FAQs for Virtual Board Meetings: Legal Compliance and Best Practices

What are some platform options for videoconferencing?

**Zoom**: Anyone can use Zoom meeting for free; however, group meetings are limited to 40 minutes on the free version. The paid subscription version of Zoom is feature-rich and includes options like the ability to share your screen, record and transcribe meetings, and add virtual backgrounds.

**Microsoft Teams**: Teams is included with Office 365 business accounts and is tightly integrated with all of the other Microsoft applications. Some of the helpful features include the ability to share screens, record and transcribe meetings, and blur the background or add virtual backgrounds.

Some other options are detailed on this [Tech Soup blog post from January 2020](#).

If your organization has the financial resources to purchase board management software, there are several advantages, including videoconferencing, voting facilitation, calendar features, easy document sharing, and integration with other apps. Some platforms like [Board Effect are offering their software free of charge](#) or deeply discounted during the COVID-19 crisis.

What are some steps we can take to help make our videoconference meetings as secure as possible?

Whichever platform you choose, cybersecurity remains an issue. Some points to consider:

- **Zoom** has some prominent security flaws that have been exploited recently in high-profile Zoombombing cases. If you are using the Zoom platform, the following actions are recommended:
  - Change your account password.
  - Use a per-meeting ID, exclusive to a single meeting.
  - Enable the “Waiting Room” feature.
  - Make sure you know how to remove an unwanted participant from your meeting.
- **Endpoint security** is absolutely necessary. Maintain active subscriptions to anti-virus and anti-malware.
- Avoid using Chromebooks or other machines that are not a business-class computer.
- Make sure you are using a current operating system. For example, Windows 7 is no longer supported as of January this year, which means that security patches are no longer issued for machines on that operating system.
- Board members meeting remotely can be vulnerable to **man-in-the-middle attacks**. Use a wired connection wherever possible, and a VPN connection when you need to use WiFi.
- Board members are especially vulnerable to **Business Email Compromise attacks** (BEC), popularly known as CEO Fraud. For all email communications with requests for wire transfers, access to organizational accounts, etc., contact the sender by phone to confirm the email’s validity.

*Please note: This document is for informational purposes only and in no way constitutes, and should not be relied upon, as legal advice.*
Are there any filesharing platforms that you recommend?

Everyone uses the same few platforms (Dropbox, Box, etc.). Keep in mind that the more popular a platform becomes, the more it becomes a target for cyberattacks.

If you use Microsoft apps, OneDrive and OneNote are useful, well-integrated, and generally secure. They are also helpful for collaborative work.

Board management software, while expensive, can also be very useful for filesharing and collaboration.

Can we still have a board meeting if one or more of our board members can’t (or won’t) participate on the platform we choose?

Yes. However, see discussion below regarding meeting quorum requirements.

Is it ok for some members to be on video and some just audio?

Yes, as long as all board members are able to hear and fully participate in discussions and voting.

Is it legal to record the meeting?

Yes, but by law in Florida, you are required to obtain permission from all parties. At the beginning of the meeting, make sure to remind everyone that the meeting is being recorded and ask for the board to assent.

Is there any additional information that should be in minutes by virtue of it being a conference call or videoconference? If board members put comments in the chat box, should that be included in the minutes?

Note the location of all board meetings in the minutes, but other than that, recordkeeping requirements don’t change. Only include strong objections, substantive comments, and items of that nature if they show up in the chat box. Minutes shouldn’t ordinarily be a verbatim record of the meeting; virtual meetings are not any different.

How does voting work in a virtual board meeting? Do people have to say their vote on every motion or only if they dissent?

The board can take a voice vote as it would in an in-person meeting, where a member makes a motion, it is seconded, the Chair asks for all in favor to indicate agreement (usually by saying “Aye”) and all opposed to indicate (usually by saying “Nay”). If the vote is close (or if it is not clear if it is close), the Secretary or Chair can conduct a poll asking for each individual to vote by name.
Another option that your organization may want to consider implementing, whether the meeting is virtual or in-person, is the use of a consent agenda. Agenda items that aren’t likely to need a great deal of discussion can be voted on as a block, freeing up meeting time for more important issues.

**What are things we can do as board meeting facilitators to encourage full and active participation?**

- Set up ground rules for how the meeting will be conducted and share them with the board before every meeting. Reference the ground rules at the top of the meeting as a reminder.
- Encourage board members to pause before speaking to make sure that the last speaker is done, and state their name before commenting to help the recordkeeper taking minutes.

- If this is the first time your board is meeting virtually, the dry run is your friend. Fifteen minutes practicing with the system can save considerable time during the meeting.
- Designate a “meeting engineer” who can reach out ahead of time and practice with members who are unfamiliar with the technology. Designate a point person who can troubleshoot problems during the meeting, as well.
- Consider appointing a co-facilitator who can step in if the facilitator experiences technical issues so that the meeting can continue without interruption.
- Distribute the material ahead of time and consider sending it multiple times through multiple formats.
- Have an agenda and stick to it. If facilitating an online meeting is not in your Board Chair’s wheelhouse, practice ahead of time or designate someone else who can serve as the meeting “parliamentarian.”

**What can we do to ensure board members with vision impairment or low vision and board members who are deaf or hard of hearing are able to fully participate in virtual meetings?**

Zoom is compatible with multiple different screen readers (NVDA, JAWS, VoiceOver, and Android Talkback). Teams is as well.

The captioning capabilities of these platforms are also helpful. Bear in mind that they are about 80% accurate so if the transcription doesn’t pick up the nuances of what is said, clarification may be needed. The captions also do not identify the speaker so the practice of stating your name before speaking becomes more important.

Have someone contact the board member one-on-one before the meeting to review the agenda and determine agenda items that will likely be of particular interest. Ensure that ample opportunity is given for participation on those items.

If slides will be used during the board meeting, limit the text one slides (25 words or less is ideal), choose uncluttered backgrounds and large, clear fonts with a high degree of contrast.
If we can’t meet with a quorum, is there a way that we can still conduct business and make critical decisions?

There are a few different options, presented below. However, the use of proxy voting by directors and email voting should be discouraged as they hinder review, debate and discussion. Some courts have ruled in specific circumstances that proxy voting can amount to a breach of a director’s fiduciary duties.

1. **Executive Committee**
   If critical decisions need to be made in between full board meetings or when a board is unable to meet, Executive Committees can be very useful.

   You may already have a provision in your bylaws outlining the powers of the Executive Committee. If you do not already have that provision, Florida State Statutes ([FS 617.0825](#)) allow the board to appoint an Executive Committee by resolution adopted by a majority of the full board of directors as long as that Committee is not prohibited by the Articles of Incorporation or bylaws. The powers of the Executive Committee should be expressly written in the Board Resolution.

2. **Unanimous Written Consent via Digital Signature**
   In Florida, in order for the board to take action without a meeting, board consent must be unanimous and written. You likely already have language in your bylaws that allows the board to take action without a meeting through unanimous written consent, but you may not have specifically noted that digital signatures are acceptable. That is an important component as the Electronic Signature Act allows digital signatures if all parties have agreed to conduct transactions by electronic means. Sample language is included in the attached slides.

   If your bylaws do not include language that allows digital signatures, the board can approve the use of digital signatures through a resolution.

   eSignature solutions are a convenient way to obtain unanimous written consent via digital signature. Docusign is the most commonly used eSignature system that the panelists see used in the nonprofit sector. Tech Soup has [deeply discounted versions of Docusign](#) available on their website.

   If you can’t afford an eSignature solution, the “old school” solution of printing, scanning, signing, and returning will also suffice. Alternatively, opening the document on a tablet or computer with a touchscreen, signing it via the touchscreen, saving the signed copy, and emailing it back is likely permissible for board members without access to a printer.

3. **Emergency Bylaws/Emergency Powers**
   As a last resort, Florida State Statutes allow nonprofit organizations to adopt emergency bylaws and/or exercise emergency powers. It is worth noting that these statutes (FL 617.0207 and 617.0303 in the attached slides) were written at a time when the emergency at the forefront of the public consciousness was nuclear disaster, so the “catastrophic events” that warrant the use of emergency powers are not clearly defined. Broadly speaking, if the board cannot “readily assemble” or convene a quorum due to a catastrophic event and the event is happening now, the board may either adopt emergency bylaws to enable it to change meeting procedures and quorum requirements; or it can enact statutory emergency powers in order to designate officers (who are not
ordinarily voting board members) to serve as board members for the purpose of a quorum, and allow directors in attendance to serve as a quorum.

Only exercise emergency powers in the event of an actual emergency and after all other available options have been exhausted. Any time emergency powers are used, follow up and ratify the action at the next board meeting when there is a standard quorum.

**What’s the most important thing to keep in mind during virtual board meetings?**

We’re rapidly moving to an environment in which virtual meetings are the norm, or at least close to it. That is likely to extend beyond the conclusion of the COVID-19 pandemic. How these meetings are conducted now will set the standard and expectations for these types of meetings in the future.

All the same rules for board service apply. Conflict of Interest policies and procedures still must be followed. As an example of a common situation occurring now, if your organization is applying for a Paycheck Protection Program loan and an employee of the bank you are applying with is on your board, have that person follow the procedures in your organizations Conflict of Interest policy, or at a minimum recuse themselves from the decision and document it in the meeting minutes.

Board members still have legal obligations to the organizations they serve. Fiduciary duties are still in play and your role may be more critical now than it has ever been.

**Nonprofits First thanks our expert panelists:**

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