

CAN YOU HEAR ME NOW?

CONDUCTING BOARD MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY

by Gregory S. Cagle, Esq.



With the ever-increasing role of communications technology in our lives and the conveniences it affords, the ability to conduct board meetings remotely is a welcome and valuable tool for homeowners associations. Texas homeowners associations can now utilize the full array of communications software and equipment to conduct its meetings anywhere in the world and still have full attendance of its directors. Or in other words, you can still attend your board of directors meeting while sitting on the beach in Tahiti drinking mai-tai's.

Almost all homeowners associations (or "HOA") in Texas are incorporated as nonprofit corporations and are managed by a board of directors. In most cases, the governing documents for HOAs will provide for regular meetings of the board (generally once a month, but sometimes less often) at which the board of directors generally consider and take action necessary for the normal, ongoing operation of the HOA. The governing documents may also authorize the board of directors to call special meetings for certain special or limited purposes, such as when it is necessary to take some action before the next regularly scheduled meeting.

In most cases of resident-controlled HOAs, the board of directors consists of volunteer homeowners who work full time in professions or occupations unrelated to the HOA, some of whom may actually live or work far away from the area where the HOA is located. This is especially true in resort and vacation communities. In addition, with the demands of work and family, it is sometimes difficult for directors to attend all board meetings, and in some cases, a board may find it difficult to get enough directors to attend a meeting in order to establish a requisite quorum since only directors actually present at a meeting may be counted toward the quorum and director proxies may not.¹ While directors should generally attend board meetings in person at the same physical location, in today's environment, it may be necessary for the board to consider alternative ways to meet. Fortunately, under the recently enacted Texas Nonprofit Corporation Law (which was made applicable to all HOAs incorporated as nonprofit corporations as of January 1, 2010), nonprofit corporation boards of directors may now conduct meetings by remote communications technology, such as telephone conferencing, video conferencing and the internet.

Historically, there have been very few limitations as to where board meetings were physically held. Both the Texas Nonprofit Corporation Law and its predecessor, the

¹ *Tex. Bus. Org. Code § 22.213(b).*

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Texas Nonprofit Corporation Act, allow boards of directors of nonprofit corporations to hold meetings at physical locations in or outside the state of Texas as provided by or fixed in accordance with its Articles of Incorporation or Bylaws or as agreed to by all persons entitled to notice of such meetings.² Now, however, boards of directors may hold meetings by using a conference telephone (or similar communications equipment) or other suitable electronic communications system (including video conferencing technology or the internet) or any combination thereof.³ And, unlike directors who are present at meeting by proxy only, a director present by telephone or similar communications equipment, is considered physically present and may be counted toward the quorum requirement.⁴

In order to conduct a board meeting by remote communications technology, the Texas Nonprofit Law requires the telephone or other equipment or system to be used to permit each person participating in the meeting to communicate with all other persons participating in the meeting. In other words, all participants must be able to communicate in a "live" format with all other participants at the same time so that each director is able to hear and be heard by every other person at the meeting. In addition, if voting is to take place at a board meeting where one or more directors is attending by telephone or other equipment or system, the Texas Nonprofit Corporation Law requires the nonprofit corporation to implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified and

² *Tex. Bus. Org. Code § 6.001(c); Tex. Rev. Civ. Stat. art. 1396-2.19(A).*

³ *Tex. Bus. Org. Code § 6.002(a).*

⁴ *Tex. Bus. Org. Code § 6.002.*

to keep a record of any vote or other action taken.⁵

In addition to the authority to conduct board meetings by remote communications technology under the Texas Nonprofit Corporation Law, the Texas Uniform Condominium Act authorizes boards of directors of all Texas condominium associations, unless provided otherwise by its governing documents, to hold meetings by any method of communication, including electronic and telephonic, if: (1) notice of the meeting has been given in accordance with the condominium association's bylaws (or in absence of a bylaw provision providing for notice of board meetings, then in accordance with the Texas Nonprofit Corporation Act); (2) each director may hear and be heard by every other person at the meeting; and (3) the meeting does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular unit owner before such unit owner has an opportunity to attend a board meeting to present the unit owner's position, including any defense, on the issue.⁶

⁵ *Tex. Bus. Org. Code § 6.002(b).*

⁶ *Tex. Prop. Code § 82.108(c).*



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