



By Leslie Brown, ESQ.

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How to Make Remote Business A VIRTUAL REALITY

After this article was prepared, the Virginia General Assembly passed emergency legislation waiving the requirement that two board members be physically present in order to conduct a board meeting via telephone or video conferencing means. For more about the emergency legislation, visit: www.caids.org/news/legislative-alert-virginia-general-assembly-relaxes-board-meeting-rules/

The world has changed drastically in a mere month. “Social Distancing” became a household term, parents became teachers, and busy, bustling offices turned quiet as businesses transitioned to fully or almost fully remote environments. Such a quick transition to remote workplaces would be challenging for any business, but for the community association industry, in particular, where relationships and contact are so important and the conduct of business is so heavily based in legal requirements, the challenges are many and the obstacles great.

Considerations for Managers

Transition Analysis. It's important to begin the process of transitioning to a remote environment with a comprehensive sustainability plan, focusing on the business goals, contract requirements, key positions and responsibilities as well as an analysis of risks and challenges when these positions become remote. By identifying functions that can be instantly transitioned to a remote environment (i.e. checking emails, voicemails, reviewing and analyzing financial reports, staying in contact with clients and residents, approving invoices, etc.) and those that present a greater challenge (i.e. sorting through daily incoming mail, preparing mailings, answering incoming phone calls, etc.), a plan

can be implemented to address the more challenging functions as well as ensuring that the daily functions can continue without operational disruptions.

Access to Technology. One of the first steps to ensure success in transitioning to a remote workplace is ensuring that all employees have access to remote computer and phone access. The technology that is used becomes incredibly important to ensure that managers and other support personnel can still continue to fulfill daily responsibilities without interruption. An additional challenge is presented with each individual's access to technological resources at home (i.e. those employees that do not own a computer or do not have WiFi access). It's incredibly important to inventory and document each employee's individual technology and access at home and to provide additional resources to those that do not have them available (for example, providing “loaner” computers or hot spots for employee use).

Site Operations. Addressing the challenges of moving a corporate office to a remote workplace is only part of the challenge when you are managing community associations. The same planning and effort needs to be paid to each of the association's site oper-

ations under management as well. Assessing each individual's access to technology and ability to perform their job functions at home is only part of the challenge, however. Moving a site office to a remote environment also requires regular communication with the Board of Directors and the residents of the community. Ensuring that you are communicating with the residents regularly regarding changes in operations and changing expectations related to communication with management, maintenance and the Board is critical to success.

Considerations for Boards

Community association Boards have also had their own challenges. Board members who are accustomed to conducting business at in-person Board meetings and residents who are used to attending such meetings have had to alter expectations quickly and determine a path forward to ensuring that business can still be conducted, often posing operational concerns as well as legal ones. Remote meetings require planning, patience and flexibility. Management and the Board should work together to make as smooth a transition as possible to a remote meeting environment, with the understanding that the association's first virtual meeting might not be perfect – and that's ok!



Testing the Technology. It is recommended that the Board and Management, perhaps with a small group of community members, conduct a test run prior to the meeting to identify any potential pitfalls or challenges so that plans and solutions can be implemented in advance. The meeting platform used should be able to accommodate a call volume equal to the number of resident-owners, non-resident owners, and representatives holding power-of-attorney. Furthermore, the meeting platform should allow for both phone and web participation to accommodate those residents who do not have computers or who do not use the internet.

Protocols and Etiquette. Controlling Board meetings can be a challenge when they are held in-person. Virtual meetings present a new set of challenges when it comes to control and staying on task. The Association should identify a moderator and the moderator should explain the meeting protocols and etiquette at the beginning of the meeting. Participant phones should be muted to reduce background noise and participants should hold questions until discussion is offered by the moderator. Only one person should speak at a time. Some platforms include a “raise your hand” feature that allows the moderator to control the order in which attendees participate. If a participant intends to exercise his or her right to record the meeting, this should be announced. Because of the ease in which on-line recordings can be disseminated, Boards may want to include as part of the meeting protocol a prohibition on livestreaming of the meeting to social media platforms.

Board Meetings. The laws in our local jurisdictions must be considered as a Board considers virtual meetings during this health crisis. The laws pertaining to community associations in Virginia, Maryland, and D.C. mandate that Boards meet in person and openly (except for the discussion of certain executive session matters allowed). Unless a Board needs to decide a matter of health or safety within the community, a regular meeting of the Board is a non-essential meeting; therefore, Boards may postpone meetings or conduct them remotely.

In Virginia, both the Condominium Act and the Property Owners’ Association Act permit Board members to participate in Board

meetings via telephone or video conference call, so long as at least two (2) Board members are physically present at the location of the meeting and everybody can be heard. The General Assembly didn’t enact these laws with states of emergency or recommendations from public health officials to enact social distancing and as much self-quarantining measures as possible in mind.

Most venues where Boards commonly meet (community buildings, clubhouses, etc.), are currently closed due to the health crisis. It is hard to even imagine a Board member feeling comfortable meeting with another Board member in person merely to comply with the 2-Board member rule currently. So, Boards should utilize the unanimous written consent process as much as possible. Most sets of Bylaws permit Boards to utilize written resolutions to take actions outside of a Board meeting so long as the action taken is unanimous. Make sure that the action is filed appropriately in the books and records of the Association. It is recommended that actions taken outside of a meeting are ratified at the next meeting of the Board.

If a Board in Virginia does need to hold a virtual meeting where no Board members are present in person, then it remains to be seen how the Common Interest Community Board would act on a complaint filed that the Board violated the open meeting requirements; but, under these unprecedented circumstances, it is reasonable for Boards to follow precautionary measures to maximize public health over technical compliance with the procedural requirements of the law until these states of emergency are rescinded.

For D.C. and Maryland communities, there is more flexibility. The D.C. Condominium Act permits meetings of the Board to be conducted by telephone or video conference so long as everyone can be heard. In Maryland, if the community is incorporated under the non-stock act, then statute permits the conduct of Board meetings by telephone and video conference, so long as the governing documents do not restrict such use of technology and everyone can be heard. For communities in Montgomery County, the Commission on Common Ownership Communities provided a temporary waiver to meeting requirements by allowing

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and recommending the use of telephone or video conferencing to conduct Board meetings, providing all members of the association the opportunity to join in and participate.

Annual Meetings. When it comes to Annual Meetings, both the Virginia Condominium Act and Property Owners' Association Act allow associations to use and integrate technology into their meetings and elections procedures. Under these statutes, unless the governing documents expressly provide otherwise, any notice required to be sent or received, or any signature, vote, consent, or approval required to be obtained may be accomplished using the most "advanced technology" available at that time. E-mail and other internet-based notice and voting websites, forums or networks generally qualify as "advanced technology". For communities that are incorporated, the Virginia Nonstock Corporation Act also permits members to participate in meetings of the membership via remote communication if the Board allows for it (and it is otherwise not prohibited by the governing documents).

Both the Maryland Homeowners Association Act and the Maryland Condominium Act provide that, regardless of what is stated in the governing documents, the Board may give the association authority to provide meeting notices or deliver information by electronic transmission provided that the owner provides the association with prior written authorization to provide such notices via electronic transmission. Likewise, in the District of Columbia, the D.C. Condominium Act permits associations to incorporate electronic voting and notice procedures. Please note that these statutes require that there be non-technology alternatives for those owners who do not have the capability or desire to use technology to receive notices or to vote.

Communities also need to check their governing documents closely. If your community's governing documents require that the meeting be held at a certain time of the year or in a certain physical place, you will have to find a way to reconcile conducting the virtual meeting against these strict provisions. Again, it is reasonable for associations to put public health over technical compliance.

It is recommended that the membership adopt a resolution at the beginning of the Annual Meeting accepting the use of technology for the conduct of the meeting and waiving the requirements that the meeting be conducted in a particular place on the basis of the public health crisis. Another option is to ask that all members use proxy voting to establish quorum and for voting as much as possible.

The notice and the minutes of the Annual Meeting must include that the meeting will be held remotely and that the reason for doing so is to comply with orders issued for the current public health emergency. The notice must contain instructions on how to access the remote meeting and should be sent through the association's normal means. Associations will have to verify that each person participating remotely is an authorized participant. This can be accomplished by creating individual pins or passwords to participate remotely.

Associations should encourage the use of proxy voting as much as possible to obtain votes in advance of the virtual meeting to simplify the remote meeting, but there still needs to be a means for owners to vote through the remote platform. When taking action, the meeting chair should call for motion, second, discussion and vote. Each speaker should state his or her name so that it can be recorded in the minutes.

Final Thoughts. It's important to remember that, as we lead our teams and Boards into a remote work environment, not everyone is comfortable with technology and some of our team members have never worked from home in their career. We have to exercise patience, flexibility and understanding of the discomfort that some people feel at such a drastic change and provide them with the tools and resources that they need to not only be successful in this transition but also comfortable with it. They need our leadership, compassion and empathy as these changes are implemented.

While this has been a challenging time for our industry and has required management companies, Boards, and homeowners to pivot to a new and, in some cases unfamiliar way of doing business, the greatest lesson in all of this is that our teams and our clients are flexible and resilient! While the world will eventually return to normal operations, it is possible that the community industry will never return to the normal we once knew – some of the virtual methods of conducting business may be around beyond this health crisis, taking our industry to a place where technology is not new or scary, but appreciated and valued. 📺

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