



SHOULD HOA's CONTINUE ON-LINE MEETINGS AND VOTING ?

Continuing Impacts of COVID-19

I. Intro

- a. With more than 5 months of COVID-19 behind us, clouds of confusion dissipate.
- b. HOAs are seeking clarity on Annual Meetings – specifically regarding legality and best practices conducting the annual meetings including voting.
- c. We will take a closer look at virtual only HOA annual meetings and on-line elections.
- d. We are happy to answer any questions.



II. On-Line Meetings

a. Rapid Evolution of On-Line or “Virtual-Only” meetings

- Historically the framework for HOA’s is that all meetings were conducted in person.
- With COVID-19, are on-line meetings legal? YES
- Defined: An on-line or “virtual-only” meeting has no physical location—all attendees participate via remote electronic communication.
- In October 2019, Amendments to the New York Business Corporation Law (“BCL”) enabled Boards to conduct annual meetings at a physical location and also permit some shareholders to participate by electronic means

(In the wake of COVID-19, this *part physical-part virtual* meeting has now been coined a “*hybrid meeting*”)

- On March 20, 2020 Governor Cuomo issued Executive Order No. 202.8 temporarily suspending subsections of the BCL that require physical presence of shareholders at meetings. This enabled Virtual-ONLY meetings for the first time
- On June 17, 2020 Governor Cuomo signed into law temporary amendments that permit virtual-only meetings until the end of the state of emergency, subject to an expiration date of December 31, 2021
- So Virtual-Only meetings are fully legal, and the decisions made during on-line meetings are binding

Best Practices for On-line Meetings: Notices, Nominations and Proxies

- The Notice contains easy instructions to join the meeting using a PC, laptop, tablet, Mac, or telephone, and includes the unique URL for the meeting
- Individuals without computer access may call in by telephone so *no one is excluded*
- The Notice directs that all nominations be submitted by a specific date at which time nominations for inclusion on the proxy/ballot will be closed (we recommend at least thirty (30) days prior to the meeting) so that all names are included on the proxy/ballot)
- The Notice informs owners that after nominations are closed a second notice will be sent with a Proxy/Ballot form that lists the candidates nominated for election
- Once the nominations are closed send the Proxy/Ballot listing names of nominees and attaching their bios
- Owners will be asked to submit completed Proxy/Ballots by email, fax, or regular mail to streamline the voting process
- Mail and email the Notice of Annual Meeting to all owners; and post it on BuildingLink or at a prominent building location

On-line Meeting Best Practices: Pre-Meeting Zoom Set-up

- Zoom “Host” must have experience and high level of comfort with platform
- Host should not serve any other function during the meeting
- Zoom Functions:
 - Set up requirement that participants pre-register for added security and identification for voting
 - Enable the virtual “waiting room” function in order for the Host to sign in participants on master sign-in sheet and check in owners as they are moved into the main meeting room
- Conduct a Practice Meeting or Candidate’s Night, to familiarize all with the Zoom platform

Best Practices for On-line Meetings: The Zoom Meeting

- Open Zoom meeting 20-30 minutes early. Registration begins at least 15 minutes early
- Owners will be directed to a waiting room and admitted one at a time and muted upon entry.
- Host will act as chair of the meeting and use the Zoom mute function to control who is able to be heard by other participants.
- Briefly Introduce and Explain Zoom Functions
 - o Announce that the Chat Room is pre-set to cast vote privately to Host / Inspector of Elections
 - o Instructions to send Chat text ; or send regular text or email
- Regular Meeting: Announce Quorum, Proof of Notice, present Minutes of last year's meeting (invite/accept waiver), conduct Officer/ Management/ CPA/ Legal Reports
- Q&A – Host will recognize speakers by removing the mute function for the speaker alone
 - o The host can also “share” documents or other presentation materials on screen

III. On-Line Voting: Best Practices for Elections

On-Line voting is legal. However, individual voters must be identified, and individual votes must be recorded

- Announce that the Results will be published in 2-5 business days
- Announce Nominations received in advance
- Open the floor for additional nominations (if applicable)
- Nominees may be introduced and given an opportunity to make a brief statement
- Announce the Inspectors of Election who will certify election results
- Host explains the voting process, and give owners instructions on voting by Chat or email or by phone
- Proxy/Ballots received prior to the meeting are accounted for
- All votes should be recorded and saved
- Inspectors of Election tally the results (publish in 2-5 days)

The Role of Recording On-line Meetings

Recording meetings

- a. Meetings should not be recorded unless circumstances dictate otherwise / it is discoverable in litigation
- b. Zoom shows when a meeting is being recorded
- c. Assume that all information will be made public
- d. Participants may record with separate devices as with any meeting

What's Next: On-Line Meetings

a. What happens to Virtual Only meetings when coronavirus is no longer a factor

- Virtual-only legislation expires on the earlier of (i) 12/31/2021 or (ii) the end of state of COVID-19 emergency
- When safety concerns subside, do boards revert to physical meetings / hybrid
- Trends in the law and in society - You can't "un-ring the bell"
- Boards will Balance:
 - On-line Election: convenience for commuters, travelers; possible increased participation, break down physical barriers
 - Is the sense of community from an in-person meeting of the HOA irreplaceable?
- Amend governing documents to memorialize modifications to policies

What's Next: On-line Voting

- A. **What happens to On-Line Voting when coronavirus is no longer a factor?**
 - A. HOAs are already trending toward paperless ballots, electronic functionality
 - B. Amendments to by-laws may permit electronic voting, provided that the individual votes are:
 - A. Cast individually (and not by general community “polling” function)
 - B. Confidential – not shared to community
 - C. Recorded and Saved



IV. Q & A

Thank you for your participation !!

Smith Buss
& Jacobs^{LLP}

Eric P. Blaha, Esq.

914.476.0600 x4234

Eblaha@SBJlaw.com

Kenneth R. Jacobs, Esq.

914.476.0600 x4102

Kjacobs@SBJlaw.com