

Community Advisor

E-NEWSLETTER FOR
COMMUNITY ASSOCIATION
CLIENTS AND FRIENDS



ALERT!

With the declaration this week of a COVID-19 pandemic, we know all our clients and managers continue to consider what associations should do. Over the past few days, every glance at an online news source or e-mail inbox seems to bring fresh news of more cancellations of gatherings due to COVID-19, ranging from entire sports seasons to schools, concerts and other events. NowackHoward has also determined to reschedule our March 21 Legal Forum and Expo to October 24.

Given the evolving situation and need for social distancing, NowackHoward Partner Rebecca Drube has prepared the following blog post of considerations for community associations with the need to avoid in-person meetings. This summary is also available on our blog at [The Community Counsel](#), which we invite you to follow for more community association law news.

Association Meetings during the COVID-19 Pandemic

In light of the constant stream of cancellations and guidance from public health officials concerning social distancing, many community association boards of directors are struggling with how to conduct association business without in-person meetings. Luckily, Georgia law provides options for boards to keep community association operations going even when in-person meetings are not possible or advisable.



Membership Meetings

For those associations with annual membership meetings planned for this spring, Georgia law allows for postponement of the annual membership meeting should the board deem it advisable. The Georgia Nonprofit Corporation Code (the Code) provides at O.C.G.A. Section 14-3-701(f) that “*failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation’s bylaws does not affect the validity of any corporate action.*” In other words, even if an association’s bylaws provide for the annual membership meeting to occur this spring, the board can postpone the annual meeting without adversely affecting any corporate action taken by the board or by the membership at the postponed annual meeting.

If the board does not want to postpone the association's annual election while waiting to reschedule the annual meeting, most community associations possess the ability to conduct the annual election of directors by mail-in ballot without a meeting. The Code provides at O.C.G.A. Section 14-3-708 that "*Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a ballot in writing or by electronic transmission to every member entitled to vote on the matter.*" Many association bylaws do not limit or prohibit the use of written ballots without a meeting for election of directors, so many associations will have the option of moving forward with the annual election by mail-in or electronic ballot, even if the membership cannot meet in person.

A caveat to using mail-in or electronic ballots without a meeting is that the Code provides very specific requirements that the ballot used by the association must meet. In addition, the association's bylaws may provide additional requirements for action taken by the membership without a meeting. Any failure to strictly follow the requirements of the Code and bylaws can invalidate the election. Given this, if your association is considering holding an election by mail-in or electronic ballot without a meeting, we strongly recommend that the board consult with the association's attorney to confirm that it has the right to hold the election by this method and that the process and form of ballot meets all Code and bylaw requirements.

Board of Director Meetings

While Georgia law does not provide for meetings of the membership to be held by conference call or electronic means, the Code does allow for boards of directors' meetings to take place by such methods. Specifically, the Code provides at O.C.G.A. Section 14-3-820(b) that unless provided otherwise by the association's bylaws or articles, any or all directors can participate in a board meeting, or conduct a meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. This permits the board to conduct board meetings by conference call, Skype, GoToMeeting, or similar means by which all directors can simultaneously hear each other. Boards should take note, however, that although not required under Georgia law, some association bylaws require that owners be permitted to attend meetings of the board. If your association's bylaws require that board meetings be open to the general membership, please consult with your association's attorney to devise a plan to allow for telephonic and/or electronic board meetings that still comply with the open meeting requirements of your association's bylaws.

Boards of directors may also have the option of acting without a board meeting by written consent, if the action meets all requirements of the Code and the association's bylaws. O.C.G.A. Section 14-3-821 of the Code provides that action taken by the board without a meeting must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by no fewer than the required number of directors and delivered to the corporation for inclusion in the minutes for filing with the corporate records. This Code section allows for board action electronically and without a meeting if the action meets the foregoing requirements.

Importantly, the Code requires unanimous consent of all board members to any action taken outside of a meeting, including electronically (i.e., over e-mail), unless the associations' bylaws explicitly authorize board action outside of a meeting to be taken by less than all of the directors. No action can be taken by this method by less than a majority of the board. Because unanimous consent of the board can be difficult to achieve, this process may limit the usefulness of voting electronically for those boards whose bylaws do not specifically allow for action outside of meeting to be taken by less than all of the board members. Also, voting electronically should be used sparingly as it does not allow for the

same debate and exchange of ideas amongst board members that occurs at a meeting. We at NowackHoward hope that the above options for your community provide some comfort to boards as we all strive to adapt to the ever-changing landscape imposed by COVID-19.

For more community association law news, visit our blog, [The Community Counsel](#). For notifications and everything else NowackHoward, follow us on [LinkedIn](#) and [Facebook](#).



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