

To Meet (In Person) or Not To Meet (In Person)...That is the Question: North Carolina Makes Permanent the Ability for Community Associations To Meet and Vote Virtually

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The past 19 months have been a challenging time.

As a result of the Coronavirus pandemic, many precautions and restrictions were put in place to prevent the transmission and spread of COVID-19, including executive orders issued by Governor Cooper limiting the number of individuals able to meet in person. This restriction had the potential to stifle the ability of community associations to hold annual membership meetings, which are necessary to

ensure proper budget ratification and the election of new board members. Fortunately, the Governor temporarily enabled community associations to hold membership meetings virtually (most recently through Executive Order 212, which expired on June 1, 2021).

In March of this year, the North Carolina Legislature presented two bills to make permanent the virtual flexibility provided by the Governor's previous executive orders.

Today, Governor Cooper signed into law North Carolina House Bill 320, which creates flexibility for the meeting and voting procedures under the North Carolina Nonprofit Corporation Act ("Chapter 55A"). Specifically, Part II of House Bill 320 creates the right (not the requirement) for non-profit corporations, including community associations, to meet and vote virtually.

Prior to this new law, membership action could only occur at in-person meetings, via written ballot, or by uniform written consent. With the enactment of House Bill 320, community associations now have the ability under Chapter 55A to:

1. hold membership meetings virtually;
2. allow their members to vote at virtual meetings; and,
3. allow their members to vote on proposed actions by electronic voting without a meeting.

However, each community association needs to review its governing documents to confirm there are no prohibitions or limitations within those documents that would prevent holding virtual meetings or allowing members to vote electronically.

Membership Meetings & Voting

Specifically, House Bill 320 allows annual, regular, or special membership meetings to be held virtually utilizing remote communication.

Members participating by means of remote communication are deemed present and may vote at the meeting if the community association implements reasonable measures to confirm the following:

- Verify that each person participating remotely is, in fact, a member;
- Provide members a reasonable opportunity to participate in the meeting; and
- Provide members the reasonable opportunity to vote on matters submitted to the members.

The above measures must ensure that members can participate and vote to the same extent that members could participate and vote if present at an in-person membership meeting, including an opportunity for members to communicate and read or hear the meeting proceedings in real-time.

When a membership meeting is being held solely using remote communication, the notice of a meeting must include notice that the meeting will be held exclusively by means of remote communication and provide instructions on how members may join the meeting.

Proxies at Membership Meetings

House Bill 320 expands the process for voting by proxy at a meeting. Unless prohibited by the community associations' articles of incorporation or bylaws, members may vote by proxy. Members may appoint a proxy by submitting an electronic record that either shows the member's electronic signature or is sent from the member's designated email address so long as the electronic record can be directly reproduced in paper form. Meaning that a member not able to attend a virtual meeting may appoint a proxy to attend the virtual meeting in their place.

Member Action Without a Meeting

Members can now take action outside of a meeting by written ballots, uniform written consent, or electronic voting. Members entitled to vote on the proposed action must be allowed to vote by written ballot or electronic voting, or both.

For members who elect to utilize the new electronic voting option, they must supply their community association with an email address to be used for communication between the member and the community association. Under the new law, community associations are responsible for informing their members how to designate an email address, update the email address, and of any additional information the community association requires for such electronic transactions, including how to provide the additional information.

The board of directors may determine how the votes shall be cast (e.g., by written ballot, electronic voting, or both), with one caveat. The board of directors may only require all votes to be cast solely by electronic voting if all members entitled to vote on the action have provided the community association with a designated email address.

Impact on Members' List

All community associations are required to prepare a list of the names and addresses of all of their members who are entitled to notice of a meeting. Beginning two business days after notice of a meeting is given, the membership list must be made available for inspection by any member for the purpose of communication

with other members concerning the meetings. Prior to the new law, the membership list was required to be available at either the community association's principal office or at a reasonable place identified in the meeting notice. House Bill 320 gives community associations the additional option of providing the membership list on a "reasonably accessible electronic network." If a community association chooses the electronic network option, the meeting notice must provide the information required to gain access to the list on the electronic network. Further, community associations should also take steps to ensure that the information on the electronic network is available only to members of the community association.

If the meeting is held solely by means of remote communication, then the membership list must be available and open to inspection during the meeting on a reasonably accessible electronic network and presumably should include members' email addresses in place of physical address.

So When Can We Go Virtual?

Starting today, September 20, 2021, all community associations incorporated under Chapter 55A have the ability to hold membership meetings and vote virtually.

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