

# Remote Meeting Requirements as Promoted by Men Without Hats

(a/k/a The Safety Dance)

BY MATT DREWES



Ah we can dance if we want to, we can leave your friends behind  
Cause your friends don't dance and if they don't dance  
Well they're no friends of mine  
I say, we can go where we want to, a place where they will never find  
And we can act like we come from out of this world  
Leave the real one far behind

- Men Without Hats | The Safety Dance | © 1983 Universal Music Publishing Group

At the time this article is written, Minnesota is under the March 25, 2020, Emergency Executive Order 20-20 Directing Minnesotans to Stay at Home issued by Governor Tim Walz. Many other states and locations are under similar unprecedented directives from their chief local officials to “Stay at Home.” While there are many pressing business and personal matters that are at the top of our minds in a time like this, there also is a lesson for us now and into the future regarding how we can and should consider doing business in a way that is still effective in light of current necessities, while also finding solutions that may continue to assist with stability and inclusiveness in the long run.

It's easy to feel a somber mood in the face of current world events. But we need to make the most of our situation, and to find some amusement where we can. So, while discussing the virtues and the practical considerations for business continuity for community associations, we can simultaneously remember those early pioneers of thought on the concept of keeping things moving while removing yourself from people or places that might otherwise be glum. Thus, to paraphrase the forward-thinking 80s band Men Without Hats: “we can

*[meet] if we want to, we can leave your friends behind.”* With current technology, used appropriately, boards and unit owners can conduct votes and meetings without interruption even while we “go where we want to,” even if we must “[l]eave the real [world] far behind.”

Depending on the circumstances and the nature of the decisions that must be made, there are procedures that may assist in continuing the necessary business of your association now, in future times of crises, or simply because we are likely to continue to have other reasons to “assemble” through remote or virtual methods. As technology and connectivity improves, this will only become more normalized and available than a current blip on our collective radar. In fact, today the question is less about whether we can do this, but whether and how the law and our governing documents say we may do this. Here are some present considerations for conducting remote meetings, votes, elections, and other business.

Most community associations are governed by Chapter 515B of Minnesota Statutes, otherwise known as the Minnesota Common Interest Ownership Act, or MCIOA, and almost all will have been formed as a

nonprofit corporation under Chapter 317A, the Minnesota Nonprofit Corporation Act. Where these laws overlap, a community association must comply with the provisions of both, to the extent possible, as well as any further restrictions or limitations contained in the association's governing documents (articles of incorporation, bylaws, and declaration). This article will address the provisions of these laws that most directly apply to remote meetings and voting in the age of social distancing, and possibly into the future.

As part of this discussion, consider that in addition to conducting meetings remotely, the notices of these meetings may be best delivered through some means other than by mail, due to any number of factors that influence the timing and effectiveness of distributing notices by mail or hand-delivery, or by "posting" meeting notices on a bulletin board that fewer people may see. Electronic transmission may not always be the sole means for delivering messages, for a few reasons, but it's an option that many more associations are likely to start embracing now, if they haven't already.

Distributing notices or ballots for voting through "electronic means" generally refers to email messages. The phrase "electronic" can also mean by fax or by posting to an electronic message board that members are then directed to visit to retrieve meeting notices or other materials. Before your association is authorized to use one of these means, the unit owner must consent to receive notice in one of these desired methods either "in writing" or by means of an "authenticated electronic communication." "Authenticated" means the communication must be sent in a way that demonstrates the sender is, in fact, the member he or she claims to be.

As we seek ways to move forward, and despite the exhortations of Men Without Hats, we must also bear in mind the obligation not to truly "*leave your friends behind*" in every sense. There will be community members who are not as adept at the use of technology or as eager to embrace "paperless" proceedings. Also, for those members who approve electronic notices, their email address becomes a corporate record, just as their mailing address would have been, so another member may be entitled to obtain that address (if sought for a "proper purpose," which could provide the topic for its own article). Members who have only a single email address may not wish to open themselves up to the interactions of an association-wide group email chain. With each new development you introduce, keep in mind what backup or tried and true methods you are using for those who remain

entitled to participate and who won't be as confident or comfortable. And, before adopting one of these prospective remote means of connection or communication, offer advance warning and possible assistance, to the extent possible, to ensure the system will work when the time comes.

## Board of Director Meetings

There is no question that associations governed by MCIOA can utilize electronic notice procedures for board meetings. All members of the association, including board members, can consent to the delivery of these notices by electronic means. First, however, you will need proper consent from those to whom you want to send the electronic notices.

The Nonprofit Corporation Act further expressly allows board meetings to be held by remote means of communication, as long as there is a quorum and as long as each board member present by remote means or physically "may participate with each other during the meeting." This generally means they must be able to be heard and to hear the other board members in "real time," without having their opportunity to speak on a given matter limited in some manner. Under MCIOA, board meetings must also be "open" to all unit owners. To accomplish this, many of the same video and audio conferencing solutions available for the board to communicate can also accommodate the addition of more participants. Those participants who are not on the board may then be "muted" by the organizer of the meeting, so they can call in or join the videoconference, but they will be unable to interject (or have their own background noises or side conversations interrupt the board's business).

In the interests of full disclosure, there are two additional options available to boards of directors, but you should either avoid using them, or use them sparingly, and only if circumstances truly dictate. First, MCIOA contemplates board meetings without the required notice to the community "if an emergency requires immediate consideration of a matter by the board." In addition, the Nonprofit Corporation Act authorizes boards of directors to take written action in lieu of a meeting, if authorized by the articles of incorporation. This would obviously violate MCIOA's requirement that the board act on the basis of "open" meetings, but if circumstances require immediate action and some form of conference isn't practical, this may afford an opportunity to act, assuming the association's articles of incorporation also allow it.

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## Owner Meetings and Voting (including Annual Meetings)

The concepts suggested here are obviously for those who have weighed and decided either they can't, or shouldn't, postpone the meeting or vote. Postponement is certainly one option, especially if we should learn that there will be an easing of meeting restrictions on traveling and gatherings of more than 10 people in the near future. But this article is also an effort to provide options involving the use of technology to assist in keeping business moving in all circumstances. With that said, please consider the points below if you wish to explore remote voting or meeting procedures.

Unfortunately, the use of electronic notices of unit owner meetings instead of mailing is not technically compliant with MCIOA, even though electronic notice of member meetings is permitted for those entities governed by the Nonprofit Corporation Act (and even though your governing documents might say it's permitted). Until and unless that changes, if you wish to provide electronic notices of owner meetings, you should consider it as a supplement to the statutorily-compliant notice, but you should still mail the notices to all owners, if that option is available.

The means for participating in a unit owner meeting electronically (including voting) are more expansive under the Nonprofit Corporation Act than those under MCIOA, as well. Voting via video or phone conference may not be very practical, because of the difficulty in identifying the numbers voting for or against. In addition, the conference methods aren't as likely to permit secret ballots. Therefore, if you wish to accommodate remote voting, MCIOA allows ballots to be sent electronically, as well as by mail, subject to limitations contained in the association's articles of incorporation, bylaws, or declaration (and many governing documents have historically contained such limitations, so beware). Just note that, in any case, before the association may transmit and receive ballots by electronic means (as opposed to sending them by mail), the unit owner must again authorize the association to send notice of the vote and the ballot either in writing or by "authenticated electronic communication." This authorization can be done in the same document or message authorizing electronic notices of board meetings. Also remember that an association cannot combine an in-person vote (or live conference vote) with a vote by ballots sent to the owners, but it can send out ballots both by mail and electronically according to each member's preference.

The conduct of a meeting, on the other hand, can be more of a logistical challenge due to the number of parties who must "attend," whether in person or by remote means (even to satisfy the quorum requirement). Simply muting the "audience" may not be an option, because annual meetings may incorporate an open forum period, or there may be a need for a vote with the challenges identified above. If a vote is required, while you cannot combine the "in-person" or "live" voting procedure with a mailed (or electronic) ballot, you can transmit remote ballots to the unit owners so that they are returned prior to the meeting and then announce the results at that time (as long as the vote is not for a decision that is prohibited to be handled by mailed or electronic means). Many of the conferencing options available have a means for participants to notify the moderator of the meeting that they wish to be recognized in order to speak. Keep in mind, however, that for those who may not have the ability to connect via video, the association must still grant them the same opportunity to participate, if they wish, or an owner may not be technologically savvy enough to use the videoconferencing application to signal the desire to comment. To account for all potential circumstances, it may be necessary to require a unit owner who would have a topic to raise at the meeting to first notify the board or management in order to be recognized and have their line unmuted to permit them to speak at the appropriate time. Remember the board shall set the rules and means for conducting the meeting. If you give the owners notice of the need to adjust past practices to account for this "social distancing" approach, perhaps with your notice of the meeting, those adjustments should be fully justified and understandable.

Finally, if as you examine your documents you observe that an amendment to one or more of the governing documents is necessary to make these remote meeting or voting options properly inclusive or available, consider whether they refer to approval via consent of the owners or whether the approval requires a vote at a meeting of the unit owners, and get advice if necessary to plan for those contingencies and to draft the appropriate revisions.

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