

Community Associations & COVID-19

FAQ



BOARD MEETINGS FREQUENTLY ASKED QUESTIONS

Should board meetings be held during this time?

Any nonessential meeting should be postponed. If a meeting cannot be postponed, association boards should move it to an electronic meeting whether video or telephone. It is important to remind attendees that recording of board meetings is not allowed. During this time, association boards should delegate as much to management as possible.

Should communities consider adopting emergency powers for future issues?

Yes. Some states have already built in a period of time for associations to use emergency powers. Some of these powers include electronic meetings, electronic voting, and reserve funding use. Every association should consider adopting emergency power procedures.

Would associations be justified in holding their board meetings via conference calls as “emergency meetings” due to the declared pandemic, and then ratifying those actions after the health issues are over?

Probably not. Older board members with underlying medical conditions are justifiably concerned about possible exposure to the coronavirus. There are steps they can take to minimize their risk and still fulfill their duties as directors.

Conference Phone. Concerned directors can attend meetings electronically via telephone, provided they can hear all other directors in the meeting and all other directors can hear them. This is easily accomplished with a conference phone. Attendance in this manner counts as if the director were physically present in the meeting. (Corp. Code §7211(a)(6).)

The Entire Board. If ALL directors wish to attend a board meeting by telephone, they can do so. However, notice of open meetings must identify at least one physical location with a conference phone where homeowners can attend the meeting and listen to the board conduct business. (Civ. Code §4090(b).) The statute does not require any of the directors be physically present at the meeting location--only a representative of the board (such as the manager).

Emergency Meeting? What if the management company has suspended all meeting attendance for their managers due to the coronavirus? If no other representative can be found to set up the conference phone, can the meeting still be held as an emergency meeting. Unfortunately, this does not meet the definition of an emergency. An emergency is defined as "circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice" to the membership. (Civ. Code §4923; Civ Code §4930(d)(1).)

Fortunately, technology has reached the point where a call-in number can be published along with the agenda so members who wish to attend can also call into the meeting. All attendees except the board should mute their phones and only listen to the meeting. Except for open forum, members cannot participate in the board's meeting. For associations where there may be a large number of attendees, boards should consult with a technology expert to determine which call-in service best serves their needs.

Our HOA is in the midst of an election. The election results are to be tallied and new board members announced. Our recent board meeting was canceled because of the COVID-19 Virus. What do you recommend we do in order to complete the election?

To protect your membership from the spread of the coronavirus, you have two options.

Option 1. Suspend the Annual Meeting. Suspend your annual meeting until the coronavirus crisis passes. At that point, reschedule the meeting, have the inspector of elections bring in the ballots, open them in front of the membership and tabulate the results. At that point, new directors are seated. Until then, existing directors remain in place.

Option 2. Suspend Attendance but Count the Ballots. Your second option is to suspend membership attendance at the annual meeting but have the inspector open ballots and tabulate results. To protect the inspector, the counting could be done at the inspector's office. That way, the inspector avoids traveling to and working in an area that may already be contaminated. The downside is that members cannot observe the counting of ballots. Even though this is contrary to the requirements of the Davis-Stirling Act (Civ. Code §5120(a)), I believe it is acceptable under the circumstances.

The option you choose is a business decision for the board to make in consultation with legal counsel. Once a decision is made, make sure you communicate it to the membership.

Industry Experts on COVID-19 Board Meetings FAQs:

- Adrian J. Adams, Esq., ADAMS | STIRLING PLC, Los Angeles, California
- Edmund Allcock, Esq., CCAL, Marcus Errico Emmer Brooks, PC, Braintree, Massachusetts
- Matt D. Ober Esq., CCAL, Richardson | Ober | DeNichilo, Pasadena, California

RESOURCES

Now is a good time to remind community association residents, board leaders, and managers of their [Rights & Responsibilities for Better Communities](#) and the [Community Association Civility Pledge](#).

View the latest COVID-19 resources and guidance from CAI by visiting www.caionline.org/coronavirus

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