

GOOD SENSE GOVERNANCE

Legal Affairs & Association and MLS Governance

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ALTERNATIVES TO ATTENDANCE AT IN-PERSON MEETINGS

IN A NUTSHELL

1. There are several ways to conduct association business outside of an in-person meeting.
2. State law dictates alternative ways of conducting association business.
3. Associations that experience difficulty gathering necessary meeting participants for an in-person meeting may still be able to establish a quorum and vote on issues by using an electronic meeting, allowing proxy voting, or conducting a ballot vote.

NUTS AND BOLTS

Electronic Meetings:

An electronic meeting takes place through an electronic medium, such as webinar or telephone, rather than in a traditional face-to-face setting. In order to hold a valid electronic meeting, participants must be able to conduct an informed and meaningful discussion, which requires that all participants be able to speak to and hear each other during the meeting. Email or chat messaging cannot be used for electronic meetings for the aforementioned reason. It is a good rule of thumb to include a statement in the meeting minutes that all meeting participants confirmed their ability to speak and hear the other meeting participants during the electronic meeting.

State law dictates whether an association may conduct official business via electronic meetings. It's imperative for associations to know their state law as they may include certain requirements or restrictions, such as an express authorization of electronic meetings in an association's bylaws, in order for an association to properly hold an electronic meeting.

Keep in mind that even when conducting an electronic meeting, an association must adhere to all other applicable meeting requirements, such as providing the required notice of the meeting and establishing a quorum. If all meeting requirements are met, the association can take any action (including voting) at an electronic meeting that it could take in a traditional face-to-face meeting.

Action outside of a meeting:

In circumstances where immediate action is necessary or it is impractical to assemble meeting participants, an association may still be able to take necessary action without actually holding a meeting. Many state laws permit action outside of a meeting with the unanimous written consent of the voting body. Most state laws will require that the consent be in writing, and set forth the action so taken. The consent must then be approved in writing by all of the individuals entitled to vote with respect to the subject matter. Whether the individual must physically sign the consent or may submit their consent by email, will depend on state law. If any individual entitled to vote withholds their consent, the proposed action cannot be taken without holding a valid meeting. An association's bylaws should expressly allow the board or other committees to take action by unanimous written consent, as this may be a state law requirement.

Proxy Voting:

Proxy voting is a form of voting whereby a member of a decision-making body may delegate their voting power to a representative who will then cast the member's vote in the member's absence. State law dictates whether proxy voting is permitted. The association should consider establishing a proxy policy to address process-related issues, such as a proxy's effective date(s), process for designating a proxy, circumstances when proxy voting is allowed, and to revoke a proxy.

While most states permit members to vote by proxy, many states prohibit directors from voting by proxy. The rationale behind this prohibition is that as fiduciaries, directors must be able to participate in a robust and meaningful discussion in order to make an informed decision, and proxy voting hinders the exchange of ideas that would otherwise occur at a board meeting.

Ballot voting:

With some exceptions, state law may allow action required to be taken at a membership meeting to be taken without a meeting. Ballot voting, either by mail, email, or any other electronic means, may provide members entitled to vote on a particular matter the opportunity to vote on the proposed action. Typically, when permitted by state law, ballot voting requires that a specific number of members approve the action, and as outlined in the association's articles of incorporation or bylaws. A quorum must be established when a membership vote is taken outside a meeting. Further, state law may further require that the voting remain open for a specific period of time. It is a good practice for an association's governing documents to include a provision expressly authorizing membership action to be taken outside of a meeting.

The various alternatives to conducting business outside of an in-person meeting is particularly helpful in circumstances where associations that routinely experience difficulty establishing a quorum at their membership meetings. Associations should consider whether an electronic meeting, proxy voting or ballot voting may help associations establish a quorum so that business may be conducted.

ASSOCIATION ACTION

1. Check state law for your state's requirements with respect to electronic meetings, action outside a meeting, proxy voting, and ballot voting.
2. Ensure the association's bylaws are consistent with association practice and state legal requirements for electronic meetings, unanimous written consents, proxy voting and ballot voting.
3. If proxy voting is permitted under state law, develop a proxy voting policy.