



COMMUNITY MATTERS

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News and Trends in Community Association Law

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Practical Tips for Holding Virtual and Hybrid Membership Meetings

by | Cynthia C. Hodge, Esq.

In recent years, most community associations have held membership meetings virtually. Georgia law now recognizes and expressly permits a community association board of

directors to hold annual, regular, and special membership meetings wholly or partially by means of remote communication. (House Bill 306, effective April 29, 2021). In other words, the law allows for community associations to consider virtual and hybrid options both now and in the future.

There are several requirements that must be adhered to in order to properly conduct a virtual meeting under the new law. Those are:

1. All members must be provided an opportunity to read or hear the proceedings of the meeting substantially concurrently with the meeting.
2. Members must be able to participate in the meeting (direct communication or text/chat features).
3. Must implement reasonable procedures to verify that each person deemed "present" at the meeting is a member or proxy holder.
4. Must maintain a record of any vote or such action conducted virtually during the meeting (make copy of chats and ballots; record if voice vote).

The various platforms community associations have been using (e.g., Zoom, Teams, Webex, etc.) will meet the first and second requirements. With regard to member participation, consider these practical tips:

1. Muting all participants, except for the Board and manager during the introduction/officer reports. Depending on who is hosting the meeting (whether it is a board member, manager, or legal counsel), the host can allow directors and the manager to be co-hosts with access to control their audio features.
2. Allowing participants to speak during nomination/election process, as well as during any Q&A session. Alternatively, you can ask for questions in advance or require members to put their questions into the Chat only, keeping everyone on mute. The host of the meeting will be able to act as a moderator to read

questions to the Board and manager.

3. Privatize the Chat Feature to go to the host and co-hosts only, in order to monitor the questions and conversations.

Some members may be unable to participate virtually, for lack of a computer or email access. Here are two alternatives to consider:

1. Consider a hybrid meeting option, where you can allow members to gather at a convenient location (such as a clubhouse) with the assistance of a volunteer who can sign-in virtually and allow those present to be counted in attendance and hear the meeting.
2. Consider sharing an audio/phone call-in option for those without computer access. By doing so, however, it is imperative that the member provides their name, address, and phone number prior to the meeting, for sign-in and admittance purposes.

Further, Georgia law provides that the community association is required to implement reasonable procedures to verify that each person deemed present at the virtual meeting is a member or a proxy holder. There are several procedures the board can adopt in order to comply with this requirement. Here are some practical tips for this:

1. The association can implement a pre-registration process wherein each member is provided unique login information for attending the virtual meeting. This would permit the association to verify membership information prior to the virtual meeting.
2. The association can also utilize a "waiting room" before permitting a member to join the virtually meeting. This enables the association to verify the membership information of each participant prior to such participant entering the meeting.

Lastly, Georgia law requires the community association to maintain a record of any vote or such other action conducted virtually

during the meeting. The manner in which the association conducts the vote or takes such other action will dictate how such record will be maintained. Here are some practical tips:

1. If the association utilizes electronic ballots, the association is required to maintain these records. That includes conducting the vote during the meeting, if quorum has been reached. Consider making the Chat private to the host only, so that the ballots remain in confidence. The host will count the votes and give those results to the President to announce.
2. If the association conducts a voice vote, the association should make a recording of such vote through the virtual platform. NOTE: You do not have to record the entire meeting, just the vote itself.

As a final note, hybrid meetings may be considered for some communities. Here are some practical tips to consider:

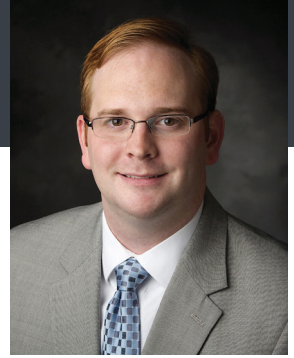
1. Make sure that you have at least two people in charge of sign-in. One person should be responsible for in-person sign in and review of proxies. The other person is in charge of administering the virtual component and signing in virtual attendees.
2. Make sure that the facility or location of the in-person meeting has appropriate equipment, outlets and a strong internet connection for running the meetings simultaneously.
3. Make sure you perform a test run of the equipment and virtual meeting. Do not wait until a few minutes before the meeting to do so.

Many community associations have benefited greatly from conducting virtual and hybrid meetings. And while many wish to return to in-person format, which is completely acceptable, please know that virtual and hybrid options will continue to be available.



Association Foreclosure In This Current Housing Market

by | **Harrison J. Woodworth, Esq.**



Assessments are the lifeblood of any community association's operation, and timely payment of assessments is critical to a functioning neighborhood. For that reason,

Georgia law has developed a way to provide associations with stronger legal rights and remedies for collecting unpaid assessments. For associations that are subject to either the Georgia Condominium Act or Property Owners' Association Act, that includes the ability to get a court order (judgment) that allows the Association to foreclose on subject properties delinquent on assessments.

Foreclosing is typically the last option that a board wants to employ against a non-paying owner. The association has likely already attempted remedies such as garnishment or enforcement of covenant violations without full success. At this point, the board just wants the problem to go away. When considering whether to proceed with having the sheriff levy on the property and schedule the foreclosure sale, a board must be aware that removing the owner from the neighborhood may be the only result. There will be some situations where recovering funds may not occur but let us focus on when it does.

There are two primary ways that the foreclosure process will result in the association collecting the balance owed. The first is that the threat of imminent foreclosure compels the owner to find a way to pay. The notice of sale from the sheriff's office can prove to be quite motivating. The second is that there is interest at the sale itself from third parties who want to try to bid on the property and purchase it at the sale. Admittedly, there is no way to know for sure if there will be third-party bidding until the date arrives and the sale begins.

The likelihood of receiving funds through the sale process is largely based on the amount of equity in the property. Equity is the value of the property compared against

the amount of any encumbrances on the property such as a security deed or liens for taxes and the association's own lien. The potential equity in a property is, thus, closely tied to the economy and the local housing market. A board can make an educated guess on the amount of equity in a property through a review of land records and local real estate estimates (for example, Zillow).

The greater the amount of equity in a property, the greater the chance that the association will receive funds at the end of the foreclosure process. An owner who wants to avoid foreclosure is more likely able to use the equity in the property to find funds to pay the association. The owner may also be able to sell the property for enough to clear all encumbrances, including the association's judgment (and lien).

However, if the owner is unable to reach a settlement with the association, or continues to ignore the foreclosure notices, the property will go to sale at the courthouse steps. If there is substantial

equity in the property, there is more likely to be multiple interested parties who want to bid. Like any auction, the more bidders, the better. Many of these third parties would be investors who believe that they can purchase the property at the sale, satisfy any other encumbrances, and sell the property for a profit.

Property values have been rising for several years, even through the pandemic-related economic disruptions since 2020. Associations that have been aggressive in asserting their rights through the foreclosure process have been able to recover substantial amounts of debt owed, beyond "just" being able to remove troublesome owners from their communities. An association that is interested in the possibility of using the foreclosure process for difficult accounts should review their governing documents and potential equity outlook with their legal counsel to take advantage of the favorable housing market. ♦





Removal of Directors and Officers

by | **David C. Boy, IV, Esq.**

From time to time a client will inform me that their board has decided to vote a director off the board. The director at issue may have a contentious relationship with the rest of the

board members, may have acted in a way that goes against the association, or, may simply be unengaged or missing board meetings. A source of common confusion by these clients is the incorrect belief that because their association's bylaws allow for removal of an officer from their officer position, this also allows the board to remove a director from their director position. As discussed below, bylaws generally provide for different processes for removal of officers versus removal of directors.

There is often a misunderstanding about the separate director and officer roles that board members occupy. Bylaws typically provide that directors are elected by the members of the association, and then the elected directors vote to appoint officers, including a president, vice president, secretary, and treasurer. (Note that some bylaws allow members of the association to elect the officer positions, but this is rare). Officers are ordinarily also directors, but bylaws may allow non-directors to serve in certain officer positions, such as treasurer. A director that does not also hold an officer position is commonly referred to as a "member at large."

Typical bylaws will allow the majority of the board of directors to vote to remove an officer from their officer position, with or

without cause, and appoint a replacement officer. However, most bylaws provide that removal of directors from their director position can only be accomplished by vote of a specified percentage of members of the association. The rationale for this requirement is that because officers are appointed by the board, they can be removed by the board, and because directors are elected by the association members, they can only be removed by the association members. (One exception to this general rule is if the bylaws allow the remaining directors to remove a director who is delinquent in payment of assessments or who has multiple consecutive unexcused absences from regularly scheduled board meetings.)

So, what are the options for a board to deal with a troublesome director who, the board believes, needs to be removed? First, if the bylaws allow, the remaining directors can vote to remove that person from their officer position and appoint a replacement officer. While the director would remain on the board as a voting member at large, the director would be removed of all officer duties and powers. This action could also send a symbolic message to the director and the members of the association, particularly if the director is removed

from the president position.

Next, the board could demand that the director resign from their director position. The director would be notified that if they refuse to resign, the board will call a special meeting of the members of the association to vote for their removal. This gives the director the opportunity to quietly resign and have their replacement appointed by the remaining directors, instead of going through the public spectacle of a removal vote by the members of the association.

Finally, if the director refuses to resign, the board could call a special meeting of the association members and present the reasons why the director should be voted off the board. The members of the association then get the opportunity to vote to remove the director and vote in a replacement.

As always, it is important to review your association's bylaws and governing documents to confirm the specific process for your community. If your board is in the unfortunate circumstance of seeking to remove a director or officer, please contact your association counsel with any questions or concerns. ❖



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