



# Technology for Community Associations *in the Midst of Coronavirus*

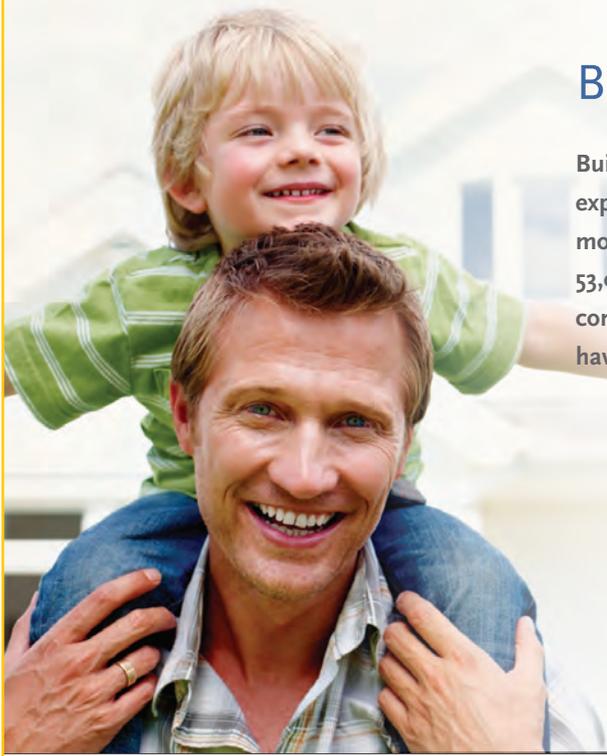
By **Deborah M. Casey, Atty at Law, CCAL®**, Partner, *Vandeventer Black LLP*

There is nothing like a global pandemic, complete with Gubernatorial Executive Orders to stay home, social distance and limit gatherings and CDC health recommendations to provide laser focus on how community associations can utilize technology. While the spotlight is on the present crisis, community associations may find that it fast forwards new and improved ways of conducting business utilizing technology. Attending meetings and voting in person can conflict with busy lives and schedules. Virtual presence and participation certainly provide ways to participate and combat apathy, eliminating travel time and other logistical obstacles. It is also possible that the lack of authority in outdated documents to use technology will be glaring and hasten long-desired changes.

The use of technology for notices, signatures, voting, consents, and approvals is one of the rare instances in which the law is ahead of practice. A decade ago, the Virginia General Assembly enacted provisions to

both the Virginia Condominium Act (“Condo Act”) and the Property Owners’ Association Act (“POA Act”) to permit the “most advanced technology available” to accomplish routine association business, with some limitations. The legislation was forward-thinking enough to recognize that technology would change and advance over time. The requirement was relevance and based on what was an “accepted business practice” at the time the technology is used. This permitted innovation without any new legislation. The recodification of Title 55 into Title 55.1 in October, 2019, now recognizes the use of electronic means (with some exceptions) unless the recorded documents provide otherwise. Board packages may also be made available electronically. Many association communications are already done electronically through an electronic newsletter, bulletin board or website.

While the legislation has facilitated giving notices<sup>1</sup> and getting proxies, signatures and consents, voting



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# “ The only thing that is constant in life is change ”

- Heraclitus

has proven to be somewhat more difficult<sup>2</sup>. The statutes permit the use of technology unless the recorded documents provide otherwise. Many older and boilerplate documents provide that voting is in person or by proxy. In associations with this kind of voting provision, the document must be amended in order to permit the use of technology for voting. Notwithstanding this limitation, a proxy (a delegation of authority from an owner to another person to vote in the owner's stead) can be submitted by electronic means. Electronic voting from one's computer keyboard should undoubtedly facilitate and increase participation. As the use and desire for electronic voting continues, and cost decreases, Associations are encouraged to review the governing documents to determine whether they are in a position to employ electronic voting. Consider also whether the documents need to be amended to change notice requirements to facilitate notice by electronic means. If not, contact association counsel to prepare an appropriate amendment and guide the association through the amendment process.

Virtual presence can also increase participation in meetings, both of board and committees, as well as of the association membership. The use of this technology (such as Zoom, Teams, and other apps and platforms) has proliferated very quickly during the pandemic while most people are working from home and practicing social distancing. It is a great way to meet Governor Northam's Executive Orders and follow CDC guidelines. What seemed difficult and ineffective only a months ago has quickly become familiar and comfortable.

In utilizing this technology, there are a few practical and legal considerations of which to be aware. Make sure the technology is available, working and secure. Hold a practice session to avoid glitches. Have a producer or tech support available to respond to technical issues so as not to divert attention from the meeting chair. Distribute call in numbers and passwords in the meeting notice. The technology should permit all persons to hear (and, to a more limited extent, speak to) everyone. This is difficult to do unless it is by some means of audio or video conferencing, and even such means can be difficult with larger groups. Email, chat rooms, social media, and similar forms of electronic communication do not allow everyone to hear and speak to everyone substantially simultaneously and therefore are not permitted.

If an Association is incorporated as a Virginia nonstock corporation, the Virginia Nonstock Corporation Act permits members to participate in any meeting of the members by means of remote communication to the extent that the Board authorizes such participation for members. Participation by remote communication is subject to procedures adopted by the Board and in conformity with Va. Code Section 13.1-844.2.B. Boards of eligible associations should enact procedures. There are limitations on a completely virtual meeting of the members as well. If you are unsure whether an association has authority to conduct meetings by electronic means and appropriate procedures, contact association counsel.

Both the Virginia Condo Act and POA Act permit boards to conduct meetings by telephone or video conference, or similar electronic means, provided at least two board members are physically present in the meeting place included in the notice. The audio equipment must be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present. Consider how the technology can be properly employed to permit open and closed sessions of the Board. There is "emergency legislation" currently in effect during a Governor-declared state of emergency that permits completely virtual board meetings, but it is temporary and there are certain requirements to meet. It has not been modified by any Executive or judicial order regarding COVID-19.

"The only thing that is constant in life is change" said Heraclitus. In this time when the world is changing and we are adapting very rapidly to stay safe, perhaps the most notable side effect of COVID-19 will be an accelerated and greater acceptance of and comfort level with technology, accompanied by an impetus to amend documents where needed to make it happen.



Deborah M. Casey is a partner with the law firm of Vandeventer Black where she Chairs the firm's Community Association Law practice group and serves on the firm's Executive Board. Debbie has been an active member of SEVA-CAI for almost 30 years, serving as President in 2001 and in many roles. Debbie has been inducted into the Chapter's Speakers Bureau and received its Hall of Fame and Distinguished Service Awards. Debbie is listed in Best Lawyers in America for Community Association law, Super Lawyers and Legal Elite.

1 except notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings to enforce an assessment lien

2 There are many other statutes that apply more broadly to electronic signatures, notaries, and filing that may apply.