Governance Notes

Practical Considerations for Holding Board Meetings during COVID-19

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Non-profit organizations and their boards of directors are facing unprecedented challenges as they try to adapt to every changing operational and financial challenge associated with the COVID-19 pandemic. As such, continuing to hold regular board meetings is a crucial element for keeping boards fully engaged and responsive to the changing conditions. This article provides practical guidance to non-profit healthcare organizations and their governance support staff about how they may manage board meeting operations and keep board members engaged under the current pandemic conditions.

Virtual Board Meetings

In response to current social distancing measures, boards may not be able to meet in-person to conduct business. However, unless otherwise prohibited by an organization's governing documents, most states allow non-profit corporations to hold board meetings electronically, so long as the participating board members can communicate live with each other and participate in all matters before the board. Options such as telephone conference calls and videoconferencing are generally permitted; however, time-delayed options such as email or media without audio, text messaging, and chat rooms are generally not permitted. Governance support staff should check with their legal counsel to confirm a given technology is permitted in their state before scheduling a board meeting.

Key Takeaways

COVID-19 has changed the way boards meet and requires a new level of diligence to ensure meetings are efficient and productive. To make the best use of virtual meetings, governance support staff should work with the board chair to:

- **Choose the right virtual meeting platform.** When deciding on a technology platform for meetings, check with legal counsel to ensure it is permitted by state law and consider what will be most accessible to directors.
- **Set the board up for success.** Give proper notice of meetings and provide board members with detailed information around how to participate and what to expect. This may require spending time with members beforehand to test technologies so that meetings run smoothly.
- **Continue to follow quorum and record requirements.** When not face-to-face, it can be more challenging to confirm and document quorums, have engaging discussions, and properly vote. Extra steps may need to be taken such as taking roll call and asking participants to announce themselves before voting or speaking. This will help board members and make it easier to take accurate meeting minutes.
- **Keep members engaged during meetings.** Make sure all board members are included in discussions and have the opportunity to speak up. Take measures to promote this environment by, for example, allowing additional time for important discussion topics, utilizing meeting platform tools where board members can "raise their hand," and stressing the importance of engagement beforehand.
- **Consider alternatives to virtual meetings when necessary.** Situations may arise where it makes more sense to rely on committee actions or put together a written consent, rather than holding a formal board meeting. Careful consideration should be taken when weighing these options over full board meetings.

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- Organizations' governing documents and state law should be reviewed to identify authorization for and additional requirements applicable to conducting virtual meetings.
- If an organization's governing documents currently bar virtual meetings, consider amending the documents by unanimous written consent (as discussed below), to permit virtual meetings.
- Identify a platform that will be most accessible to your directors, noting, however, that videoconferencing is often more conducive to member participation.

Proper Procedures Still Matter

Despite the inherent informalities that come from participating in a board meeting from your living room, meeting procedures must continue to be followed as though the meeting is being held in person, including:
- Appropriate notice
- Quorum
- Recording of meeting minutes

Organizations that are moving to an electronic meeting format should follow their normal notice procedures, including timing and form (printed, electronic, or both). In addition, the notice should include a clear description of how to participate in the meeting (for example, dial-in telephone numbers, passcodes, links, or instructions to access videoconferences). Governance support staff should work with board members to ensure that they understand how to access the new format and have downloaded and tested any technologies that they will need to use in order to participate in the meeting. It is also a good practice to have a back-up method for accessing the meeting, such as by providing a secondary telephone number of

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a governance support staff member who can conference the director into the meeting if they have difficulty accessing the line through the normal access process.

Similarly, boards must ensure that they continue to follow quorum and record requirements. Electronic meetings can present new challenges for what were otherwise routine tasks. For example, determining whether a quorum is present is no longer as easy as looking around the boardroom and may be difficult on telephone conferences where only telephone numbers are displayed. As a solution, boards should be prepared to take a few additional steps to confirm and document the quorum, such as by taking roll call and enabling "chime" features to signal to the board when a participant enters or exits a meeting. Similar practices are also helpful to implement during board discussions and votes, where it may not be as clear to the participants who proposed a motion or who is in agreement during a voice vote. Asking participants to announce themselves before speaking each time and having formal roll call votes will help ensure meetings run smoothly and are accurately recorded. Although tempting given the electronic format of the meetings, it is not recommended that governance support staff record the board meetings in lieu of preparing meeting minutes.

Practical Tips:
- Test the system being used for the meeting before notices are distributed to directors.

- Appoint someone to help people who have difficulty joining the meeting and have back-up options for accessing the meeting. Keep records of anyone who attempted to join the meeting but was unable.
- Determine ahead of time the method for taking attendance, confirming that no uninvited attendees are on the line (especially important during closed sessions or otherwise privileged sessions), and taking and recording votes.

Keeping the Board Engaged

In light of all the various issues facing organizations currently, it is as important as ever for board members to stay engaged during meetings. Unfortunately, electronic meetings—especially telephone conferences—present a number of challenges for maintaining active participation from all members. Board chairs should actively take steps to make sure all board members are included in the discussions and have ample opportunity to comment and voice questions and concerns. Board chairs and governance support staff can prepare a list of best practices to be implemented during meetings and distributed to participants in advance, including, for example, reminders to announce yourself before speaking, not interrupt someone speaking, allow a five-to-10-second pause before starting to speak, and allocate additional time for each discussion topic. Some virtual meeting platforms also have options to "raise your hand" to indicate you have something to say

when the current speaker is finished. Virtual meetings also present the temptation for participants to multi-task during meetings, and therefore the board chair should remember to stress the importance of full engagement and discourage silent lurking in the background.

Alternatives to Virtual Board Meetings

Even with the flexibility virtual meetings provide, there may be some situations where a formal board meeting may not be practical. Whether these situations arise because of limited resources or situations requiring immediate action, boards can continue to rely on committee actions and procedures for taking action without meetings. Executive committees are often authorized to take certain actions without a full board vote. However, the board and governance support staff should review the organization's bylaws and committee charters carefully to confirm the scope of actions the executive committee and other committees are permitted to take. As we continue to adapt to the current times, this may be an appropriate time for the board to consider whether to expand the executive committee's authority, at least temporarily.

Boards also often have the option to utilize actions by written consent in lieu of a meeting. A written consent is a written board resolution that is signed by board members without holding a formal in-person or electronic meeting. The organization's bylaws will often dictate whether such approach is permitted, but generally require unanimous consent by all board members. In addition to confirming such actions are permitted by statute and the organization's governing documents, governance support staff should confirm any applicable requirements for the board members' signatures, including whether there are any restrictions on PDF signatures or electronic signatures (e.g., DocuSign). The board and management should also consider, even if such written consent is permitted, whether the action to be taken is appropriate for a written resolution, including whether the board has had an adequate opportunity to learn about and discuss the action to be taken.

Practical Tip:
- Remember that just because you can, does not mean that you should. In trying times, it is important to have robust board engagement, which may not always be possible when committee actions and written consents are used.

In order to weather the current storm, non-profit organizations and their boards must remain fully engaged and in ongoing communication. Governance support staff can help support this effort by ensuring that board members have the tools to schedule and effectively hold virtual board meetings.

Considerations around Confidentiality

- **Duty of confidentiality.** Board members have a fiduciary duty to maintain the confidentiality of corporate information, and to protect that information from unauthorized disclosure, including to family members who may be sharing workspace at home with the board member. Board chairs should take time to remind board members of their continuing duty and, to the extent a board has one, consider recirculating the board's confidentiality policy for reference.
- **Confidentiality is critical for board engagement.** Maintaining the confidential nature of board meetings is also important to keeping the board engaged. Board members may feel less willing or able to engage in robust discussion when they are unsure of who may be listening.
- **Executive or privileged session.** Consider having a separate dial-in number for board members to use for confidential portions of the meeting to ensure only the appropriate participants are present.