

## “Association Voting During the Pandemic, What Can We Do?,” CAI South Gulf Coast

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Although the advent of vaccines signals the end of COVID-19, the pandemic remains a fixture in our landscape and undoubtedly will for some time to come. As Southwest Florida community associations typically have most of their meetings during the “season,” this presents recurrent questions about the applicable laws and “sunshine rules,” especially regarding “remote participation.”

Contrary to popular belief, there is no law or governmental order which squarely addresses this. For condominiums, the provisions of Chapter 617 of the Florida Statutes (the “Corporation Act”), Chapter 718 of the Florida Statutes (the “Condominium Act”), and Chapter 61B-23 of the Florida Administrative Code (the “Rules”) all play a role.

Also, many association bylaws require the annual meeting to be held in the county where the community is located, and state that owners may “vote in person or by proxy.”

This is a summary of the applicable laws:

- Section 617.0206 of the Corporation Act, the “emergency bylaws” section, does not authorize “remote” meetings.
- Section 617.0721 of the Corporation Act provides for proxy voting and allows proxies to be sent as an email attachment or a facsimile transmission.
- Section 617.0721(3) of the Corporation Act states that “if authorized by the board” and “subject to guidelines and procedures as the board may adopt,” members and proxyholders who are not “physically present” at an owners’ meeting may vote by “remote communication.”
- Section 617.0820 of the Corporation Act allows board meetings to be conducted by remote means, stating that a director participating remotely is “deemed to be present in person at the meeting.”
- Section 718.112(2)(b)3 of the Condominium Act states that a board

member's participation in a board meeting via remote means is as though the director is "physically present."

- Section 718.112(2)(c) of the Condominium Act states that board meetings are "open" to unit owners and that the right to "attend" includes the right to "speak."
- Section 718.112(2)(d) of the Condominium Act suggests that an annual meeting must have a "location," which must be within 45 miles of the condominium.
- Section 718.112(2)(d)6 of the Condominium Act allows electronic notice to be used as the means of giving official meeting notices if the owner consents.
- Section 718.112(2)(d)7 of the Condominium Act states that unit owners have the right to "participate" in owners' meetings.
- Section 718.1265 of the Condominium Act, the "emergency powers", likewise does not address remote meetings, just when notice requirements can be relaxed.
- Section 718.128 of the Condominium Act sets forth the procedures for electronic voting.
- Rule 61B-23.0021(2) of the Rules states that the election voting must occur at the "place at which the annual meeting is scheduled occur."
- Rule 61B-23.0021(10) of the Rules requires election ballots to be "transported to the location of the.... meeting." The Rule also requires that additional election ballots for those who have not voted be "available at the meeting."
- Rule 61B-23.0021(10) of the Rules requires the election committee to verify signatures and count the votes "in the presence of any unit owners in attendance."

Based upon the language in Section 617.0721(3) of the Corporation Act, owners and holders of proxies from owners can vote in person, by remote means, on meeting agenda items (such as reserve and financial questions, amendments, or material alterations) if the board has adopted procedures to implement remote voting. If your association is considering a remote voting alternative, make sure to check with the association's legal counsel to verify that you have "dotted the i's and crossed the t's."

If there is going to be a board election, things get more complicated yet. As noted above, the condominium election rules regarding the processing of ballots are quite detailed, and somewhat strict. Issues that are commonly confronted include whether attendance at meetings can be limited to a certain number of persons (assuming you can find a place that will allow you to meet), whether "remote only meetings" are legal, and how "hybrid meetings" (partially remote, partially in person) should be set up.

The current laws were obviously not written with a public health crisis in mind. While I am aware of proposed legislation to fix these problems, even if adopted, it will not be in time to help with this season's meetings.

There is no doubt a delicate balance between public safety and owner rights to robustly participate in their community's electoral and voting processes. One thing is clear, there is no one size fits all or magic answer. The nature and size of your community, what issues will be voted on, and whether there will be an election are all factors that must be taken into account.

The best advice I can give is to anticipate these issues in advance and plan as best you can, with guidance from the team of advisors that assist in the operation of your association (legal counsel, management, and financial advisors) and of course the common sense and good business judgment of the board of directors.