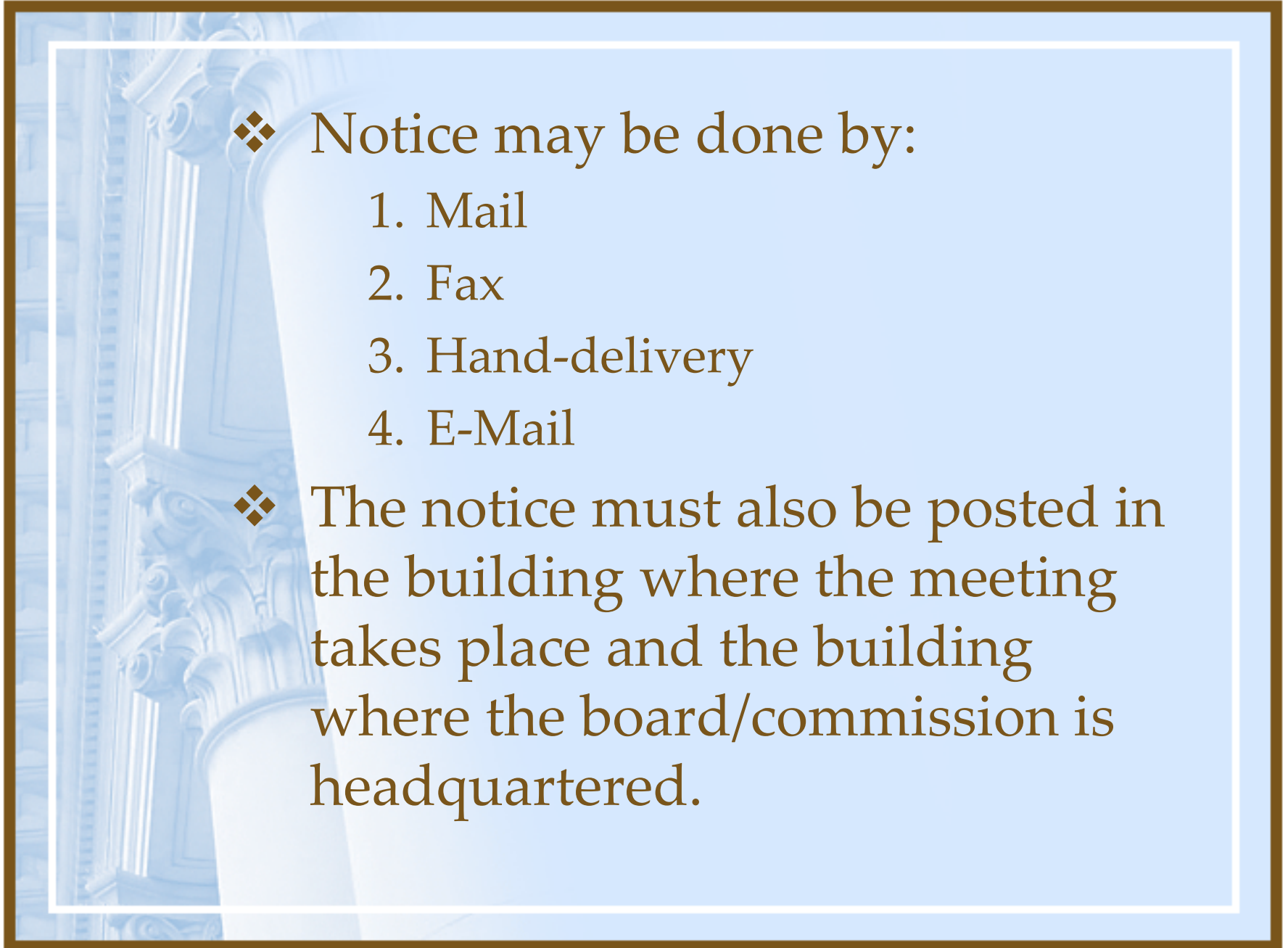
Requirements for a Special Meeting

- ❖ Written notice may be done by e-mail.
- ❖ NOTICE OF THE SPECIAL MEETING MUST ALSO BE POSTED IN THE BUILDING WHERE THE MEETING IS TO TAKE PLACE AND THE BUILDING WHERE THE AGENCY IS HEADQUARTERED.

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~Special Meetings~

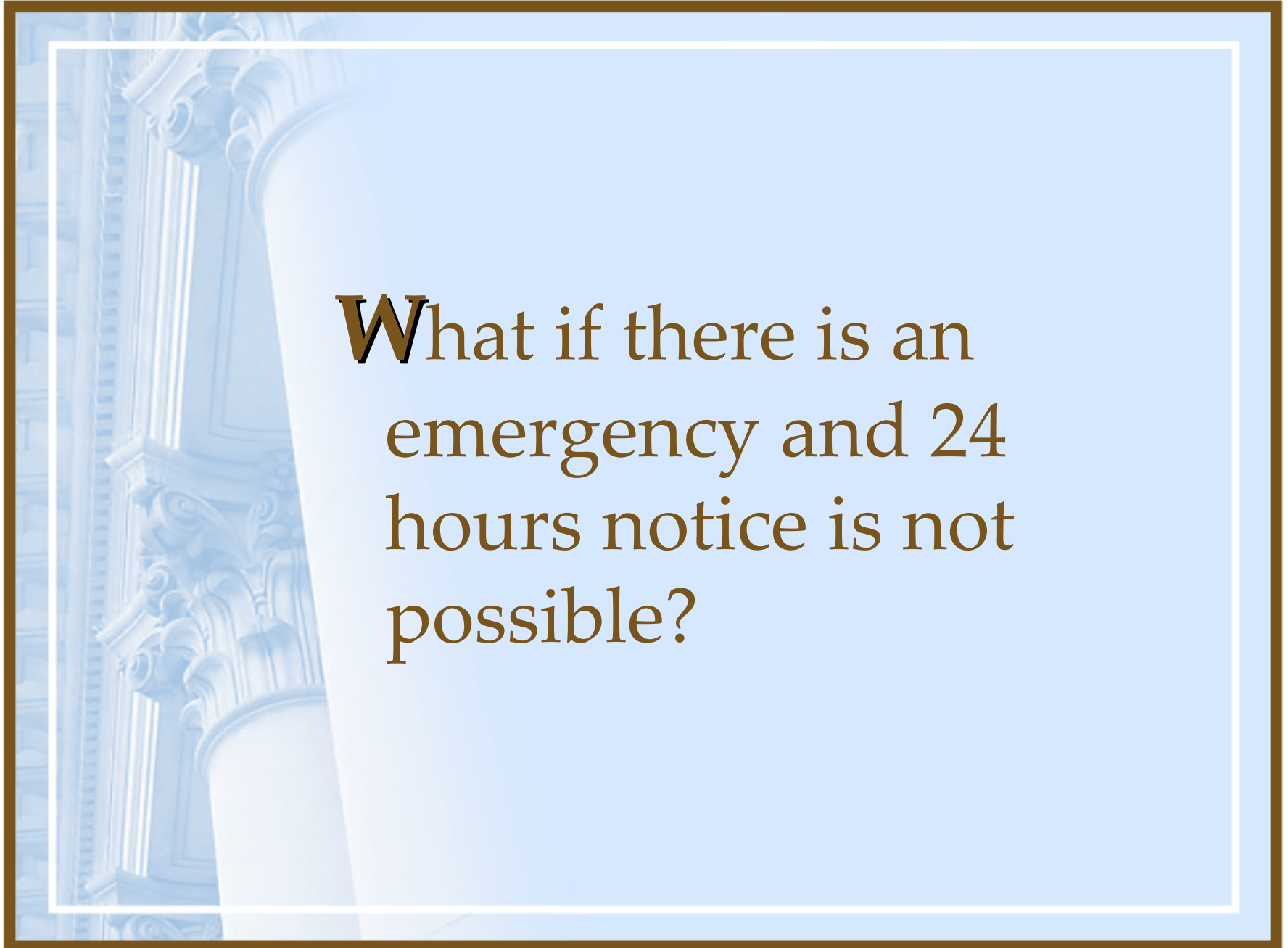
How do we provide
notice?



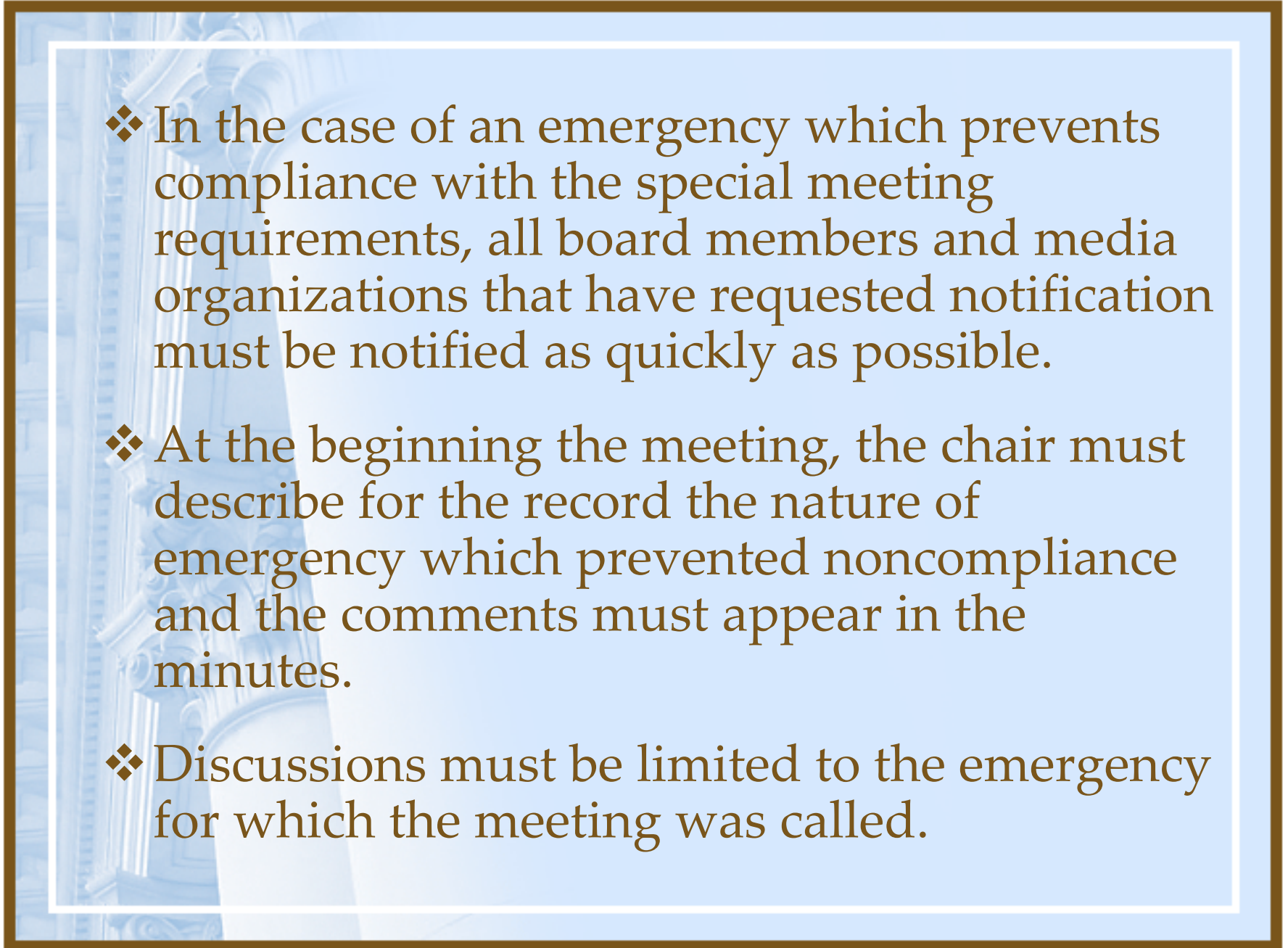
❖ Notice may be done by:

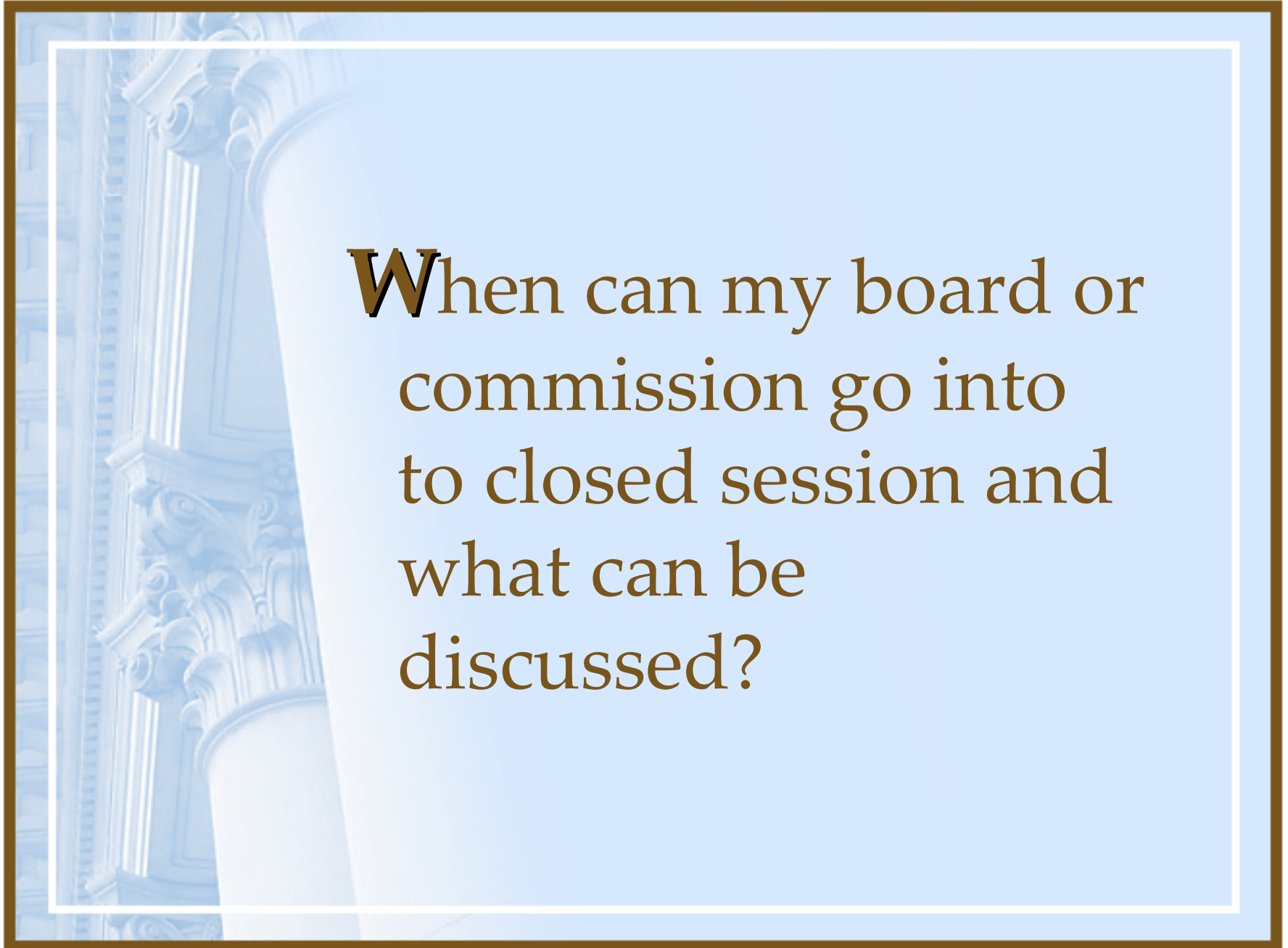
1. Mail
2. Fax
3. Hand-delivery
4. E-Mail

❖ The notice must also be posted in the building where the meeting takes place and the building where the board/commission is headquartered.

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What if there is an
emergency and 24
hours notice is not
possible?

- 
- ❖ In the case of an emergency which prevents compliance with the special meeting requirements, all board members and media organizations that have requested notification must be notified as quickly as possible.
 - ❖ At the beginning the meeting, the chair must describe for the record the nature of emergency which prevented noncompliance and the comments must appear in the minutes.
 - ❖ Discussions must be limited to the emergency for which the meeting was called.

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When can my board or
commission go into
to closed session and
what can be
discussed?

CLOSED SESSION

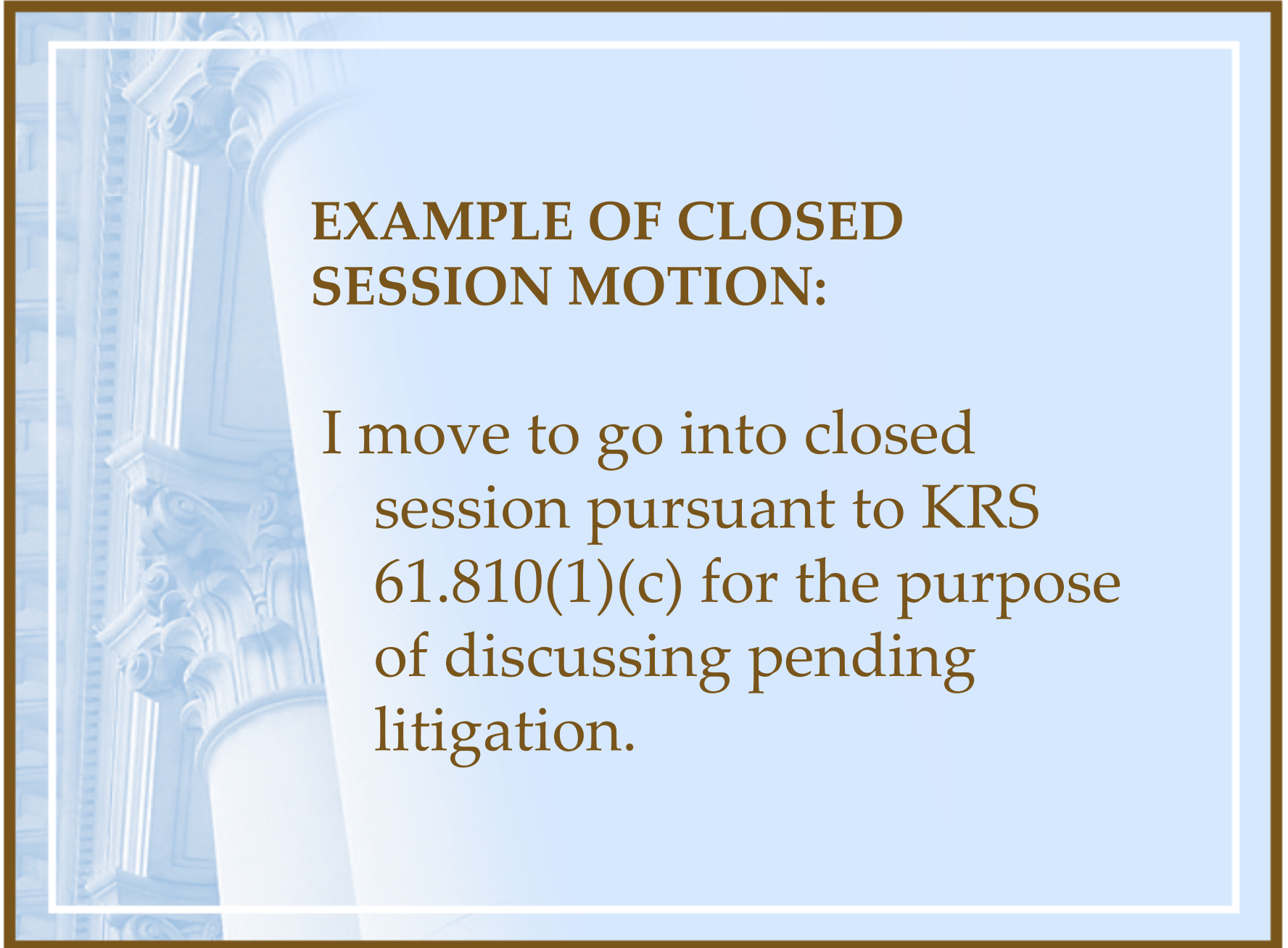
A board or commission may go into closed session to discuss certain matters so long as:

1. Notice is given in the regular meeting of the general nature of the business to be discussed
2. The reason for the closed session is given
3. An the specific exemption authorizing the closed session is given

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CLOSED SESSION

- ❖ A closed session is proper only after a motion is made and carried in open session.
- ❖ ***CAUTION:*** No final action may be taken in closed session.

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EXAMPLE OF CLOSED SESSION MOTION:

I move to go into closed session pursuant to KRS 61.810(1)(c) for the purpose of discussing pending litigation.

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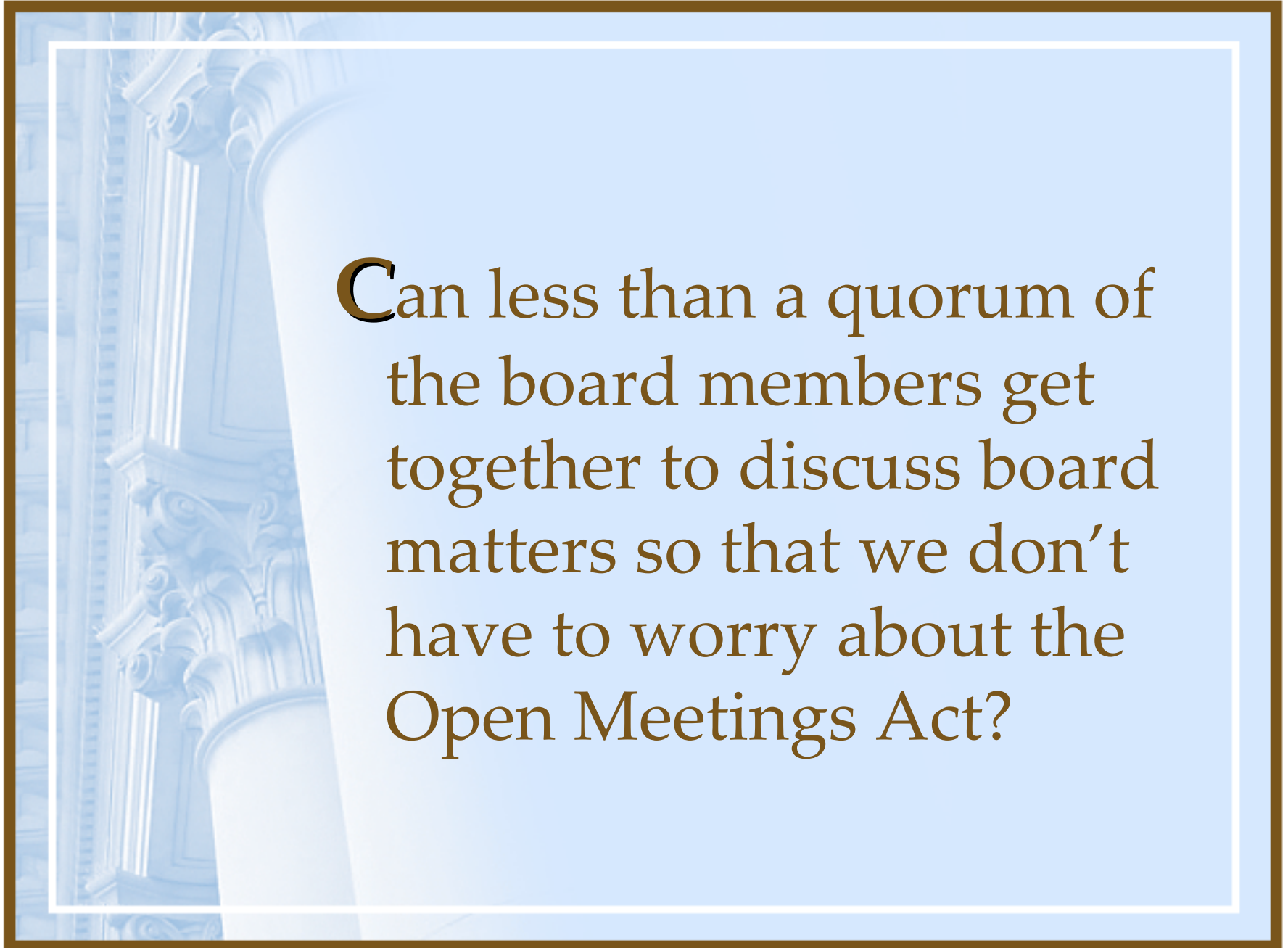
What can be discussed
in closed session?

Closed Session (*cont'd.*)

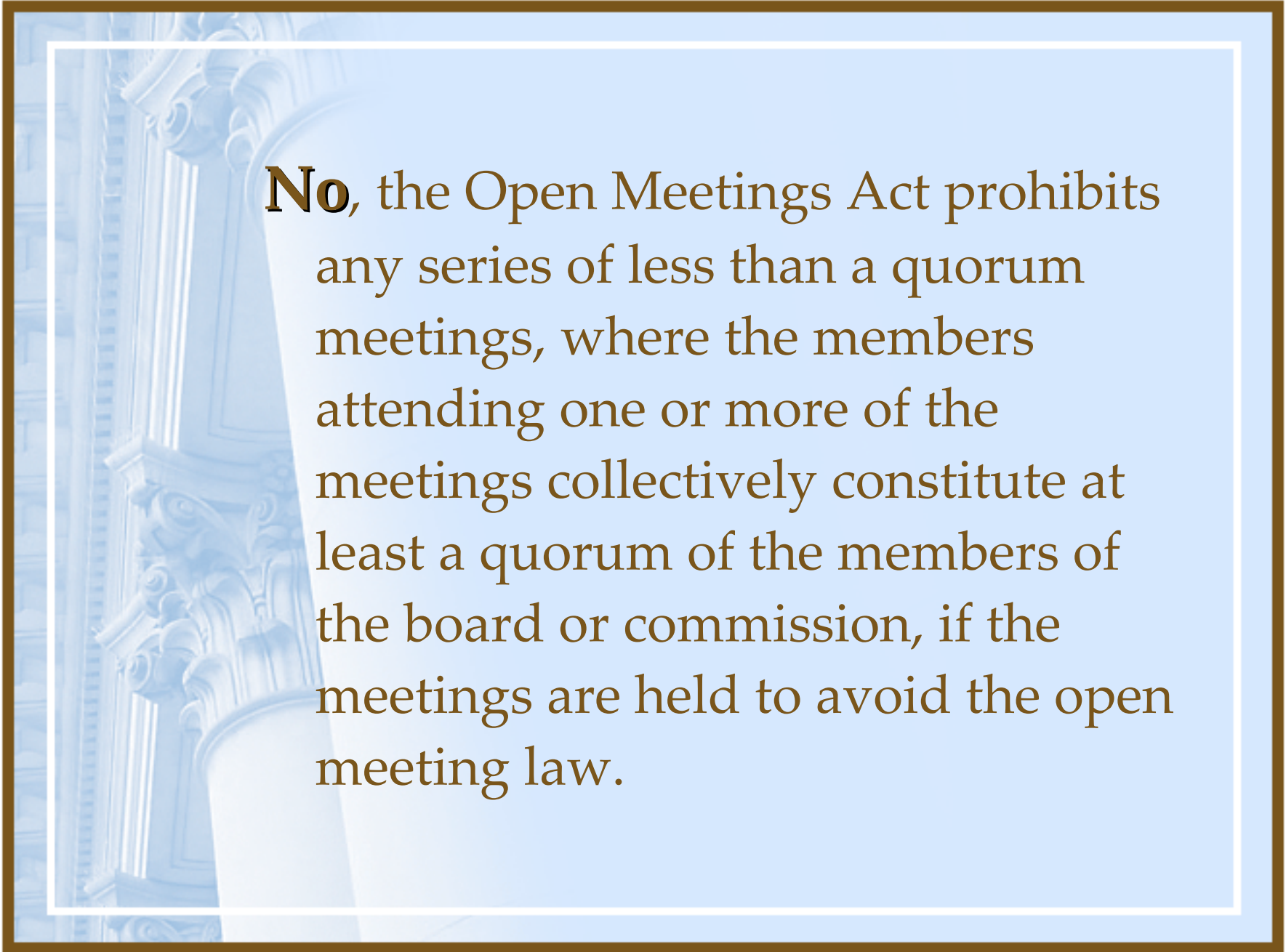
- ❖ Discussions relating to the future acquisition or sale of real property where publicity would likely affect the value of the property
- ❖ Discussions of proposed or pending litigation
- ❖ Collective Bargaining Negotiations
- ❖ Discussions or Hearings that might lead to the appointment, dismissal or discipline of an individual employee

Closed Session *(cont'd.)*

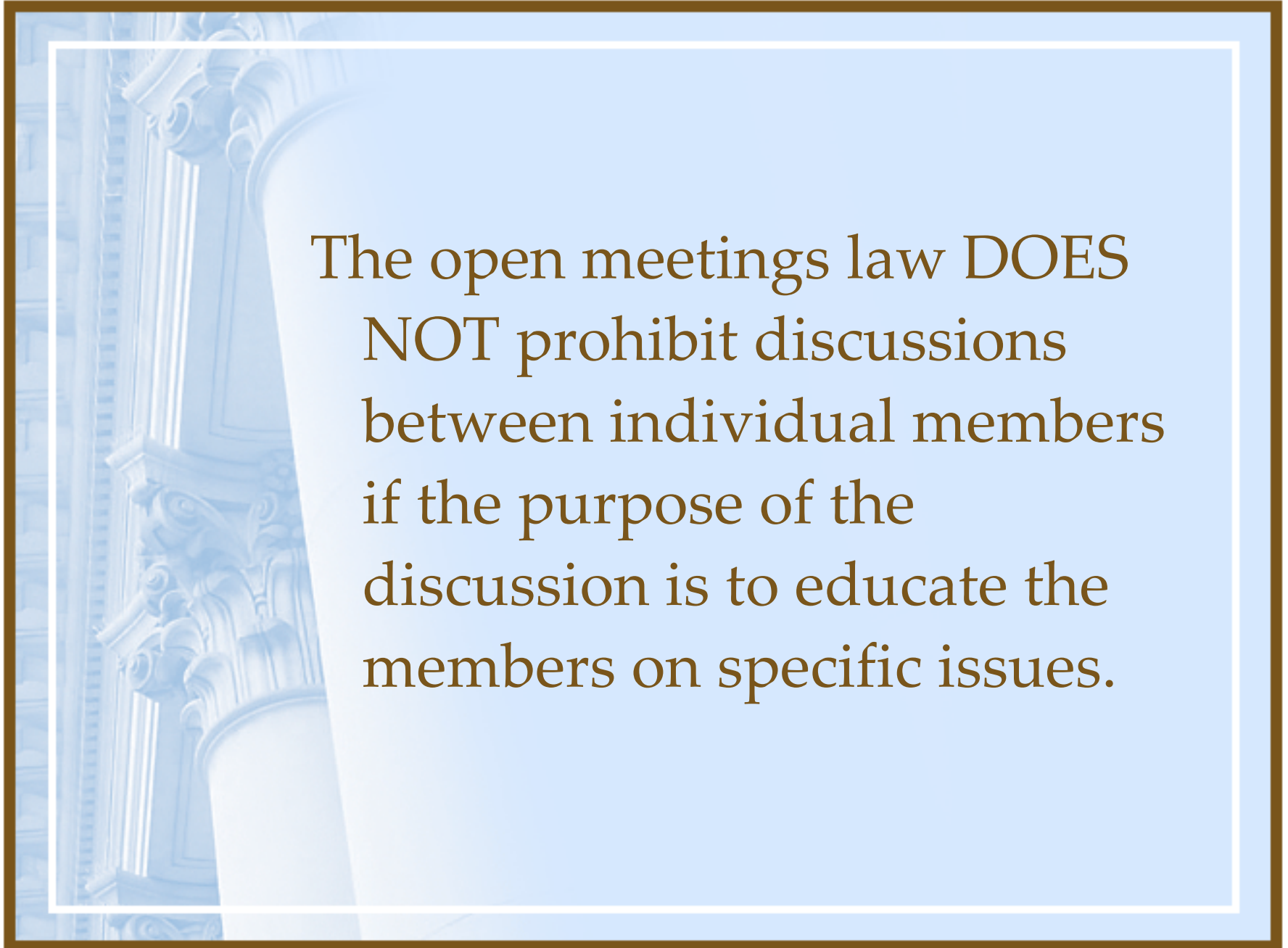
- ❖ Deliberations of judicial or quasi-judicial bodies involving individual adjudications or appointments
- ❖ Meetings which federal or state law require to be closed
- ❖ Portions of meetings devoted to discussions of a specific record exempt from public inspection pursuant to KRS 61.878(1)(m)

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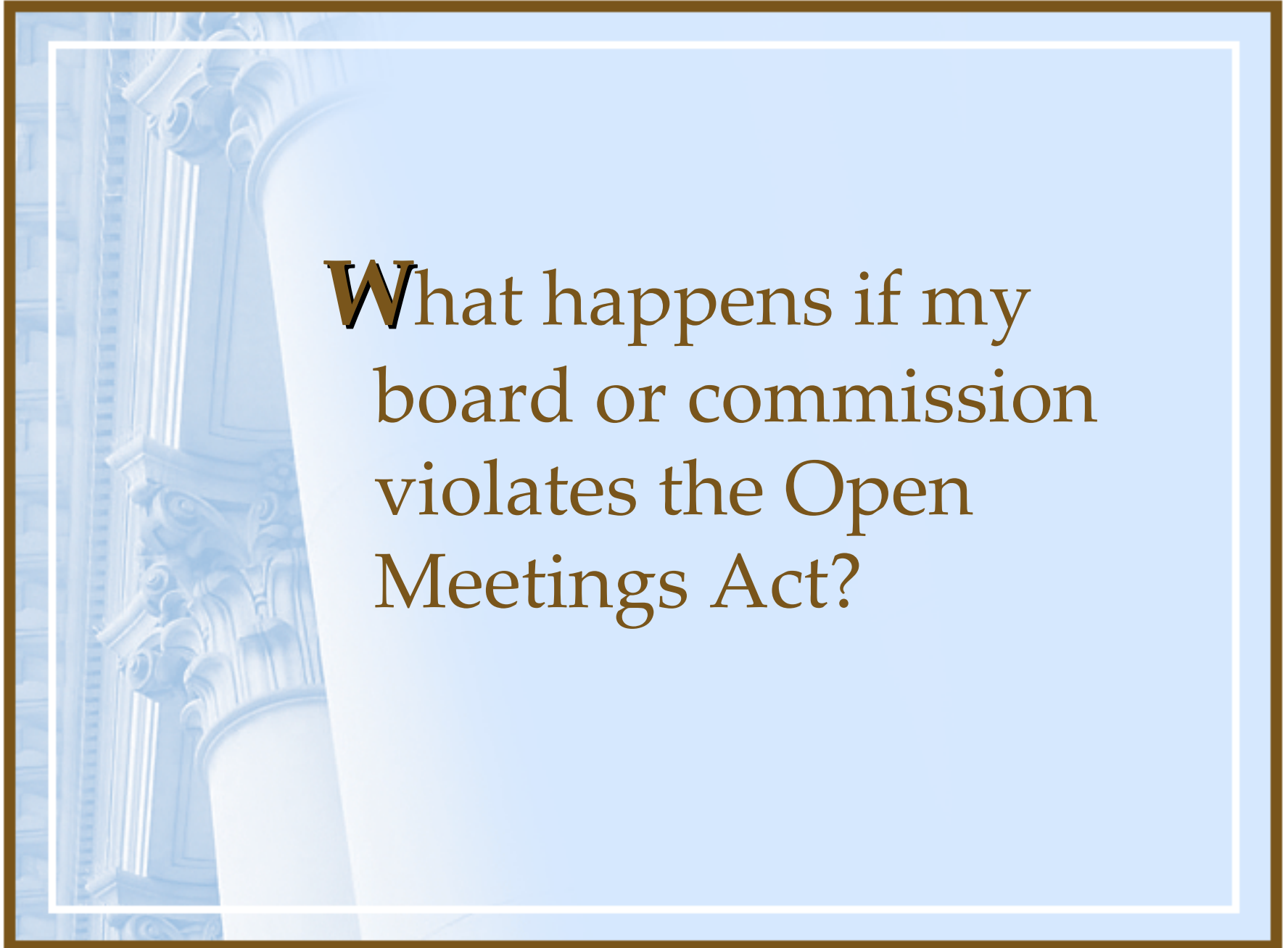
Can less than a quorum of the board members get together to discuss board matters so that we don't have to worry about the Open Meetings Act?



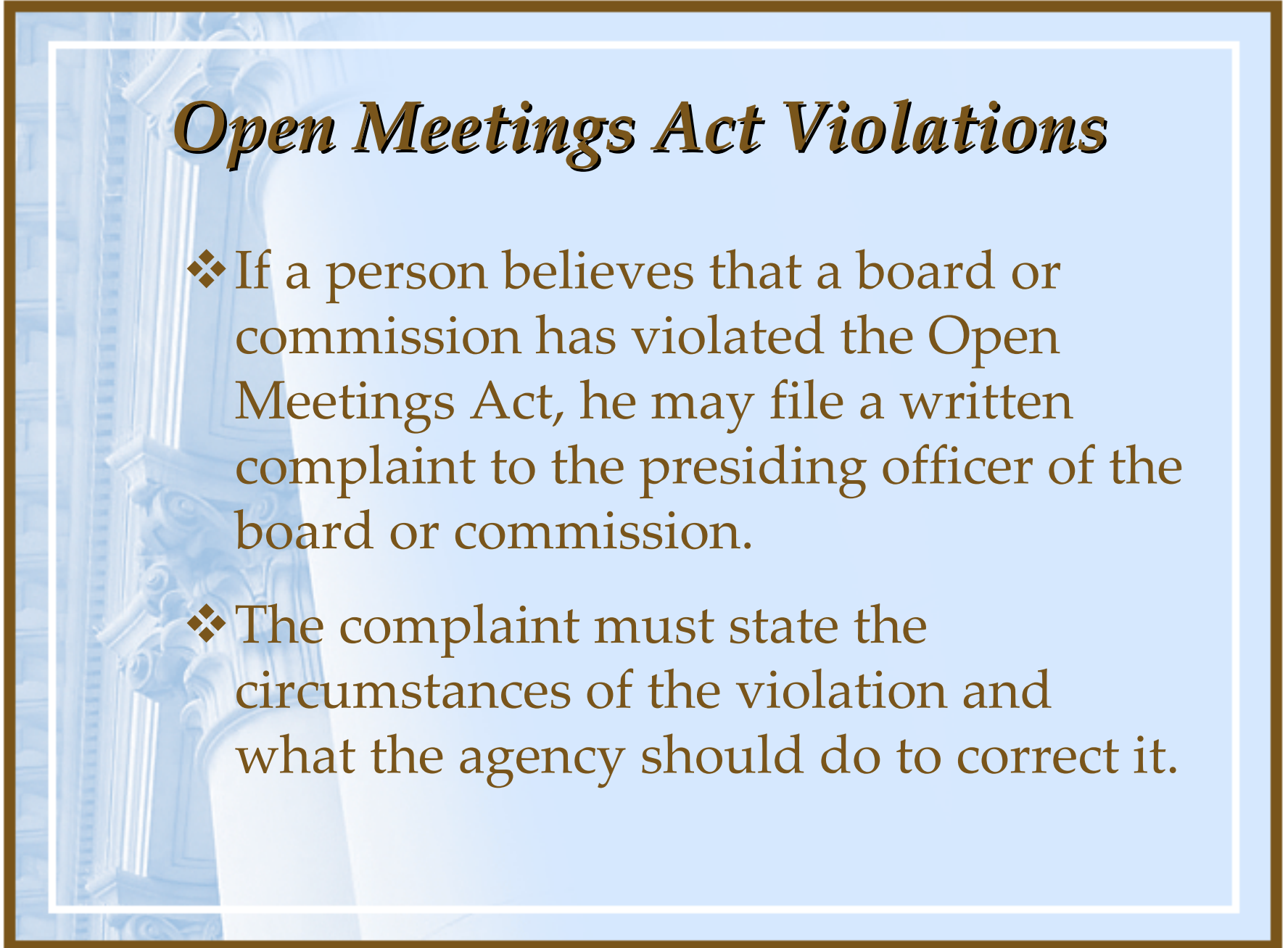
No, the Open Meetings Act prohibits any series of less than a quorum meetings, where the members attending one or more of the meetings collectively constitute at least a quorum of the members of the board or commission, if the meetings are held to avoid the open meeting law.

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The open meetings law DOES
NOT prohibit discussions
between individual members
if the purpose of the
discussion is to educate the
members on specific issues.

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What happens if my
board or commission
violates the Open
Meetings Act?

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Open Meetings Act Violations

- ❖ If a person believes that a board or commission has violated the Open Meetings Act, he may file a written complaint to the presiding officer of the board or commission.
- ❖ The complaint must state the circumstances of the violation and what the agency should do to correct it.

Open Meetings Act Violations (cont'd.)

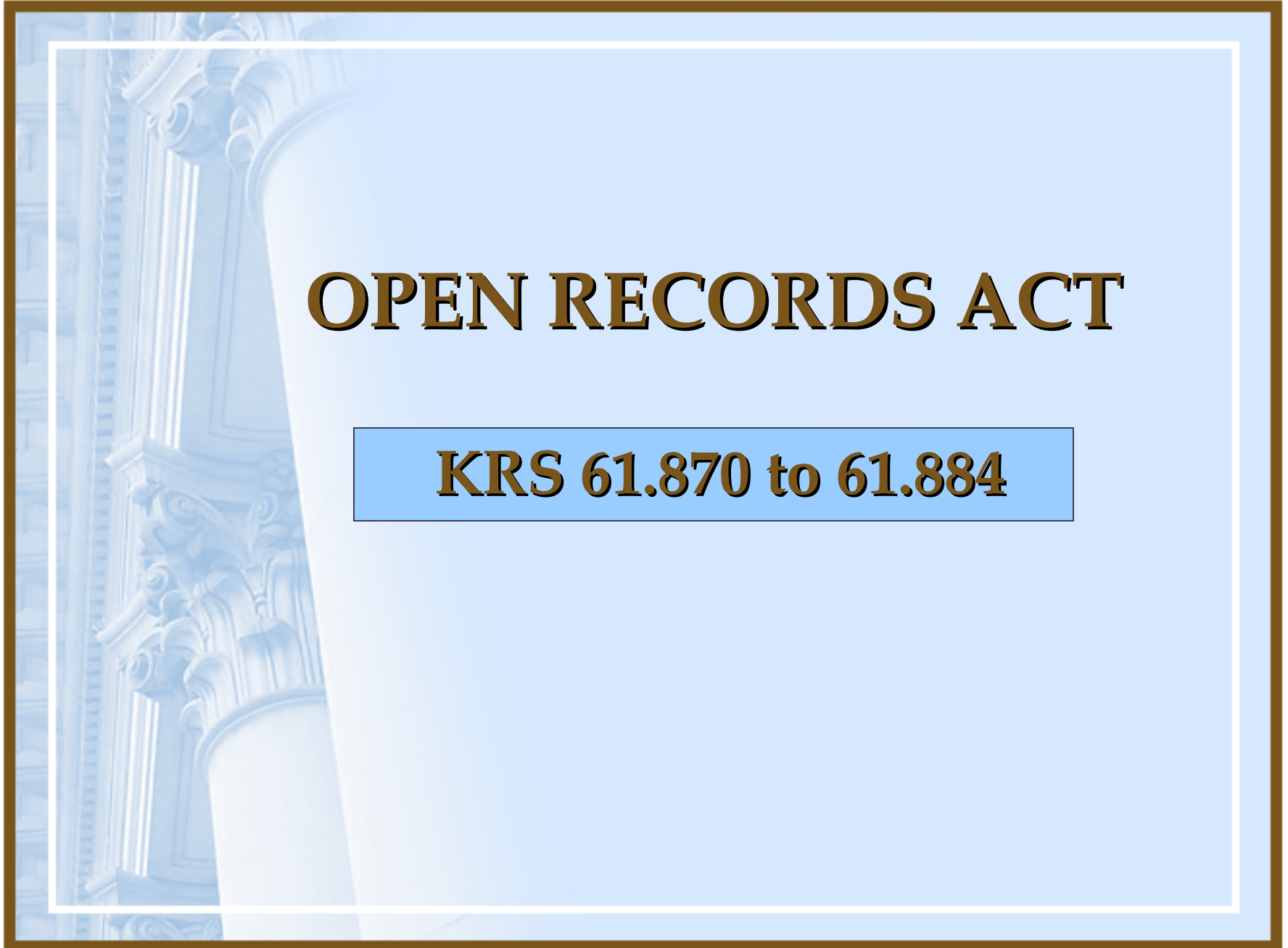
- ❖ Within three days after receiving the complaint, the board or commission must decide whether to correct the violation AND notify the complaining party of its decision in writing.
- ❖ If the board or commission believes that no violation has occurred it must cite the statute authorizing its actions and how the statute applies in its written response.

Open Meetings Act Violations (cont'd.)

- ❖ If the complaining party is not satisfied, he or she may appeal to the attorney General for review of the agency's actions within 60 days after receiving the agency's response.
- ❖ If either party is not satisfied with the Attorney General's response, an appeal may be filed in circuit court within 30 days after receiving the Attorney General's response.

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OPEN RECORDS TRAINING



OPEN RECORDS ACT

KRS 61.870 to 61.884

KRS 61.876

Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection.

Open Records Act

- ❖ The rules and regulations must be displayed in a prominent location which is accessible to the public and must include
- ❖ The principal office and regular office hours
- ❖ Title and address of official records custodian
- ❖ Fees charged for copies
- ❖ Procedures to be followed in requesting records

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Who is subject to the
Open Records Act?

Subject to Open Records

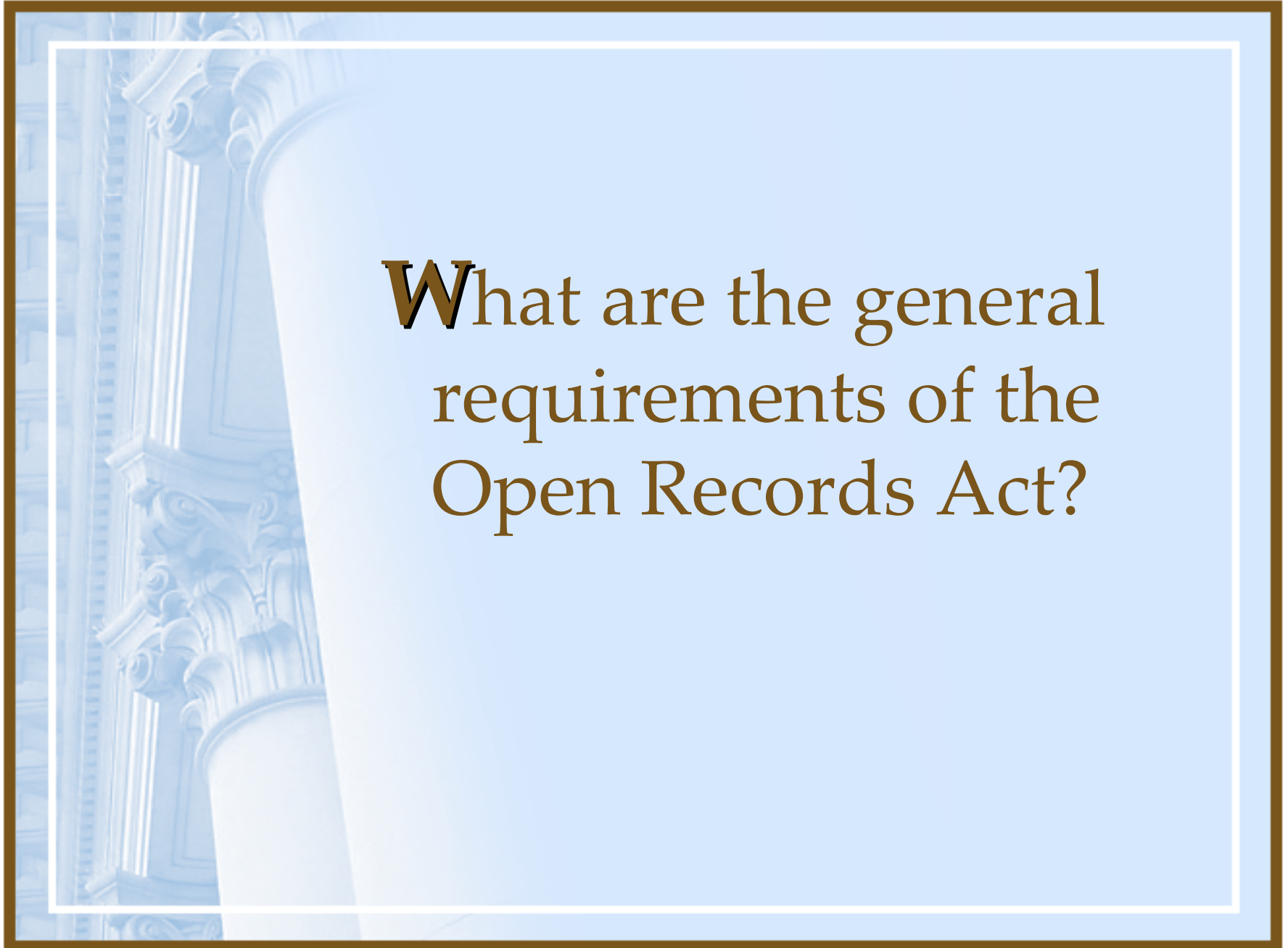
- ❖ (1) "Public agency" means:
- ❖ (a) Every state or local government officer;
- ❖ (b) Every state or local government department, division, bureau, board, commission, and authority;
- ❖ (c) Every state or local legislative board, commission, committee, and officer;
- ❖ (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
- ❖ (e) Every state or local court or judicial agency;

Subject to Open Records (*cont'd.*)

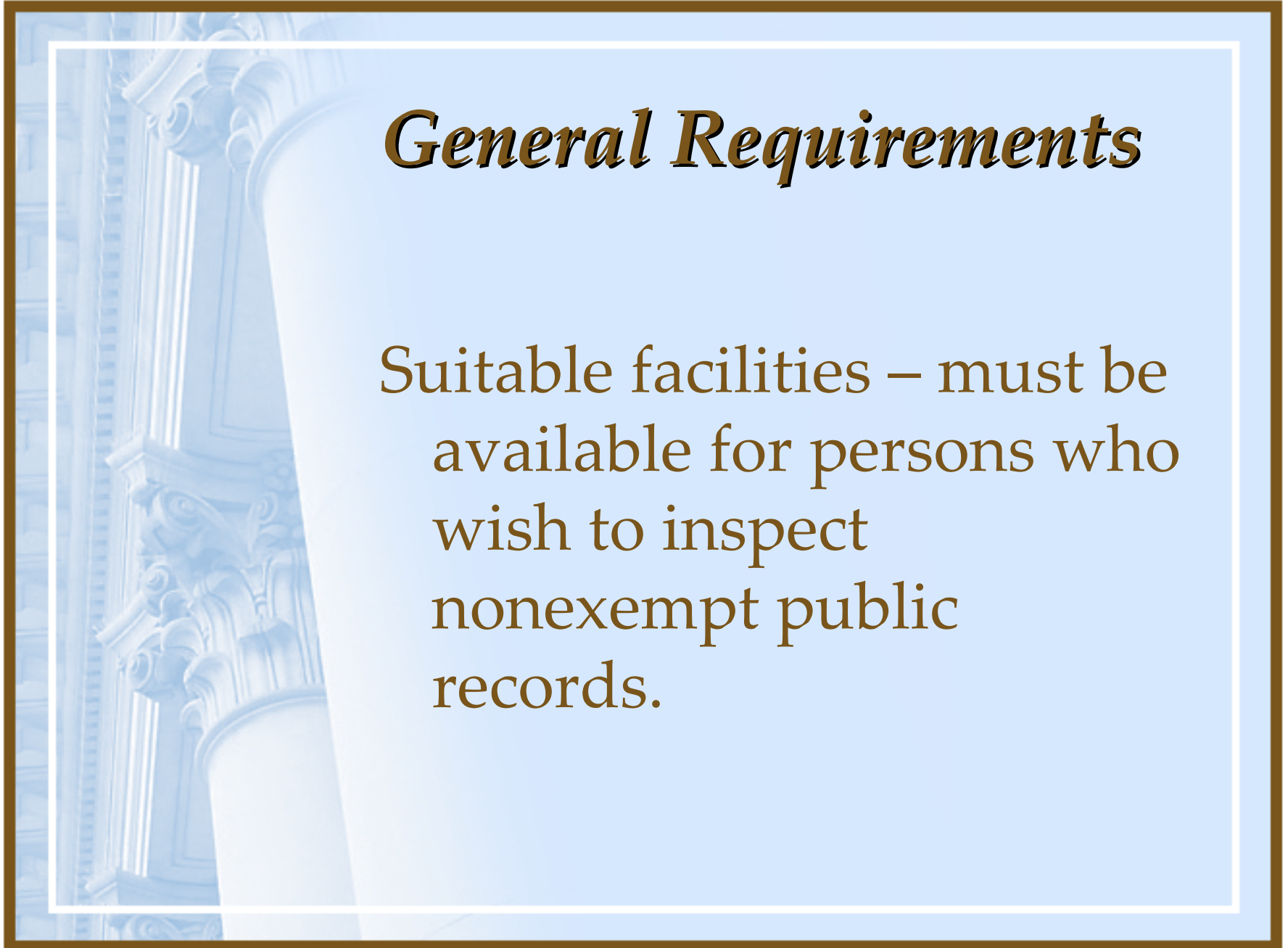
- ❖ (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- ❖ (g) Any body created by state or local authority in any branch of government;
- ❖ (h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;

Subject to Open Records (*cont'd.*)

- ❖ (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
- ❖ (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
- ❖ (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

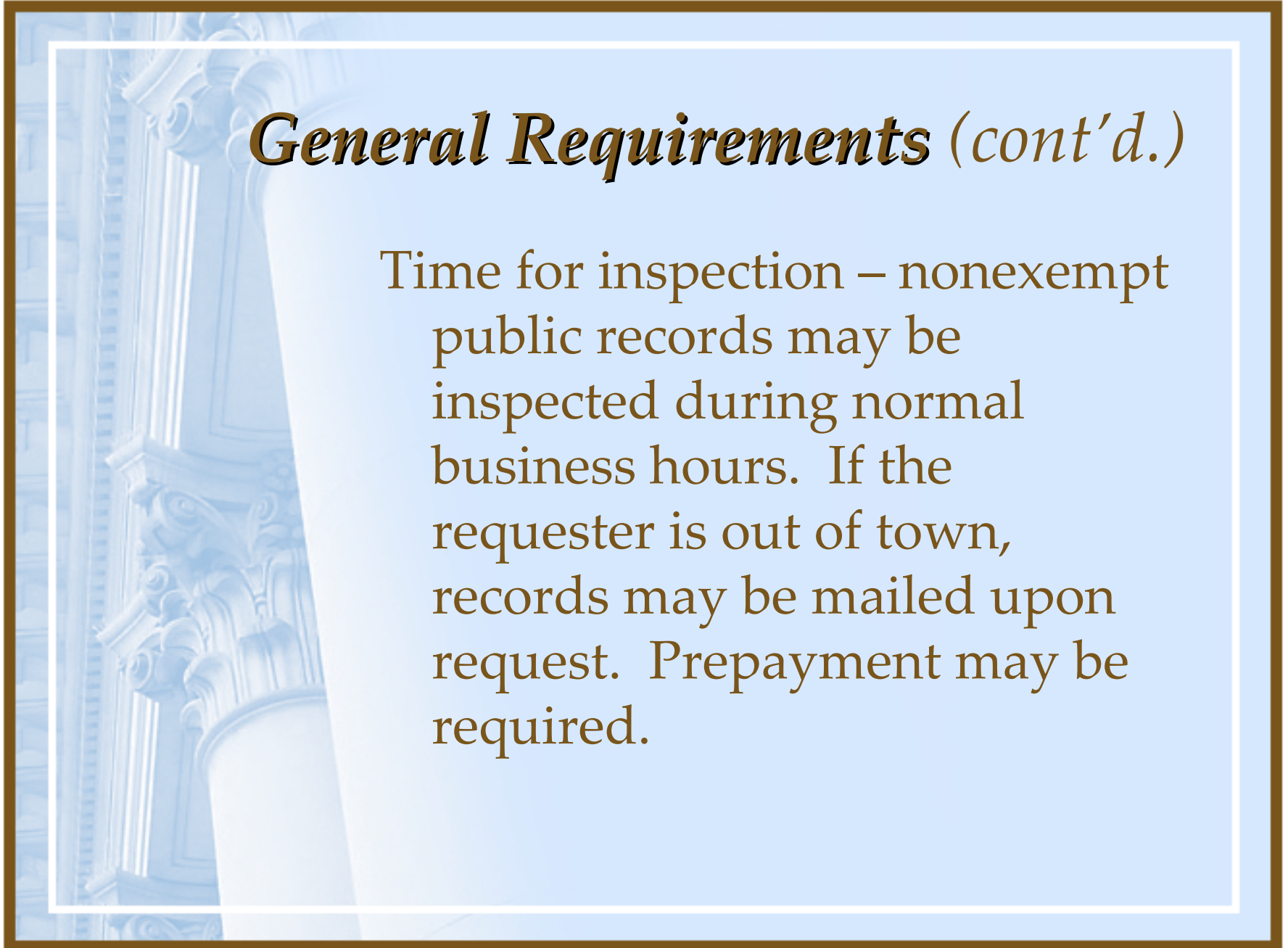
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What are the general requirements of the Open Records Act?

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General Requirements

Suitable facilities – must be available for persons who wish to inspect nonexempt public records.

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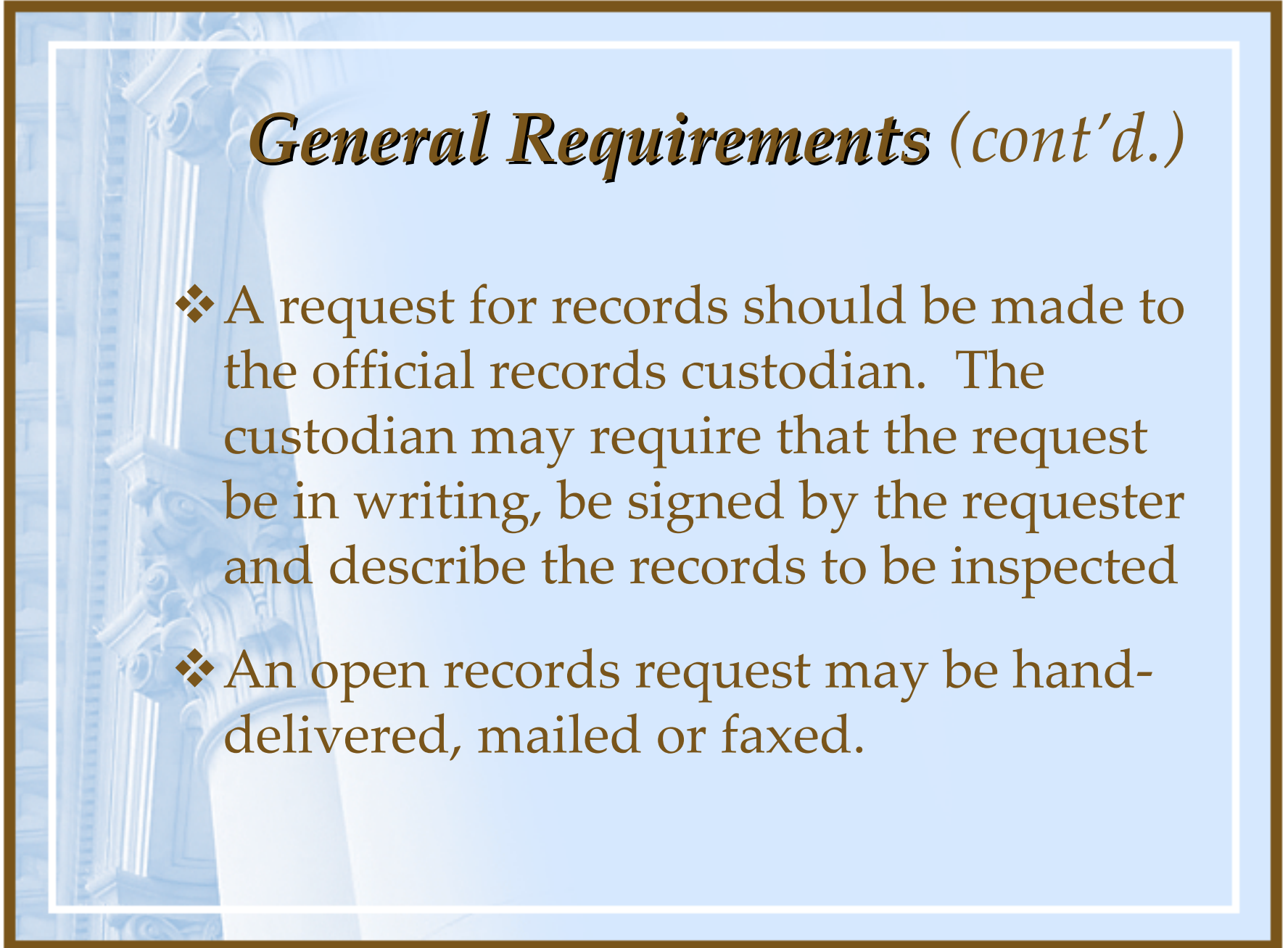
General Requirements (cont'd.)

Time for inspection – nonexempt public records may be inspected during normal business hours. If the requester is out of town, records may be mailed upon request. Prepayment may be required.

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General Requirements (cont'd.)

Official custodian – each public agency must appoint an official custodian who is responsible for maintaining the boards/commissions records.

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General Requirements (cont'd.)

- ❖ A request for records should be made to the official records custodian. The custodian may require that the request be in writing, be signed by the requester and describe the records to be inspected
- ❖ An open records request may be hand-delivered, mailed or faxed.

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My board/commission
received an open
records request.
What should I do?

The background of the slide features a faint, light blue image of classical columns, likely from a government building, which is partially obscured by the text and the slide's border.

Open Records Request

If a proper open records request is received, you have three days to respond to the request, excluding Saturdays, Sundays and legal holidays.

Open Records Request (*cont'd.*)

- ❖ If an exemption is used to deny the inspection of certain documents, the specific statutory exception should be cited in the response and a brief explanation of how the exception applies to the record withheld should be given.
- ❖ For example, if you redact social security numbers and home addresses from a record, your letter should state: “Pursuant to the privacy exemption in KRS 61.878(1)(a), social security numbers and home addresses have been redacted from the documents provided to you.”

Sample Letter
Typical Response

Re: Open Records Request
Log No. _____

Dear Mr. X:

This is in response to the above referenced open records request received on **(date received)** for the following items **(list request)**. The documents you have requested are now available for your inspection in **(place Division name and address here)** during regular business hours. After you have inspected the documents, copies may be made at .10¢ per page. Please see **(insert name of contact person)** for assistance.

Records will be available for your inspection for thirty (30) days from the date of this letter. After thirty (30) days, the records will be returned to the filing system and this matter will be considered closed.

Sincerely,

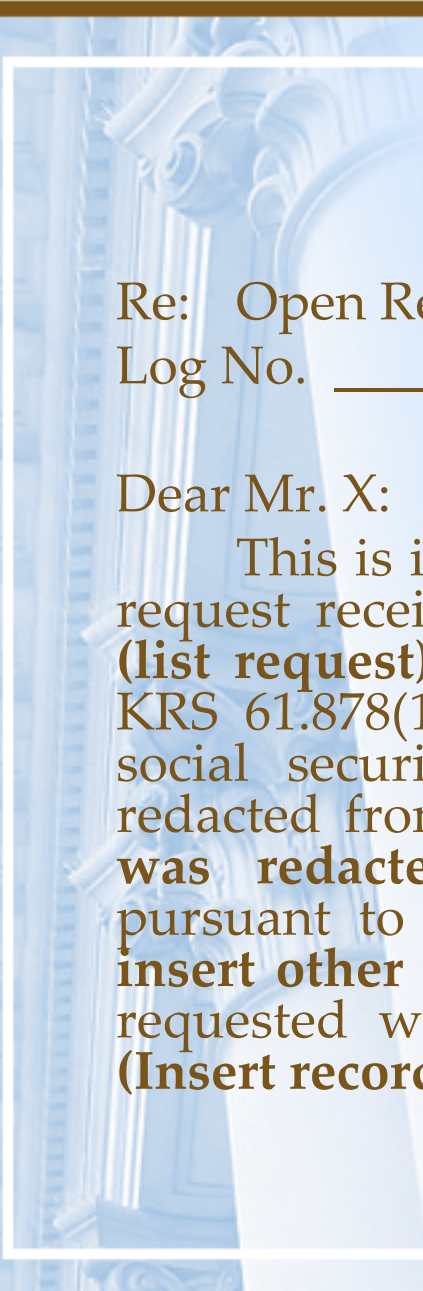
Sample Letter
Stating More Time Will Be Taken to Respond

Re: Open Records Request
Log No. _____

Dear Mr. X:

This is in response to the above referenced open records request received on **(insert date)** for the following items **(list request)**. Due to the voluminous nature of your request **(and/or)** the lengthy time period covered by your request **(and/or)** the fact that the records are not centrally located **(and/or)** **(some other stated legitimate reason)**, it will take some time to process your request. I will update you by letter in 5-7 business days as to the status of your request. At the end of this process, all non-exempt documents will be made available for your inspection.

Sincerely,



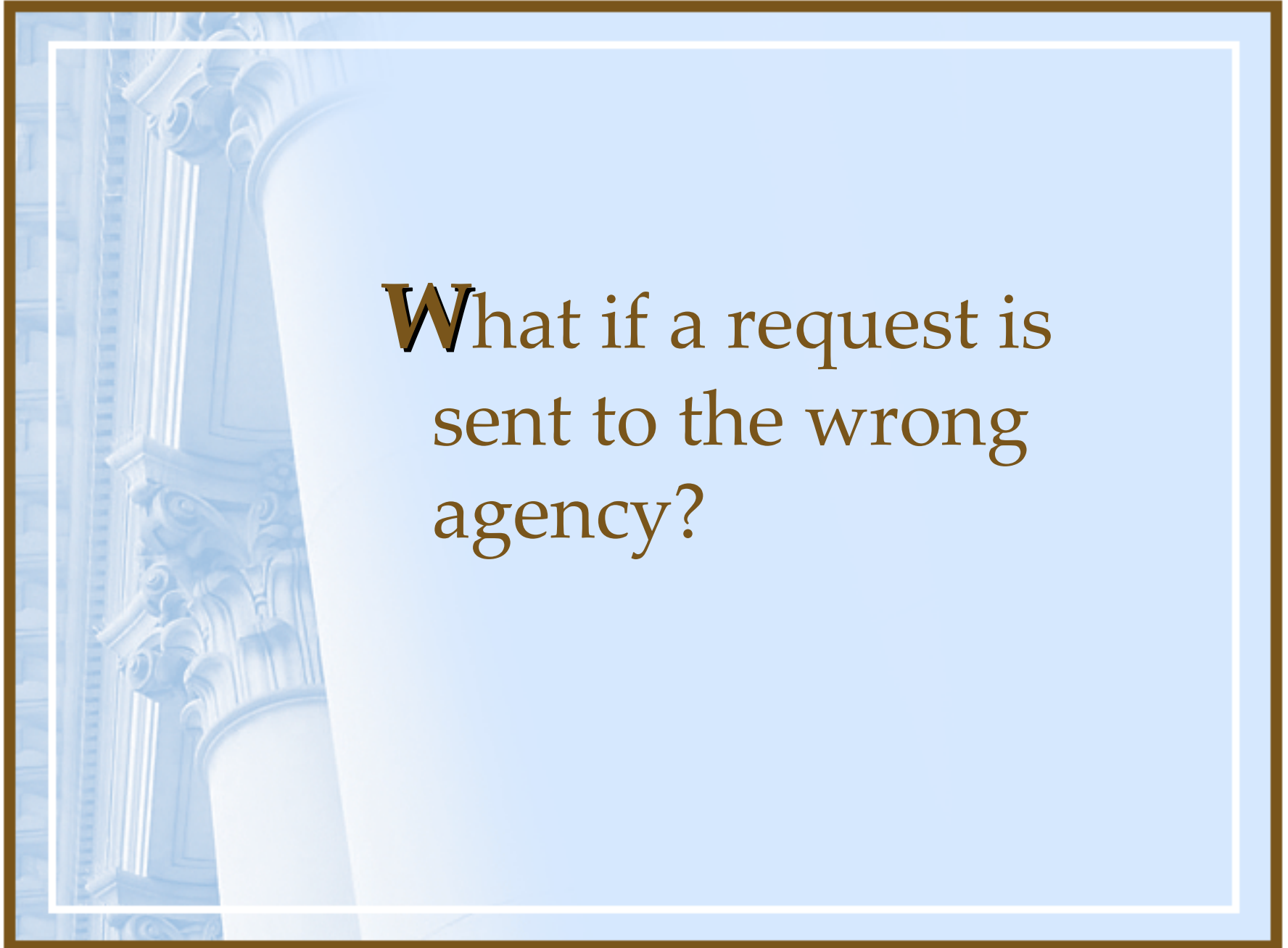
Sample Letter Use of Exemptions

Re: Open Records Request
Log No. _____

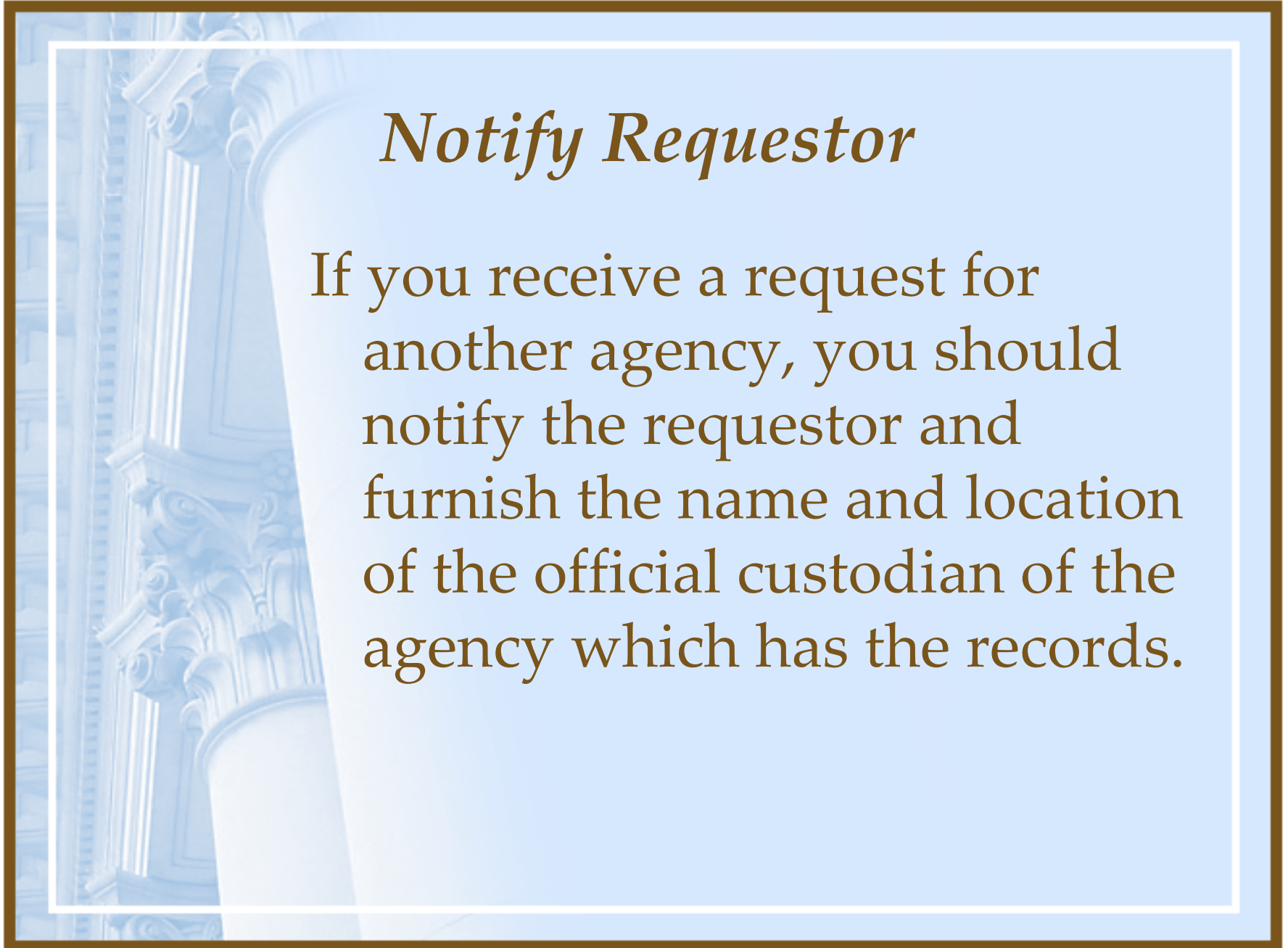
Dear Mr. X:

This is in response to the above referenced open records request received on **(date received)** for the following items **(list request)**. Pursuant to the privacy exemption stated in KRS 61.878(1)(a) **[or other applicable statutory exemption]** social security numbers and home addresses have been redacted from the documents provided to you **(insert what was redacted)** **(and/or)** your request has been denied pursuant to the privacy exemption in KRS 61.878(1)(a) **[or insert other exemption]**. The Social Security cards that you requested will not be made available for your inspection. **(Insert records denied).**

Sincerely,

The background of the slide features a light blue gradient. On the left side, there is a vertical strip showing a close-up of classical architectural columns with ornate capitals. The entire slide is framed by a thin brown border.

What if a request is
sent to the wrong
agency?

The background of the slide features a light blue gradient with a faint, semi-transparent image of classical architectural columns on the left side. The columns are white with detailed capitals and fluted shafts. The entire slide is framed by a thin brown border.

Notify Requestor

If you receive a request for another agency, you should notify the requestor and furnish the name and location of the official custodian of the agency which has the records.

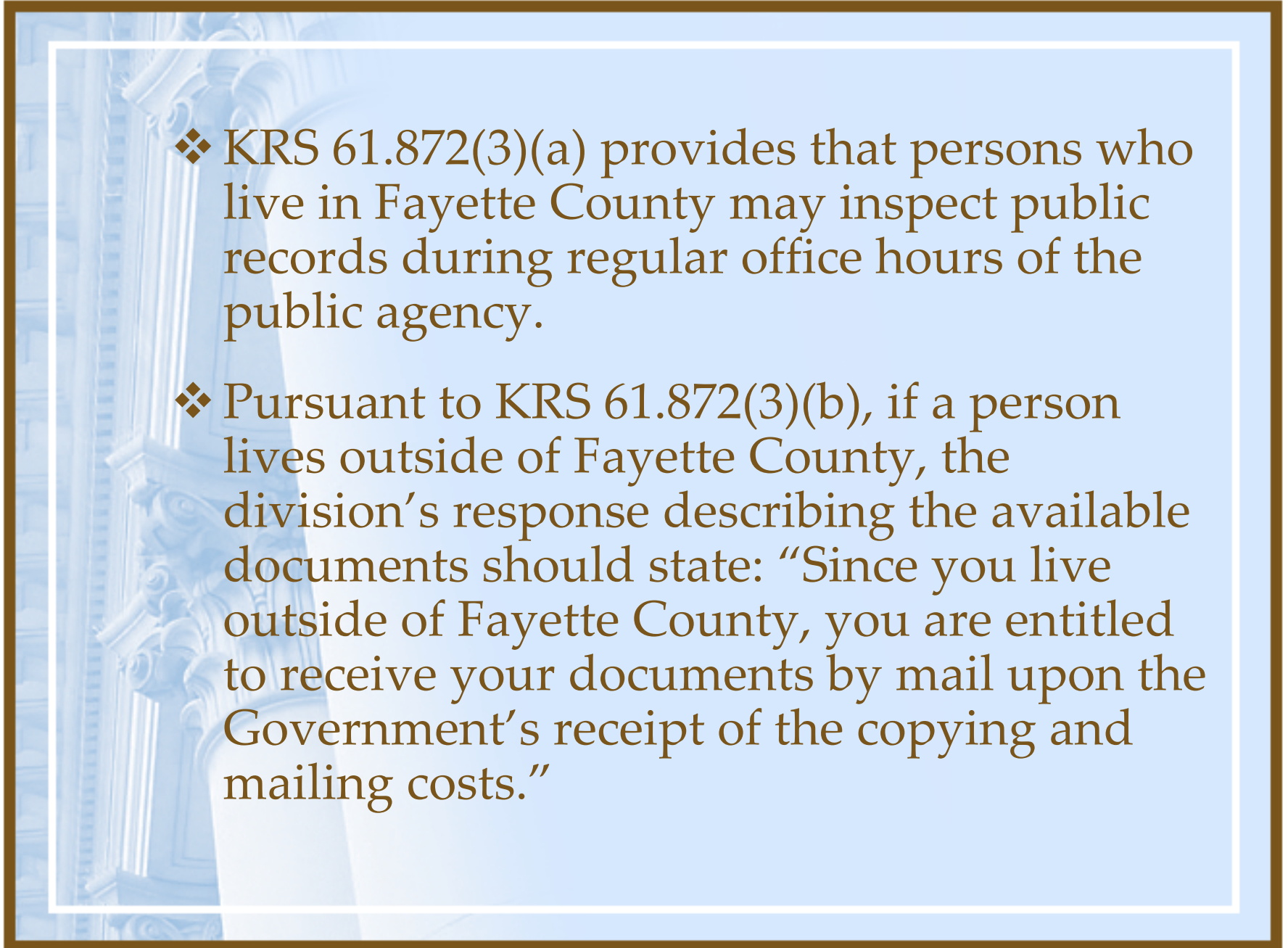
Sample Letter
LFUCG Not the Official Custodian

Re: Open Records Request
Log No. _____

Dear Mr. X:

This is in response to the above referenced open records request received on **(date received)** for the following items **(list request)**. The Lexington-Fayette Urban County Government is not the official custodian for the records you requested. You should write the official custodian who is **(insert proper agency such as Health Department or County Clerk)** at the following address **(insert other agency's address)**.

Sincerely,

- 
- The background of the slide features a faint, blue-tinted image of classical architectural columns, likely from a government building, which adds a formal and legalistic feel to the presentation.
- ❖ KRS 61.872(3)(a) provides that persons who live in Fayette County may inspect public records during regular office hours of the public agency.
 - ❖ Pursuant to KRS 61.872(3)(b), if a person lives outside of Fayette County, the division's response describing the available documents should state: "Since you live outside of Fayette County, you are entitled to receive your documents by mail upon the Government's receipt of the copying and mailing costs."

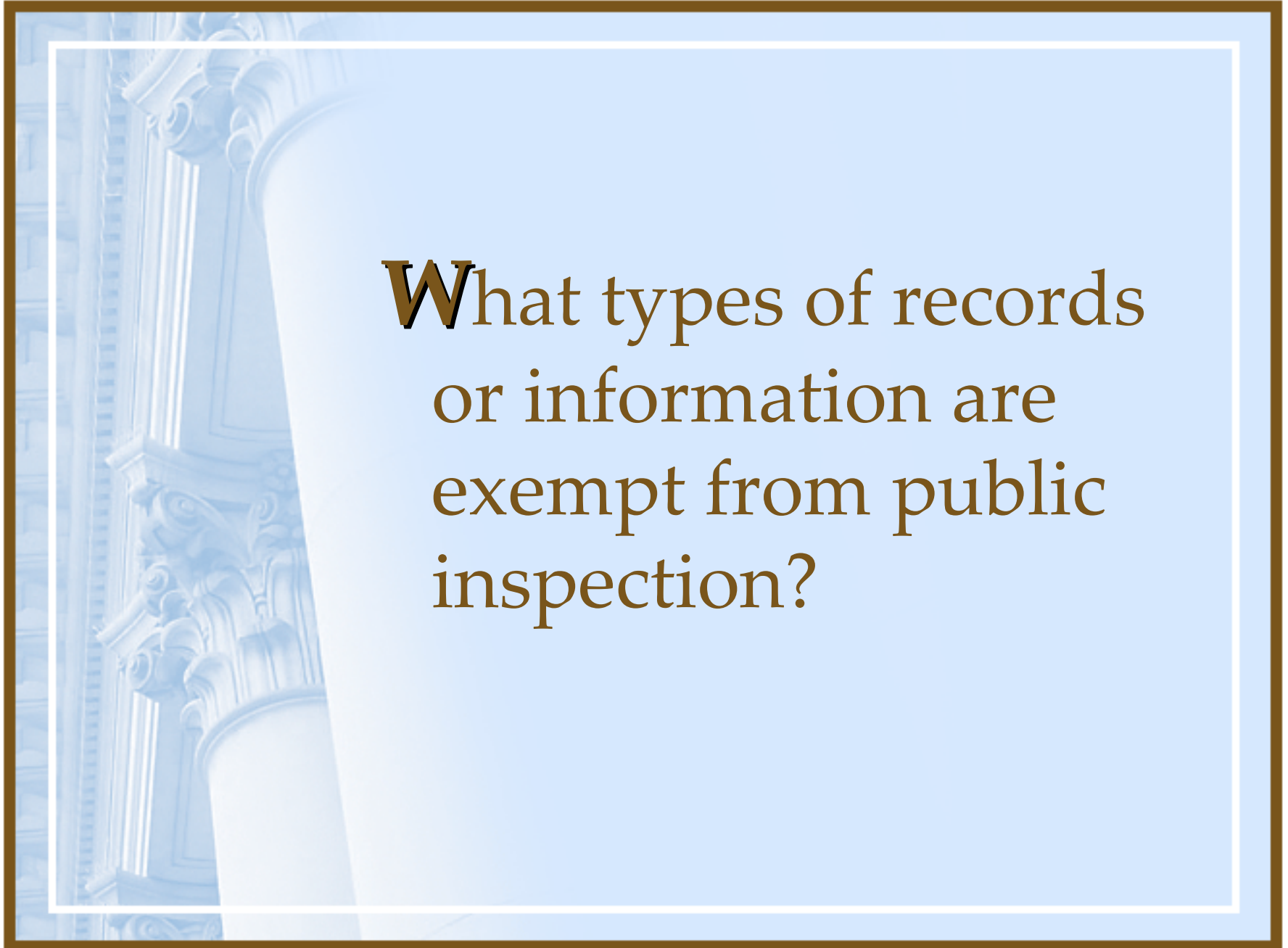
Sample Letter
Copies of Documents By Mail

Re: Open Records Request
Log No. _____

Dear Mr. X:

This is in response to the above referenced open records request received on **(date received)** for the following items **(list request)**. The documents you have requested are now available for your inspection. Pursuant to KRS 61.872(3)(b), since you live outside Fayette County, you are entitled to receive your documents by mail upon the Government's receipt of the copying and mailing costs. I will forward you your documents as soon as I have received a check for \$_____ **(.10¢ a copy times the number of copies made plus the postage amount)**.

Sincerely,

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What types of records
or information are
exempt from public
inspection?

Exemptions

- ❖ Exemptions are found in KRS 61.878
- ❖ Examples include:
 - Personal information such as social security numbers and home addresses
 - Preliminary documents
 - Handwritten notes
 - Records which would threaten public safety



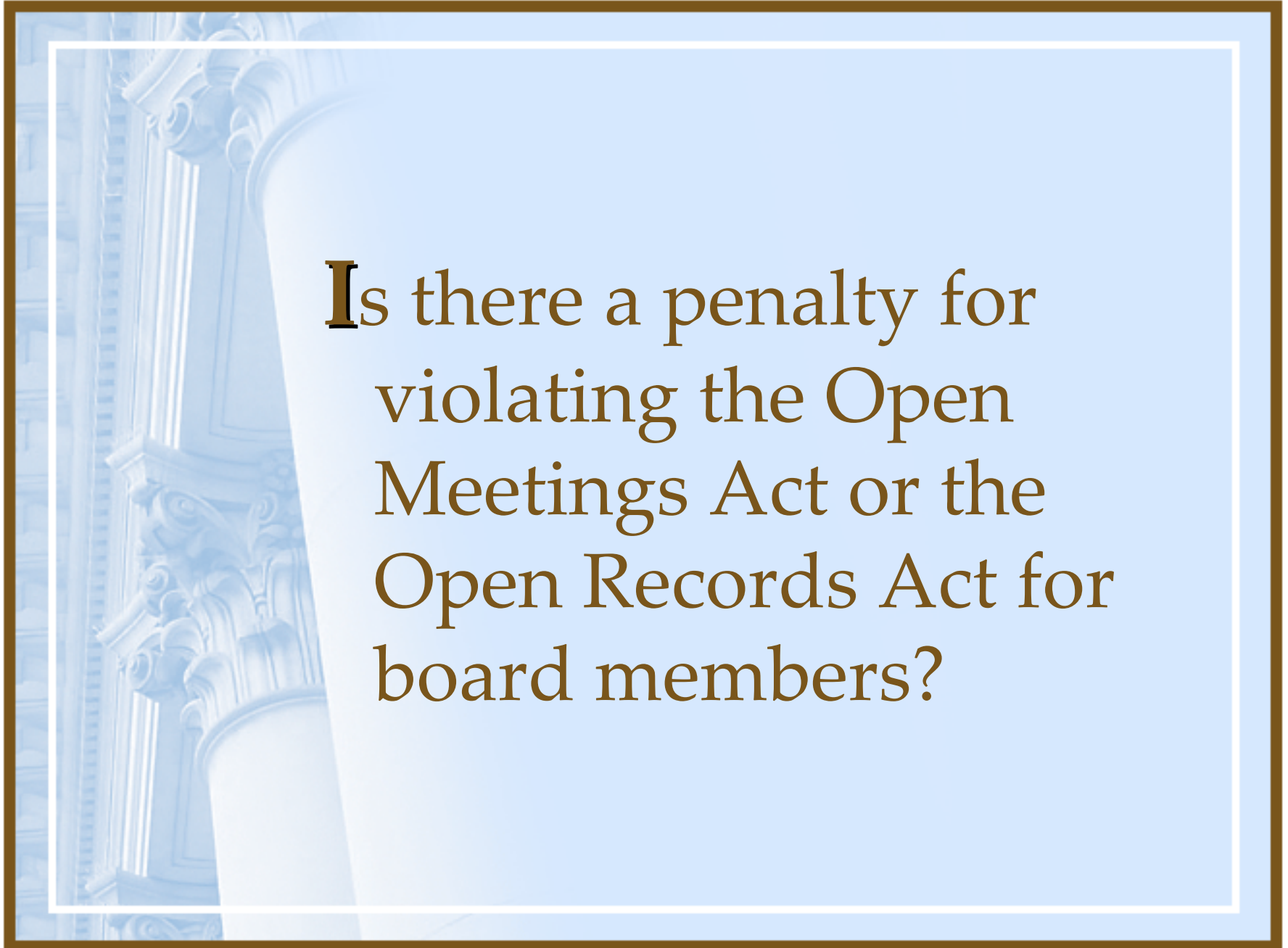
What if we deny
access to records?

Denying Access

- ❖ If you deny access to records or fail to respond to an open records request, an appeal may be filed with the Attorney General or a lawsuit may be filed in Circuit Court.
- ❖ If an appeal is filed with the Attorney General and either party is dissatisfied with the Attorney General's opinion, an action may be filed in Circuit Court appealing the Attorney General's decision

Denying Access (*cont'd.*)

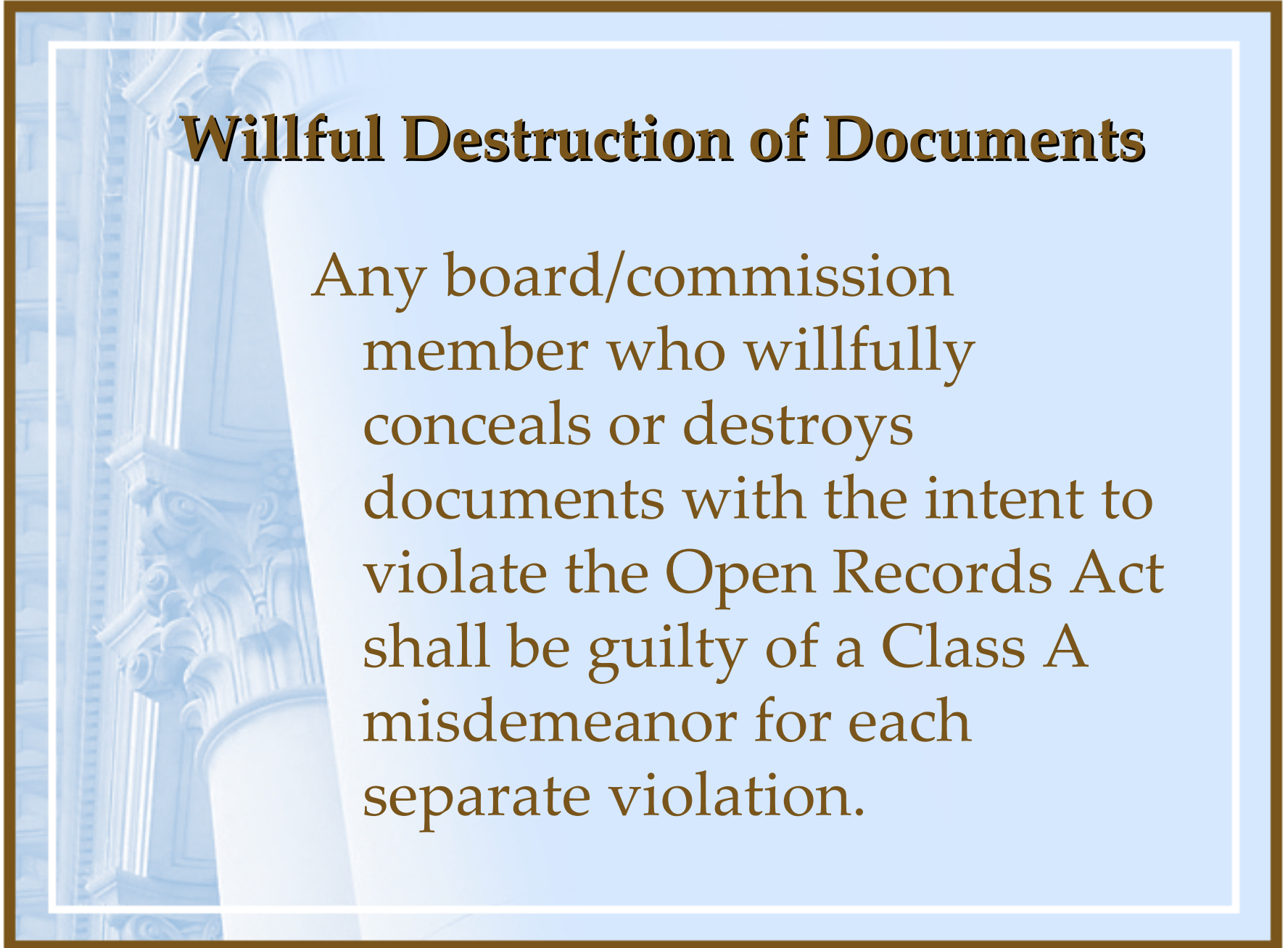
- ❖ If an action is filed in Circuit Court and the court finds that the board/ commission willfully withheld records, the requester will receive:
 - Costs
 - Attorney's fees
 - Court may impose a penalty of \$25.00 per day for each day the record was withheld

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Is there a penalty for violating the Open Meetings Act or the Open Records Act for board members?

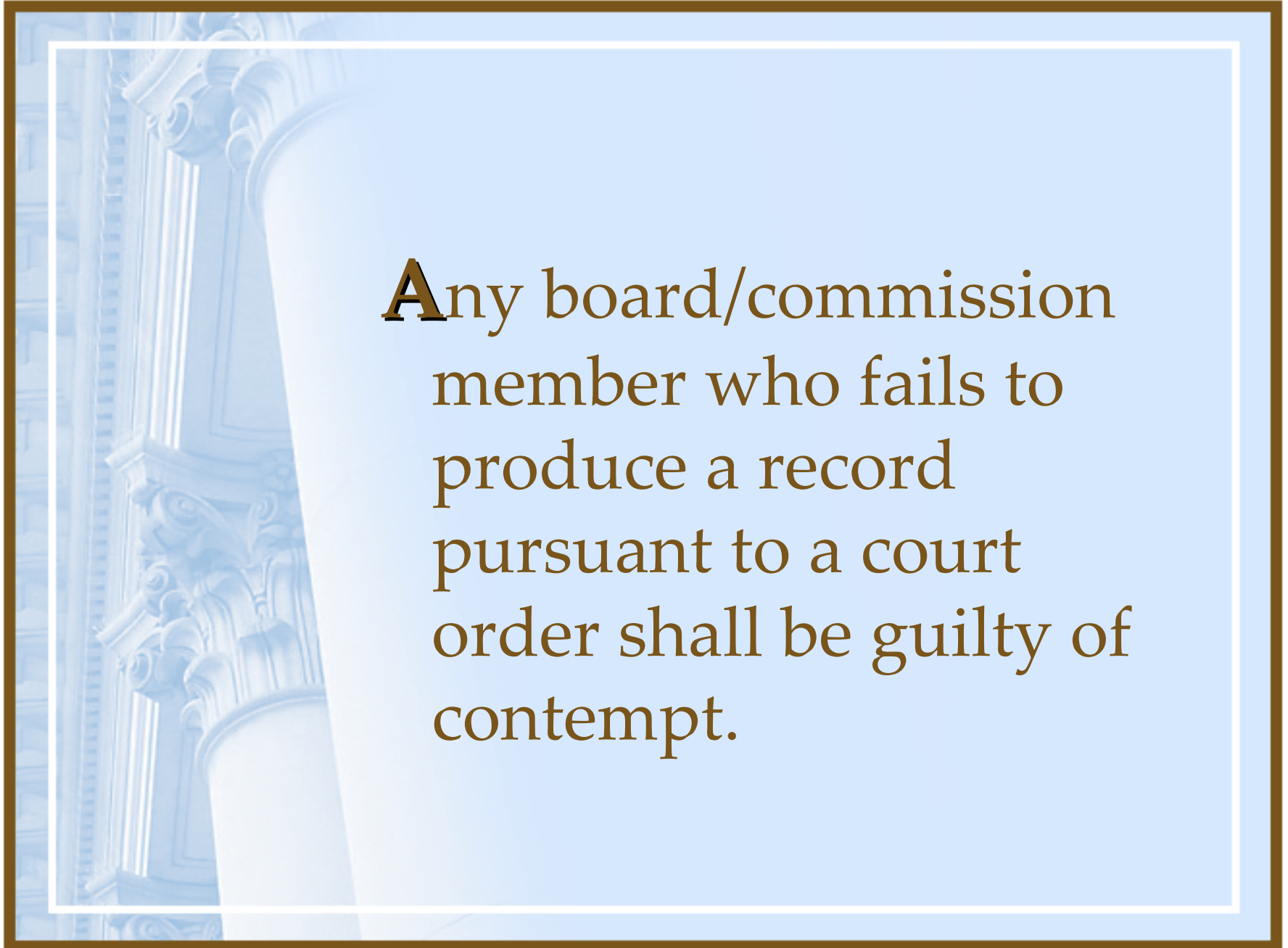
The background of the slide features a light blue gradient with a faint, semi-transparent image of classical architectural columns on the left side. The columns are white with detailed capitals and fluted shafts. The entire slide is framed by a thin brown border.

Any board or commission member who attends a board/commission meeting knowing that it is not being held in accordance with the provisions of the Open Meetings Act will be fined not more than \$100.

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Willful Destruction of Documents

Any board/commission member who willfully conceals or destroys documents with the intent to violate the Open Records Act shall be guilty of a Class A misdemeanor for each separate violation.

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Any board/commission member who fails to produce a record pursuant to a court order shall be guilty of contempt.



Questions?

Glenda Humphrey George

M. Keith Horn

Managing Attorneys

Department of Law

200 East Main Street, 11th Floor

Lexington, KY 40507

859-258-3500