

**Postponing Meetings, Electronic Meetings, Best Practices, and other FAQs:  
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This article will outline various FAQs related to meeting postponement, electronic voting, electronic meetings, and other issues that have been thrust into the forefront by the COVID-19 pandemic. Unless otherwise stated, the questions and answers apply equally to condominiums and homeowners associations (HOAs) (together, condos and HOAs are referred to as “POAs”). This is not meant as a substitute for individual legal advice but rather is only a summary; all POAs should consult their POA attorneys to review their individual dedicatory instruments and ensure proper legal protocol is followed. All statutes can be read in their entirety by going to [www.capitol.state.tx.us](http://www.capitol.state.tx.us). Then click on “Statutes” and then click on the applicable code and section.

**Annual meeting postponement.**

What happens if you don’t call an annual meeting at the time required by the governing documents?

The short answer is, “not very much.” Some POAs document do not require annual meetings to be held at any particular time. Some dictate the date of the meeting. Failure to hold the meeting on that date, especially given the current circumstances, has relatively little potential for adverse consequence. The consequence per state statute would be that if an owner notified the POA of a demand that the meeting be held, the POA would have to hold the meeting within 60 days of the date of the owner’s demand. Texas Business Organizations Code Chapter 22 is applicable to all Texas nonprofit corporations. Most Texas POAs are Texas Nonprofit corporations. The primary applicable statute is Texas Business Organizations Code § 22.154.

**Can our POA hold an owner meeting or board meeting electronically rather than in person?**

**For HOAs:** In most cases, yes. Unless your documents specifically require in-person meetings or prohibit electronic meetings, state law expressly allows owner and board meetings to be held by electronic communication. (Business Organizations Code §§22.002 and 6.002).

All people participating in the meeting (all board members at a board meeting, all owners at an annual meeting) would need to be able to hear and be heard by all others. For a board meeting, the board members simply need to be able to hear and be heard by all other board members. For an owner meeting, all being able to be heard by all usually takes the form of muting all but the board, allowing questions or comments to be typed in electronically, and un-muting for questions or comments from any given owner, or reading questions or comments and replying). Meeting notices would need to provide the directions for dial-in. (Texas Property Code §209.0051).

At a phone or video board votes would be documented just like any other board vote – a voice vote typically, with a tally made, and the minutes reflective of passage (e.g. “It was moved, seconded, and approved by at least majority vote of a quorum of directors, that the landscaping contract be renewed...”)

When setting up electronic meetings, please be mindful that not all board members or POA members may have readily-available computer access; please always have a call-in option. There is no legal requirement of video capability, a conference call line works just fine.

**For condominiums:** For member meetings, unless the governing documents prohibit electronic meetings or expressly require in-person meetings, state law allows them to be held electronically (Bus. Org. Code §§22.002 and 6.002). For board meetings, state law expressly allows electronic board meetings, but with limited exceptions as to votes that can be taken at electronic meetings. Texas Property Code §82.108 prohibits the following board votes at an electronic board meeting: voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue.

Under the same statute, condo boards may also act by unanimous written consent as long as the vote is not on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue

In ALL cases of electronically-conducted votes, POAs must implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified, and must keep a record of any vote or other action taken.

<p style="text-align: center;"><b>Can our POA owners vote without a meeting, for example can we use absentee ballots for director elections?</b></p>
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**For HOAs:** State law (Texas Property Code §209.00592) expressly allows owner voting by proxy, absentee ballot, or electronic ballot (online voting). If a vote is taken outside of a meeting, there must be 20 days written notice<sup>1</sup> rather than the standard 10-days notice (Property Code §209.0056). Unless your bylaws or other deed restriction requires it, you are not required to provide more than one voting method (so, you could provide absentee ballots and nothing more.) If your bylaws require proxies, your ballot could be in the form of a directed proxy. In short, the proxy document could assign the proxy to the board president and directs him or her how to vote, and then the president formally casts the votes in that manner via absentee ballot. That being said, it is difficult to imagine a realistic objection from someone put out that he could not vote by proxy, but could vote (more directly) by absentee ballot.

**For Condominiums:** In condominiums, owner absentee balloting or other voting outside of a meeting is not authorized by statute. Owner voting outside of a meeting (by mail, fax, or electronic vote) is only allowed if the condo association's certificate of formation or bylaws expressly authorize it. (Business Organizations Code §22.160.) In many cases, the board can amend the bylaws by board vote – this may be a good solution for many condos – amend your bylaws to allow for electronic voting. Your POA's attorney would need to advise you.

<p style="text-align: center;"><b>Can our POA board vote without a meeting?</b></p>
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**For HOAs:** State statute (Property Code §209.0051) allows for board votes outside of a board meeting, with exceptions for certain votes that may not be taken outside of a meeting (these exceptions are listed below). Voting need not be unanimous but each board member must be given a reasonable opportunity to express his or her opinion to all other board members and to vote. Any action taken in this manner must

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<sup>1</sup> This notice must be given at least 20 days before the latest date on which a ballot may be submitted to be counted. So if the ballot was due on the 30<sup>th</sup> in order to be counted, you would need to provide notice no later than the 10<sup>th</sup>.

be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting.

The following items are the exceptions that may NOT be considered or voted out outside of a meeting (they must be acted on at an electronic or in person meeting, with 72 hour notice to the ownership<sup>2</sup>: fines; damage assessments; initiation of foreclosure actions; initiation of enforcement actions (excluding TROs and health or safety matters); assessment increases; special assessment levies; appeals from ACC denials; suspensions of common area use rights before the owner has had opportunity to attend a board meeting to present his or her position; lending or borrowing money; adopting or amending dedicatory instruments; approving an annual budget; approving an amendment to the budget that increases the budget by more than 10%; the sale or purchase of real property; filling a board vacancy; construction of capital improvements (n/a to repair or enhancement of existing improvements); and election of officers.

**For condominiums:** State statute (Property Code §82.108) expressly allows the board to act by unanimous written consent (email consent is written) with the exception that the board cannot act by unanimous written consent (must have a meeting) on the following items: voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position. A record of all board action taken by unanimous consent must be filed with the minutes of board meetings.

<b>Can and should our POA board vote waive or suspend assessments?</b>
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“No” and “no”. There is no legal basis to waive or suspend assessments. There is legal basis for flexibility with payment. POAs have mandatory duties and in some cases fiduciary obligations to their members. Bills have to be paid. POAs are nonprofit businesses but are a business – with business obligations like taking care of the POAs infrastructure, paying for POA insurance, and other legal obligations.

**For HOAs:** All Texas HOAs with more than 14 lots are required to offer payment plans to their members (Property Code §209.0062). All should have a payment plan rule filed of record – this is required by state law. HOAs are not required to offer payment plans to an owner who has defaulted on a plan in the last two years. If you do not have a payment plan of record, you need one if you are an HOA with more than 14 lots. Consult your HOA attorney. This is only going to become more important if more people request plans.

**For condominiums:** Condominiums are not required to offer payment plans. Condominiums typically have far larger budgets than HOAs and rely heavily on the cash flow from assessments. That being said, the board could consult their HOA attorney about adopting a payment plan rule. It is suggested that you adopt a rule (not just take requests case-by-case) in order to have standard protocol to avoid situations of or accusations of disparate treatment.

A practical suggestion for POAs with a number of owners requesting payment plans is to ask those who are able to to pay several months of assessments advance. This will help to allow the POA to give payment

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<sup>2</sup> Your management professional or HOA attorney should be consulted for these notice requirements)

plans to the owners who need them while still allowing the POA to carry out its mandatory functions without dipping into reserves.

<b>Can and should our POA board vote suspend enforcement of restrictions?</b>
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“No” and “no”. Decisions regarding enforcement action can be taken on a case-by-case basis in a time like we are experiencing, but suspending all enforcement action is not advised. Some enforcement may be a practical impossibility – for example if inspectors can’t drive the neighborhoods, landscape/lawncare violations may lag. But in my opinion an across the board suspension of enforcement is not advisable.

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