

# COMMON INTERESTS



**WINTER EDITION 2021**

A SEGAN MASON & MASON, P.C. PUBLICATION  
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# *ASSOCIATIONS LAUNCHED INTO THE FUTURE*

## *ELECTRONIC MEETINGS AND VOTING*

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For many community associations with older governing documents, the mountains and hills representing obstacles to electronic meetings and voting are being leveled by the 2021 Virginia General Assembly in the form of amendments to the Virginia Property Owners' Association Act (POAA) and Virginia's Condominium Act which flew through the House (HB1816) and Senate (SB1183) and are expected to be signed into the law by the Governor.

The amendments provide that a meeting of the association's members (such as annual or special meetings), its board of directors or any committee may be held entirely or partially by electronic means so long as the board has adopted guidelines for the use of electronic means at such meetings. The statutory definition of a meeting conducted by electronic means has been expanded to include a meeting conducted via teleconference videoconference, Internet exchange, or other electronic methods.

The desire for electronic meetings and voting may have been heightened by the spread of the coronavirus, but the new legisla-

tion does not require that there be a state of emergency. Rather, the amended statutes are intended as a permanent alternative for all future meetings. The “four feet on the floor” rule requiring at least two persons be physically present at the meeting place during a meeting conducted by electronic means has been eliminated. Convenience, increased member participation, budgetary savings, environmental gains, and increased voting accuracy have all been cited as justifications for the change.

The amended statutes provide that, “unless expressly prohibited” by the governing documents, a member may vote in person, by proxy or by absentee ballot and that the voting may take place by electronic means. They also provide that members voting by absentee ballot or proxy “shall be deemed present at the meeting for all purposes.” This is shift away from the phrase “unless expressly provided otherwise.” Many associations’ governing documents could be read to provide otherwise— by stating that voting must be in person or by proxy—and thus, electronic meetings and voting by electronic means were often stymied. The amended statutes state that governing documents must expressly prohibit the standard the new law allows, in order to override the reform efforts of the amendments. The same standard—unless expressly prohibited by the governing documents—is also applied to providing notice of meetings by electronic means.

These new laws had to be worded carefully to be valid because Virginia courts have held that community associations’ governing documents are – in effect – contracts, and the Virginia Constitution prohibits new laws from overriding the provisions of existing contracts.

As for governing documents that require voting be by secret ballot, the electronic means used must protect the identity of the voter. The association can devise methods to enable secrecy to be maintained while ensuring each owner’s right to vote; there is also software for use that would ensure secrecy in voting.

The amendments’ requirement that the board adopt guidelines for electronic meetings and voting is meant to ensure that the persons accessing such meetings or voting are able to do so. Members not having the ability or desire to participate or vote by electronic means are to be provided with an “alternative” by the association.

Unless a different date is specified—which it currently is not—or the legislation is deemed to be emergency action – which it currently also is not - the effective date is expected to be July 1, assuming the General Assembly adjourns by March 1. The POAA

and the Condominium Act state that a meeting of members shall be held once a year but defer to the governing documents as to the details. Many associations have annual meetings scheduled in the Spring and early Summer. The discretion vested in boards, if any, to postpone the annual meeting to the middle of July, for example, varies depending upon the terms in an association's governing documents. Some require the meetings to occur on a certain day or a certain month; other allow the board to choose the date. Furthermore, associations will need to hurdle the 4th of July holiday and cope with summer vacations. And there remain the safety concerns from the coronavirus and its mutations. The gathering number may still be limited by the Executive Orders of the Governor of the Commonwealth of Virginia when your governing documents require the annual meeting to be held.

Once the amendments become effective, the board will be tasked with determining whether a meeting shall be held entirely or partially by electronic means. Regardless of when the annual meeting is held, associations may want to get started talking with potential third party providers of an electronic voting service and developing guidelines related to meetings and voting.

As with any issue legally tangled, we strongly recommend that you consult your association's counsel before proceeding—or not proceeding—with your owners', board and/or committee meeting entirely or partially by electronic means.



# HOT OFF THE PRESS!

**HB 1816** and **SB 1183** which will empower community associations to hold fully electronic membership and Board meetings and vote electronically have passed both Virginia's House and Senate without a single NO vote and are headed for the Governor's desk for his signature. We anticipate that the legislation will go into effect on July 1, assuming the General Assembly adjourns by March 1. But stay tuned!

# THANKS FOR READING!

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