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2020 LEGAL WEBINAR SERIES

TODAY'S TOPIC

Association Meetings in the COVID Era

Presented by Brendan P. Bunn

Disclaimer: The information presented in this Webinar is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each case and each association's governing documents. Every effort has been made to ensure this information is up-to-date. However, it is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.

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*Community Association Legal Webinar
recorded October 24, 2020*

Association Meetings in the Era of COVID

**Presenter:
Brendan Bunn**

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Preface – Operating in Virginia’s COVID era

I. Virginia in “Phase 3” of “Safer at Home” Reopening

<https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Forward-Virginia-Phase-Three-Guidelines.pdf>

II. “All Sector” requirements

Policies for Physical Distancing (6 feet);

Signage for entry – no fevers, symptoms, exposed persons allowed;

Occupancy limits – Usually 75% of facility – sector-specific;

Telework encouraged;

Cleaning/Disinfection of surfaces

III. Additional Requirements for Specific Sectors:

Social Gatherings – 250 persons or fewer based on occupancy limits

Fitness Facilities & Pools – 75% occupancy; screening of patrons; hand-san; disinfection of seating; 10 feet distancing for persons not in same household

IV. Be Wary of Insurance Coverage Issues - Exclusions

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Stay Updated

<https://www.virginia.gov/coronavirus/>

<https://www.chadwickwashington.com/blog/>

<https://www.caionline.org/pages/default.aspx>

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Association Board Meetings During COVID



- **Existing provisions of Condo and Property Owners' Assn Acts**
 - Video- or tele-conference meetings allowed as long as two directors present in a physical location
- **Virginia Emergency Legislation adopted in April 2020**
 - Board may meet **without directors/owners physically present as long as:**
 - Emergency makes it **impractical/unsafe** to assemble in single location
 - Meeting's purpose to discuss required **business** and continue Assn operations
- **Procedures for Virtual Board meeting**
 - **Notice** of meeting to owners – best available method
 - Arrange for **owner access** to meeting via telephone/video
 - Owners have **opportunity to comment**, if e-method allows
 - **Distribute meeting minutes** via same method as meeting notice – minutes should note the emergency and electronic means used

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Association Membership Meetings During COVID

- **General Concepts – Membership Meetings**
 - Owners may attend meetings in person or by proxy
 - Attendance supposed to be **physical**, including the proxy
 - Attendance via video-conference does not necessarily = “legal” attendance
- **How to Have Safe Membership Meeting in COVID?**
 - Various approaches can get Assn to **primarily** virtual meeting – “hybrid”
 - Depends on governing documents and/or whether Assn is incorporated
 - Most condominium associations are **not** incorporated (but some are)
 - Most HOAs are incorporated – can utilize provisions of Nonstock Corporation Act



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Incorporated Associations: Remote Participation in Meetings

- **Virginia Nonstock Corporation Act**
 - Section 13.1-844.2B – allows members to participate “remotely” in association meeting to extent board authorizes → gateway to virtual
 - Members participating remotely **deemed legally present** and may vote
 - Association must adopt measures to **verify each person is the member** (or proxy) and provide members **reasonable opportunity to participate** and **vote** concurrently with proceedings
- **Can Board require totally virtual meeting?**
 - **Probably not.** Law says board can require all-virtual, unless articles/bylaws require meeting to be held at a place (as most documents do)
 - POA Act Section 55.1-1832 authorizes use of technology but requires that Assn accommodate member **without “capability or desire”** to do e-business
 - **Bottom line:** Incorporated associations can do **primarily** virtual meeting, must allow limited number of non-tech members to attend in person

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Board Resolution to Allow Association Virtual Meeting

- **Board Resolution Should Do the Following:**
 - Recite the **reason** for allowing remote participation – pandemic
 - Describe **platform** to be used for remote participation
 - State that members participating remotely deemed **legally present**
 - Provide for method of **verifying** that the person logging in is the member
 - State that members will have opportunity to **participate and vote**
 - Confirm that members without requisite technology have **option to attend in person** – state that space limited & masks/social distancing required
- **Practical Issues**
 - Ensure familiarity with the platform - consider a dry run
 - Make sure notices contain login/call information
 - Ensure that records of the votes are kept (as well as minutes)

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Can Unincorporated Associations Have (Primarily) Virtual Meeting?

- **Unless documents have excellent “use of technology” provision, truly virtual member meeting may not be possible**
 - If documents have comprehensive technology provision, follow similar procedure as for “remote” participation
- **Option for Unincorporated Associations – Use Proxies + Remote**
 - Legally, no choice – need a person to be **physically** present
 - Appoint **agent** as proxy, if allowed – then owners attend via Zoom to see and hear meeting for informational purposes
 - Drive owners to use **instructed** proxies
 - Call for candidates in advance – include candidates on proxy form
 - Include instruction on form allowing member to instruct proxy via electronic means (on any matter not included on form) – allows owner to use e-mail, text or Zoom to instruct their proxy

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Lessons for Future



- Remote participation may be here to stay – already authorized in the law – build the infrastructure.
- Use Board resolutions to set the standards for meetings.
- Keep minutes and records of these meetings – document the pandemic emergency
- Legislation may come -- but consider amending documents to address virtual meetings

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Questions?

If you enjoyed this brief Webinar and have a few questions regarding this topic, we can schedule a **live** Zoom session to take questions.

If interested, please email Cathleen Watkins at cwatkins@chadwickwashington.com. Once enough parties indicate an interest, the Zoom session will be scheduled, and you will be notified.