

MERCERTRIGIANI

Virtual Meetings in Virginia

Legislation proposed (House Bill 1816 and Senate Bill 1183) during the 2021 Session of the Virginia General Assembly *substantially reforms* how board, committee and membership meetings may be conducted. The amendments to the Virginia Property Owners' Association Act and the Virginia Condominium Act (1) establish legal authority for boards, committees and members to meet entirely by electronic meetings means and (2) expand available voting methods for membership meetings – including voting by electronic means or absentee ballot.

Virtual Meetings

Section 55.1-1832.F of the Virginia Property Owners' Association Act and Section 55.1-1935.F of the Virginia Condominium Act establish express authority for **board, committee and membership** meetings to be held partially or entirely by electronic means. In order to meet by electronic means, a board of directors must adopt guidelines that (i) ensure persons accessing the meeting are authorized to do so and (ii) persons entitled to participate in the meeting have the opportunity to participate. *Incorporated* community associations must continue to ensure compliance with requirements established in Section 13.1-844.2 of the Virginia Nonstock Corporation Act for remote participation in membership meetings.

Alternative Voting Methods **(Membership Meetings Only)**

Section 55.1-1815.H of the Virginia Property Owners' Association Act and Section 55.1-1953.E of the Virginia Condominium Act expand available voting methods for membership meetings – **in person, by proxy or by absentee ballot** – unless prohibited by *recorded* governing documents. We anticipate that the expansion of voting methods will allow community association to consistently meet quorum because the statutes expressly provide that owners voting by absentee ballot are deemed present at the meeting for all purposes.

Electronic voting at membership meetings is also expressly authorized, but board of directors must adopt guidelines for voting by electronic means. Careful attention should be given to whether the governing documents require voting by *secret ballot*. If secret balloting is required, Section 55.1-1832.D of the Virginia Property Owners' Association Act and Section 55.1-1953.D of the Virginia Condominium Act require preservation of ballot secrecy via electronic voting that protects the voter's identity.

Additional Thoughts

The virtual meetings legislation provides community associations with several tools to expand member access to meetings, which encourages transparency in governance. Careful attention should be given to planning how and when to use these tools – including *reasonable* non-electronic alternatives made available to any person who does not have the capability or desire to conduct business by electronic means. And, care must be taken to ensure compliance with other requirements established in community association statutes and governing documents regarding notice, open forum, executive session, etc.