

# MERCERTRIGIANI

## ***LEGISLATIVE ALERT***

### ***Board Meetings & Coronavirus***

Virginia common interest community associations will benefit from amendments proposed by Governor Ralph S. Northam and adopted by the General Assembly at the veto session on April 22, 2020. The amendments to the Budget Bills (House Bills 29 and 30) allow policy-making boards and boards of common interest community associations to meet virtually without requiring any member of the board to be physically present at one location during a Governor-declared state of emergency.

#### ***Prior Law***

Without the Budget Bill Amendments, boards of directors of property owners associations and condominium unit owners associations may convene electronic meetings properly only if certain conditions are met. Section 55.1-1816.C of the Virginia Property Owners' Association Act and Section 55.1-1949.B.4 of the Virginia Condominium Act allow boards to meet properly *only if*

- ***Two*** Board members are *physically present* at the meeting location *and*
- Audio equipment allows for any member in attendance to hear what is said.

Board meetings that convene without satisfying statutory requirements are improper. Actions taken at an improper meeting *are subject to challenge* and put board members at risk of personal liability for actions taken.

Because of concerns about the novel coronavirus (COVID-19) crisis and compliance with Executive Orders 53 and 55 issued by Governor Northam, boards have been faced with a difficult decision – assemble properly in accordance with community association statutes *or* meet virtually and improperly, with fingers crossed that no challenge is made.

#### ***Budget Bill Amendments***

Amendment 28 to the Budget Bills provides boards with necessary relief from the physical assembly requirement of the community association statutes. Once the Governor signs the amended Budget Bills, boards of directors may meet without two members physically present during a Governor-declared state of emergency *if*

- (i) The nature of the declared state of emergency makes it impracticable or unsafe for the board to assemble in a single location *and*
- (ii) The purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the community association and the discharge of lawful purposes, duties and responsibilities.

Boards must also meet certain requirements for notice, access and meeting minutes.

**Notice** - Boards that convene a meeting in accordance with the Budget Bill Amendments must give notice of the meeting to members (i) contemporaneously with the notice provided to the board and (ii) using the best available method given the nature of the emergency.

**Access** - Boards must arrange for association members to access the meeting. And, if the means of communication allows, boards must provide members with an opportunity to comment in accordance with community association statutes. How members can access the meeting and participate in open forum should be carefully planned and explained in the meeting notice.

**Minutes** – Minutes from board meetings convened pursuant to the Budget Bill Amendments must state (i) the nature of the emergency, (ii) the fact that the meeting was held by electronic communication means and (iii) the type of electronic communications means by which the meeting was held. Following the meeting, the minutes **must be distributed** to association members by the same method used to provide notice of the meeting.

### ***Additional Thoughts***

The Budget Bill Amendments deliver much needed relief to volunteer leaders navigating association governance challenges during the coronavirus pandemic. The authority provided to boards should be exercised *only* in accordance with the amendment provisions. To the extent action is taken at an improperly convened meeting, boards must take steps to ratify action at a *properly* convened board meeting.

Boards and community managers should evaluate electronic meeting services carefully to meet owner access and open forum requirements. Platforms that have been used successfully include Zoom, Skype, GoToMeeting and Google Meet – but there are many other available services. For open forum, boards may adopt reasonable rules such as requiring members to preregister in order to speak. The meeting chair should maintain order, so that all have an opportunity to hear and speak.

Importantly, the relief provided by Amendment 28 to the Budget Bills is temporary – the relief from the community association statute meeting requirements will only last through June 30, 2022. Steps must be taken in upcoming Sessions of the General Assembly to make these changes permanent or to adopt other changes. MercerTrigiani is prepared to continue advocating on behalf of common interest community associations in Virginia.

## Virtual Meeting Requirements

- On-going Governor-declared State of Emergency.
- Purpose of meeting must be to discuss or transact business that is required to continue operations and the discharge of lawful purposes, duties and responsibilities.
- *Notice of Meeting*
  - Given to members contemporaneously with notice provided to board.
  - Given using best available method given the nature of the emergency.
- *Access to Meeting*
  - Members must have access to “attend” meeting.
  - Members must be provided with an opportunity to comment on association matters.
- *Minutes of Meeting*
  - Must be distributed to members following meeting by the same method used to provide notice of the meeting.
  - Content of minutes must include:
    - The nature of the emergency,
    - The fact that the meeting was held by electronic communications, *and*
    - The type of electronic means by which the meeting was held.

## Tips for Virtual Meetings

- Plan ahead
  - Consider alternative platforms.
  - Train participations in the platform.
  - Test the platform.
  - Develop Instructions for use of the platform.
- Announce yourself when joining the meeting.
- If you are leading the meeting –
  - Take attendance so all participants know who is attending.
  - Set ground rules for the meeting (e.g., talk one at a time; mute your line when you are not speaking, identify yourself when speaking)
  - If a participant joins late, identify participants and provide a brief review of the status of discussion.
  - At the end of the meeting, provide a brief recap of discussion, making sure to include conclusions reached and follow up action to be taken.
- Mute your device when you are not speaking.
- Avoid distractions (e.g., use headphones, sit in a closed-off area).
- Before you begin speaking, state your name.
- If you need to leave the meeting, inform the meeting leader.
- Project a cheerful and positive tone when you speak.