

The Law of Virtual Board Meetings

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The scenario: You are the Director of Meetings for the National Widget Company, Inc. The CEO comes to you and tells you that, due to budget cuts, the Fall 2002 board of directors meeting needs to be held online rather than face to face. After much frantic research on meeting technology, you submit a proposal to the CEO for how the board meeting may be held online. Board members, you explain to the CEO, can participate from their desktop computers from the comfort of their offices or homes all around the country. The technology enables all board members to concurrently view the agenda and handouts on their computer screens. For conversation, board members type in a “chat” box, which immediately pops up on everyone’s computer screen, enabling virtual conversation and voting on items of business. Your CEO is thrilled with your ingenuity and the cost savings of a virtual meeting. Good job! Oh, except that this meeting may *violate the law*.

Know your organization

Whether you are an independent, corporate, or association meeting planner, you need to be aware of the legal status of the organization for which you are planning a meeting. Is it a partnership, a limited liability company (LLC), or a corporation? In what state is the organization organized or incorporated? These issues are important because state laws may govern how often a meeting must be held and in what manner it must be held.

Remote board meetings are allowable in most states in the US provided that all directors can hear each other, enabling real-time debate and deliberation over decisions. The attendance of the directors in remote locations counts as if they were physically present. However, remote board meetings without the audio component violate the legal requirement, so organizations should be careful not to rely solely on visual media. Though directors have the option to attend a meeting remotely, a physical location where they can go to if their schedule permits should be set, and at least one designated person should be present in the said location. Given these restrictions, email meetings are not allowed unless for non-board business reasons (such as scheduling meetings) or emergencies. In case of an emergency, written consent by the board should be provided, whether individually as directors or collectively as a group.

The law of corporations

If the organization for which you are planning a meeting is a corporation, be aware that the scenario above involving the National Widget Company, Inc. may be contrary to state law requirements. The law that applies to an organization is the law of the state where the organization is incorporated, which may be the same as or different than the state in which it is headquartered. Most states’ laws require that all members of a corporation board of directors be able to “hear” one another simultaneously at a board meeting. An online meeting with no audio component would violate this legal requirement.

Alternatives

The law of corporations in most states allows a vote of the board of directors by written consent, so a board of directors could use an online forum for discussion and take action (that is, vote) in writing. Check the corporation’s bylaws and state law, however, as the written consent may have to be unanimous.

Participating in a simultaneous telephone conference call in addition to a virtual online presence would be a combination of technologies that would satisfy the letter of the law in most states. Using a web conferencing technology via a computer with an audio component would also meet the requirements of a legally valid board of directors meeting.

An extreme minority of states (California and Illinois, predominately) have recently changed their corporate law to allow the board of directors of a corporation to meet in any manner in which all members can “communicate” with one another (rather than “hear” one another). The word “communicate” in the laws in these states would allow online meetings of a corporation board of directors, whether or not an audio component is included.

Tyra W. Hilliard, Esq., CMP (tyra@mindspring.com) is a meetings industry attorney and Assistant Professor of Event Management at The George Washington University in Washington, D.C.