



Tips for Conducting Virtual Board Meetings

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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BOARD MEETINGS DURING THE COVID-19 PANDEMIC

Like it or not, the COVID-19 pandemic is changing how Arizona planned communities and condominiums conduct business. Due to Governor Ducey's "Stay Home" Order and CDC social distancing recommendations, in-person board meetings are no longer recommended at this time. However, Arizona planned communities and condominiums are still obligated to comply with the Arizona Open Meeting law, even during these unprecedented times. How can boards best balance this unique situation? Until the COVID-19 pandemic subsides, it is Mulcahy Law Firm's legal opinion that regular board meetings and regularly scheduled committee meetings should be conducted via teleconferencing or conference calls.

Teleconferencing is the use of telecommunication devices (such as a computer, laptop, tablet or smartphone) to hold online discussions between participants in different locations. Participants can pick whether or not their picture is displayed during the teleconference and all participants can hear each other discuss items. As many of us already know, a conference call is a telephone call in which several people are able to talk with each other and hear each other at the same time using a shared conference line.

Mulcahy Law Firm is here to help Arizona HOAs and condominiums conduct board meetings and regularly scheduled committee meetings via teleconference or conference call. Our law firm can set up, organize, troubleshoot attendee's connection issues and assist with running Zoom teleconferences or conference calls for associations. Also, many associations are now asking our firm to be available during meetings in case you need us or have an attorney attend the teleconference or conference call to answer questions during these challenging and unprecedented times. Please contact Beth Mulcahy, Esq. at (602) 241-1093 or bmulcahy@mulcahylawfirm.com to find out more information on how we can help your association.

TIPS FOR CONDUCTING BOARD MEETINGS (AND REGULARLY SCHEDULED COMMITTEE MEETINGS) VIA VIDEOCONFERENCING OR CONFERENCE CALLS

- **Notice of Board Meetings:** Notice to unit owners of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. The notice should include the date, time and a comment that due to the COVID-19 pandemic and the Governor Ducey's Stay at Home Order there is not a physical Arizona location for an in-person meeting. In addition to satisfying the standard notice requirement for a board meeting, I would also recommend clearly explaining in the notice that the meeting will be held strictly via teleconferencing; providing instructions on options to attend via videoconferencing or conference call; and, due to the current COVID-19 pandemic and the Governor's Stay at Home Order, owners will be strictly prohibited from attending the meeting in-person.

Owners/Members should be given the option to attend via computer, laptop, tablet or smartphone. While I understand that it may be possible that certain owners are not willing or able to attend via teleconference or conference call, it remains my opinion that these options are the best way to hold board meetings during the pandemic. If an owner/members object to having a teleconference or conference call, I recommend providing meeting minutes to the membership on an expedited basis after meetings. Also, the Zoom meetings can be taped as part of the Zoom technology and provided to residents as well.

- **Agenda:** The agenda shall be available to all those attending. In order to satisfy this requirement, I would recommend including the agenda on the notice, and sending copies of the agenda via email to all owners who have email addresses on file with the association and having the agenda available to review on the Zoom teleconference.

TIPS FOR CONDUCTING BOARD MEETINGS (AND REGULARLY SCHEDULED COMMITTEE MEETINGS) VIA VIDEOCONFERENCING OR CONFERENCE CALLS (*CONTINUED*)

- **Agenda (continued):** In an effort to expedite the meeting, the board may also want to consider a consent agenda, which would allow the board to vote on, and approve, some items that don't need discussion on the agenda in one action.
- **Member Participation:** All members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.

This may be the most challenging requirement in a virtual meeting. Most videoconferencing software and conference call systems provide the moderator or call organizer the power to control which participants are able to speak at appropriate times. In order to avoid confusion and owners talking over one another, the board will need to take an organized approach to the member participation portion of the meeting. A homeowner forum could still be conducted at the beginning of the meeting with a 1 or 2 minute time limit per person. Another option may be to ask members to submit their comments in advance of the meeting, and then have the board read those comments on behalf of the owners at appropriate times. While I would still recommend allowing members to comment during the meeting, advanced comments may at least streamline the process.

- **Closed/Executive Session:** If the board has closed session business to discuss, I recommend that the board make an announcement at the end of the open session that it is going into closed/executive session, provide the statutory section that allows the board to go into closed/executive session, and then ask all non-board members to leave the teleconference or conference call. Please ensure that the moderator confirms that all non-board members have left the teleconference prior to discussing closed/executive session business (note: it may be difficult to determine if an owner has left a conference call). Alternately, a separate Zoom teleconference with a new log-in and password could also be started after the regular board meeting for just the board members. Reminder, prior to entering executive session, the board is required to announce what paragraph from A.R.S. Section 33-1804(a) authorizes the board to close the meeting:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
2. Pending or contemplated litigation.
3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association
5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

- **Meeting Minutes:** The board should take meeting minutes just as it would during any other board meeting and, once approved, the open meeting minutes should be available for review of the members.

- **Tape of Meetings:** Zoom allows meetings to be taped. As such a tape of meeting can be quickly distributed to owners after the meeting for those owners who are unable to attend the meeting.