

**STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.**

ATTORNEYS AT LAW

**MEMORANDUM**

**TO:** Gary White, AIS Past President

**COPY:** Jody Nolin, AIS President

**FROM:** Dale Strauss

**DATE:** September 21, 2020

**SUBJECT:** Affiliate Bylaws in the Event of Declared Emergencies

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The COVID-19 pandemic has resulted in a myriad of national, state, and local declarations of emergency governing the conduct of individuals, groups, and business entities during the pandemic. Many nonprofit organizations have been caught in a situation where their bylaws or other operational documents do not address specific problems such as:

1. shelter in place orders;
2. prohibitions on meetings of groups over a certain number of persons;
3. restrictions imposed by social distancing requirements;
4. interruption of regularly scheduled meetings when the bylaws mandate meetings on specific days of a month;
5. bylaws that require an annual business meeting at a certain time and place;
6. bylaws that require election of officers or directors at a certain time and place; and
7. bylaws which do not specifically provide for alternative meeting formats for the board or members, such as telephone or internet meetings (Zoom, Teams, or other group meeting software).

Above all else, common sense should prevail in all actions by the affiliates and their members. The first, and easiest issue to address, is that national, state, and local declarations and mandates take precedent over any bylaws or rules of the organization. Therefore, the failure to meet as required in your bylaws does not impose liability on the nonprofit organization, directors, or officers. Although some members may be upset, it is the duty of the officers or directors of the nonprofit organization to comply with the mandates. This may even result in disruption of traditional annual events such as conventions, rhizome sales, annual meetings, and the like.

The second issue is compliance with the mandates. If meetings are permitted in the organization's jurisdiction, you must comply with other applicable mandates, such as number of participants, social distancing, masking rules, etc. You will also have to comply with reasonable

restrictions put in place by businesses, such as restrictions on use of meeting space resources, especially in public facilities such as restaurants, churches, public meeting facilities, etc.

The third issue is the need to modernize the organization's bylaws. Few "standard" bylaws provide for electronic meetings by phone or video conferencing, nor voting electronically. The organization bylaws need to be updated to permit both. I have attached a form of bylaw amendment that can be used to permit the necessary changes, as well as a sample set of Rules suggested by

Some states permit the board of directors of a nonprofit organization to adopt emergency bylaws. In those states the board may adopt the attached bylaws and should do so as soon as possible. For their records, the bylaw amendment should be sent to each board member, with the Unanimous Written Consent also attached to this memo, and ask each Board member to sign and return the consent to the organization Secretary. The amendment, with all of the counterparts should be kept with the original bylaws in the organizations' books.

However, I in most instances the organization is managed by the members of the nonprofit. This is where common sense needs to prevail over legal perfection and Roberts Rules of Order. In this instance, I would work with a negative ballot. The organization can email or regular mail the proposed bylaw amendment to its members, and give them at least one week (suggest that they email/mail on a Friday and limit responses to 5:00pm of the next following Monday – 10 days) to submit a negative vote. In the transmittal letter explain that responses not received by that date are presumed to be votes of approval. Sounds awkward, but it is the best solution in a bad situation.

[Entity Name]

Amendment to By-Laws  
Meetings

Adopted \_\_\_\_\_

WHEREAS, the COVID-19 pandemic has created a national state of emergency, and the associated national, state, and local emergency declarations and restrictions governing shelter in place orders, group meetings, attendance restrictions, masking, and other protocols, has been disruptive to nonprofit organizations; and

WHEREAS, it is necessary for [Entity Name] to adopt amendments to its bylaws and operating procedures to permit alternative methods of meeting and voting on matters essential to its purposes and objectives as a nonprofit organization during this state of emergency, it is therefore;

RESOLVED, that the following Amendment to the bylaws of [Entity Name] are hereby adopted:

Section \_\_\_\_\_. Electronic Meetings and Voting.

1. Internet Meetings. Upon a majority vote of the executive officers, meetings of the Board or Members may be conducted through use of Internet meeting services designated by the President that support both video and call in participation, and the notice for the meeting shall outline the procedure for identifying those participating, identifying those seeking recognition to speak, showing (or permitting the retrieval of) the text of pending motions, and showing the results of votes. These internet meetings shall be subject to all rules adopted by the executive officers, or by [Entity Name], to govern them, which may include any reasonable limitations on, and requirements for members' participation. Any such rules shall supersede any conflicting rules in the parliamentary authority, but may not otherwise conflict with or alter any rule or decision, including quorum requirements, of [Entity Name]. An anonymous vote conducted through the designated Internet meeting service shall be deemed a ballot vote, fulfilling any requirement in the bylaws or rules that a vote be conducted by ballot.
2. Teleconference Meetings. Upon a majority vote of the executive officers, meetings of the Board or Members may be conducted by telephone. The President shall provide notice of the meeting which shall outline the procedure for identifying those participating, identifying those seeking recognition to speak, showing (or permitting the retrieval of) the text of pending motions, and showing the results of votes. These teleconference meetings shall be subject to all rules adopted by the executive officers, or by [Entity Name], to govern them, which may include any reasonable limitations on, and requirements for members' participation. Any such rules shall supersede any conflicting rules in the parliamentary authority but may not otherwise conflict with or alter any rule or decision, including quorum requirements, of [Entity Name]. An anonymous vote conducted through

the designated Internet meeting service shall be deemed a ballot vote, fulfilling any requirement in the bylaws or rules that a vote be conducted by ballot.

3. Notice of Electronic Meeting. Notice of the meeting shall be given by email not less than ten (10) days before the meeting date, and shall designate: (a) the date and time of the meeting; (b) the method of video and audio participation; (c) the agenda for the meeting; (d) the rules for participation; and (e) any such other information necessary or helpful for participation in the meeting.

## **Sample Rules for Electronic Meetings**

1. Login information. The Recording Secretary shall send by e-mail to the members at least ten days before each meeting, the time of the meeting, and (a) If an Internet Meeting the URL and codes necessary to connect to the Internet meeting service, and, as an alternative and backup to the audio connection included within the Internet service, the phone number and access code(s) the member needs to participate by telephone; and (b) if a Teleconference, the phone number and unique access code that that member needs to connect to the telephone conference call, and the URLs and login information for the online survey tool and file hosting service (if applicable). The Recording Secretary shall also include a copy of, or a link to, these rules.
2. Login time. The Recording Secretary shall schedule the meeting service availability to begin at least 15 minutes before the start of each meeting.
3. Signing in and out. Members shall identify themselves as required to sign in to the meeting service, and shall maintain Internet and audio access throughout the meeting whenever present, but shall sign out upon any departure before adjournment.
4. Quorum calls. The presence of a quorum shall be established by audible roll call at the beginning of the meeting. Thereafter, the continued presence of a quorum shall be determined by the online list of participating members, unless any member demands a quorum count by audible roll call. Such a demand may be made following any vote for which the announced totals add to less than a quorum.
5. Technical requirements and malfunctions. Each member is responsible for his or her audio and Internet connections; no action shall be invalidated on the grounds that the loss of, or poor quality of, a member's individual connection prevented participation in the meeting.
6. Forced disconnections. The chair may cause or direct the disconnection or muting of a member's connection if it is causing undue interference with the meeting. The chair's decision to do so, which is subject to an undebatable appeal that can be made by any member, shall be announced during the meeting and recorded in the minutes.
7. Assignment of the floor. To seek recognition by the chair, a member shall ... [specifying the exact method appropriate to the Internet meeting service being used]. Upon assigning the floor to a member, the chair shall clear the online queue of other members who had been seeking recognition. To claim preference in recognition, another member who had been seeking recognition may promptly seek recognition again, and the chair shall recognize the member for the limited purpose of determining whether that member is entitled to preference in recognition.
8. Interrupting a member. A member who intends to make a motion or request that under the rules may interrupt a speaker shall use the designated feature for so indicating, and shall thereafter wait a reasonable time for the chair's instructions before attempting to interrupt the speaker by voice.
9. Motions submitted in writing. A member intending to make a main motion, to offer an amendment, or to propose instructions to a committee, shall, before or after being recognized, post the motion in writing to the online area designated by the Recording Secretary for this purpose, preceded by the member's name and a number corresponding to how many written motions the member has so far posted during the meeting (e.g., "SMITH 3:."; "FRANCES JONES 2:."). Use of the online area designated by the Recording Secretary for this purpose shall be restricted to posting the text of intended motions.
10. Display of motions. The Recording Secretary shall designate an online area exclusively for the display of the immediately pending question and other relevant pending questions (such as the main motion, or the pertinent part of the main motion, when an amendment to it is immediately pending); and, to the extent feasible, the Recording Secretary, or any assistants appointed by him or her for this purpose, shall cause such questions, or any other documents that are currently before the meeting for action or information, to be displayed therein until disposed of.

11. Voting. Votes shall be taken by the voting feature of the Internet meeting service, which may include roll call votes, unless a different method is ordered by the President or required by the rules. When required or ordered, other permissible methods of voting are by electronic roll call or by audible roll call. The chair's announcement of the voting result shall include the number of members voting on each side of the question and the number, if any, who explicitly respond to acknowledge their presence without casting a vote. Business may also be conducted by unanimous consent.
12. Video display. [For groups using video, but in which the number of participants is too large for all to be displayed simultaneously:] The chair, the Recording Secretary, or their assistants shall cause a video of the chair to be displayed throughout the meeting, and shall also cause display of the video of the member currently recognized to speak or report.