

***Can our board meet electronically, through a program like Zoom or Skype?
Can our board vote on a question by email?***

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Note that this information is not intended as legal advice.

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Interesting questions for a board to consider.

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

First, common law principles of actions taken by board members are set on three premises:

1. That all directors are aware of what is being discussed and decided and have been given adequate notice, along with the ability to attend the meeting where the decision is being made.
2. That no conflicts exist, or none remain undisclosed, that would place in question the board's decision.
3. That in practicing its duty of care, the board may rely on executives, committees and properly appointed experts.

When you work from these premises a decision of the board, properly voted upon and memorialized, is a decision of the corporation and has the force of law.

Second, we must look at the Alaska nonprofit law under AS 10.20 which relies in large part on the general corporate law found in AS 10.06. Alaska statutes require that a properly held board meeting is one where all directors have equal access and ability to communicate with each other at the same time.

Background on electronic meetings

Sec. 10.06.475. Alternative meeting arrangements; informal action by directors. (a) Unless prohibited by the articles or bylaws of the corporation, the board of a corporation or a committee designated by the board can validly conduct a meeting by communicating simultaneously with each other by means of conference telephones or similar communications equipment.

As telephones, teleconferencing and electronic meetings were first created there was 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 meant passing a phone around was NOT OK, but if a conference phone was provided and every director had equal access that would pass legal muster. The key here is that the board must adopt or amend bylaws to allow for an electronic meeting.

Background on voting by email

As technology progressed, the concept of email voting popped up and that process now must 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 board member at the same time. Normally a request for vote is sent out with some description, maybe some directors will respond with questions, and then there is ultimately a response to the request. This process, in most instances, 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 a blog or similar communication provides the necessary simultaneous and inclusive discussion required under the law, but an email query followed by a vote, except as discussed below, will not suffice for a meeting and vote of the board.

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 will be that of the corporation, regardless of meeting, if that decision is written and receives the *unanimous* approval of all members of the board.

Sec. 10.06.475. Alternative meeting arrangements; 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.

In each part of the statute, there is the "unless prohibited" language. Therefore, last we must look at the 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 allowed, 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 or rejection), 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.