

MERCERTRIGIANI

Living & Governing Through Coronavirus (and other Acts of God or *Force Majeure*)

Member Meetings

Association members gather at least annually to receive reports on community governance and elect new leaders. Sometimes circumstances require special meetings of members to be convened. These meetings bring groups of people together, often in large numbers, in closed rooms. With concerns of the spread of Coronavirus and in light of Executive Order Number Fifty-Three (“Order”) issued by the Governor of Virginia restricting public and private gatherings, necessary precautions must be taken and clear communication given if the decision is made to proceed with a scheduled member meeting.

Proceed or Not to Proceed?

Consider:

- Do the governing documents require a meeting to take place by a certain time?
- Is there a critical reason for proceeding (e.g., special assessment, document amendment)?
- Are association members or property at risk?
- If proxies are being used, will the proxies be valid if the meeting is postponed?
- Do the governing documents provide a method to cancel or postpone the meeting?
- Do the governing documents permit remote participation and voting?

Planning Considerations

Volunteer leaders and managers must consider several factors in planning and conducting member meetings during the ongoing pandemic.

Physical Attendance – In observance of the Order which bans gatherings of more than ten individuals, physical attendance at member meetings ***must be limited*** to no more than ten people. Boards ***cannot*** allow more than ten people to attend a member meeting. In lieu of physical attendance, boards may provide members with a call-in conference line number or access to a video meeting service capable of conducting the meeting (e.g., Skype, Google Hangouts, Facebook Live, Zoom).

Amend the Agenda – Although governing documents often prescribe agendas for member meetings, members may take action to amend the meeting agenda once the meeting is convened. Meeting agendas should be limited to *necessary* items, such as establishing quorum and voting (on directors or other matters). Reviewing minutes from previous meetings may be tabled to the next member meeting. Director and officer reports can be written and published to the community. And owner forum or comment can be dispensed with upon member action.

Boards should prepare and distribute an amended agenda, explaining that a motion will be made when the meeting convenes to amend and limit the agenda only to necessary action.

Use Proxies – Unless the use of proxies is expressly prohibited by the association governing documents, members should be strongly encouraged to use proxies in lieu of attending the meeting in person. A proxy is used to designate another individual with the authority to act (e.g., vote) on behalf of the member. Proxies are **not** ballots – ballots are used to cast votes; proxies direct how a person must vote.

Proxies are legal documents and may be subject to challenge if care is not taken to ensure the form complies with statutory and document requirements and the form is fully and correctly completed. Association governing documents and applicable Virginia laws (Virginia Condominium Act and Virginia Nonstock Corporation Act) establish proxy requirements. In addition, proxies must be carefully drafted to avoid unintended consequences.

Most importantly, proxies are valid *only* if the person designated as the proxy **is present** at the meeting. If the proxy holder is not at the meeting, the vote cannot be counted. Therefore, proxy forms should be drafted to permit flexibility, such as designating the *Secretary of the Meeting* as the proxy holder rather than designating a particular person.

Remote Participation – Time and resources permitting, boards may consider authorizing remote participation in member meetings, including through electronic voting. For **incorporated** associations, Section 13.1-844.2 of the Virginia Nonstock Act authorizes remote meeting participation so long as reasonable measures are implemented to verify member participation (for voting purposes) and members have a reasonable opportunity to participate and vote. For **unincorporated** associations, both the Virginia Property Owners' Association Act and Virginia Condominium Act permit associations to take advantage of advanced technology. **But**, in either case, care must be taken to confirm governing document authority.

An Unlikely Alternative – Action Without Meeting

- Unanimous written consent
 - Incorporated Associations – Section 13.1-841, Virginia Nonstock Corporation Act
 - Unincorporated Associations – Review governing documents
- All members must deliver written consent describing action taken
- Documents may establish lesser threshold

Communicate – Once preparations are made, prompt communication is key. Members should be notified of the plan to proceed with conducting the meeting. Anticipating member concerns about the spread of Coronavirus, the communication should clearly and confidently explain the procedures being implemented to mitigate risks. Members should be encouraged to participate by proxy (or remotely, if authorized). Any additional precautions being implemented should be explained.

Conducting the Meeting

The day of the meeting, care should be taken to prepare the meeting space for members to gather. To the extent possible, the meeting space should be cleaned thoroughly, and hand sanitizer should be made available. If possible, consider convening the meeting outdoors or without chairs. Consider opening the polls for voting at the beginning of the meeting, so members can cast votes and leave. Be deliberate – script the meeting in advance and follow the script. And, if meeting using conference call or electronic platforms, additional preparation is essential – including system testing and a practice run.