

Guidelines for Virtual Nonprofit Board Meetings and Voting

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Note that this information is not intended as legal advice.

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Can our nonprofit board meet electronically, through a teleconference or an online program like Zoom or Skype?

To address these questions, we need to take some steps through general corporate common law, the Alaska Nonprofit Corporations Act (AS 10.20), and then your corporate documents.

General corporate common law

The Common Law, established to protect board members and shareholders of corporations, maintained a general rule that physical presence was required in meetings to ensure that all interested persons received notice of possible action, could attend a meeting, and could substantively act in accord with statutory mandates. But common law is determined state-by-state and most recently, in 2021, the Alaska legislature took up this question in Senate Bill 24. In this legislation, they specifically amended the Act by adding provisions providing that quorums and meetings of members and meetings of boards may be held by “remote communications” (defined as “means communication by means of electronic communication, conference telephone, videoconference, the Internet, electronic transmission, or other means by which persons not physically present in the same location may communicate with and hear each other on a substantially simultaneous basis.”) So “physical presence” is not required to have a valid corporate meeting in Alaska.

The key to using an electronic platform is the ability to conduct simultaneous communications. But even understanding what that means, a certain exception is allowed.

Alaska Nonprofit Corporations Act (AS 10.20)

Is there an exception to the rule when it comes to email voting?

There is almost always an exception to every procedural rule, and Alaska law provides an alternative to the formal board meeting. The Alaska exception is that a decision of the board, even without a meeting, will be that of the corporation **if that decision is written and receives the unanimous approval of all members of the board.**

Alternative meeting arrangements are dealt with in the Act – “informal action by directors – (b) Unless prohibited by the articles or bylaws of the corporation, action required or permitted to be taken by the board or a committee designated by the board may be taken without a meeting on written consents, identical in content, setting out the action taken and signed by all the members of the board or the committee. The written consents shall be filed with the minutes. The consents have the same effect as a unanimous vote at a meeting.”

However, electing board members is different as the issue is about the slate of candidates and not the actual count of the vote. So provided that electronic voting is allowed in your bylaws, a slate of candidates can be put forth for a vote if the formal ballot, including write-in candidates, is approved by either the members or the board as prescribed in the bylaws in a simultaneous meeting setting. Only then can the ballot be distributed to the voting members and/or board and collected for counting by email. **Remember, if you need to take this step, then the board must approve the ballot and the voting method using a meeting platform that allows for simultaneous communication.**

“Unless prohibited” language

In each part of the Act, there is the “unless prohibited” language. Therefore, again we must look at your corporation’s articles and bylaws to see what they allow or exclude. Unless the bylaws exclude or otherwise require, the law allows that a board may make a decision without formal notice of a meeting if the question is sent to all board members (whether by email or mailing) in writing, and a **unanimous response** is received in writing from all board members. So, if the bylaws allow, an email vote would likely be deemed valid if we:

1. Ensured the email recipient was a director, and
2. Sent a written (by email) request for a vote to every board member, and
3. Every board member responded (unanimous approval else considered rejected), and
4. Printed copies of the emails were properly collected and included in the corporate record.

If the vote is not unanimous, then any action attempted by the board in an email vote would fail to pass legal muster and would not constitute an action of the board.

Corporate documents

Provisions in your bylaws

Next, we need to ensure that your bylaws allow communication alternatives to physical presence at a meeting. Since telephones, teleconferencing, and electronic meetings were first created, there has been much case law on what it meant to have a meeting – whether directors had to be in the same physical place and whether they needed to be able to observe one another, etc. The courts came

down very clearly that board members did not have to be in the same room if bylaws allowed otherwise and that they could communicate electronically without having to see one another – provided that every board member could speak as they saw fit and could hear every other board member simultaneously.

This means that passing a phone around is NOT okay. However, if a conference phone line was provided and every director had equal access to the conversation on their own phone, that would pass legal muster. The key here is that the bylaws of each organization need to specify that meeting electronically is allowed. If your bylaws do not allow this situation, then they will need to be amended.

Can our board vote on a question by email?

As technology has progressed, many boards want to use email to vote. However, this desire needs to be compared to the law. Email is a one-way communication. Much like a walkie-talkie, where only one person can speak at a time, there is not simultaneous communication. In almost every circumstance, it is not possible for every board member to be in contact with every other board member at the same time. Normally, a request for a vote is sent out with some description. Maybe some directors will respond with questions. The back and forth of the discussion could continue. Even if there is eventually agreement in most instances, this agreement **does not create** a legal decision of the board.

What’s missing is simultaneous communication that allows all board members to participate equally with the ability to both speak and listen (this is interpreted as “being heard”). However, as technology advances, we may see a circumstance where similar communication provides the necessary simultaneous and inclusive discussion required under the law. **Until technologies change, an email query followed by a vote, except as discussed below, will not suffice for a meeting and vote of the board.**

Quick reference

Desired Action	Simultaneous communication?	Next Steps
Board meetings via Zoom, GoToMeeting, Skype, Teams, etc. if bylaws allow. Everyone is seen and heard.	Yes	If your bylaws do not specifically allow, then consider amending them.
Final vote by email – majority agrees.	No	Not a valid act of the board.

Vote by email where the motion is fully described, all members respond and unanimously agree.	No	However, if bylaws allow alternative meetings, then the outcome can still be the act of the board “in leu of meeting.” You will need to ratify at next board meeting.
Vote by teleconference where all participants can be seen and heard if bylaws allow. Everyone is seen and heard.	Yes	If your bylaws do not specifically allow, then consider amending them.
Vote to approve new board members by email.	Maybe	Only if allowed by your bylaws. Then only if the formal ballot is approved by either the members or the board as prescribed in the bylaws in a simultaneous meeting setting. Only then can the ballot be distributed to the voting members and/or board and collected for counting by email,

Given the recent changes and some continuing complexities, please do not hesitate to call us if you have questions at 907-743-1200.