

# ACTION OUTSIDE A MEETING – HOW DOES IT WORK AND WHEN CAN IT BE USED?

FILED UNDER

[Meetings / Action Without Meetings](#), [Meetings](#)

POSTED

July 1, 2022

SHARE

Share 0

Tweet



What exactly does it mean to take action (i.e. make a decision) outside of a meeting and who has that right anyway? Most importantly, when should action outside a meeting be taken? While in-person (or virtual) meetings and open discussions are always best, it is not always feasible. Therefore, making decisions outside meetings is a useful tool.

Colorado law addresses action outside of a meeting in a number of different ways, and each way should ultimately be confirmed by an association's governing documents.

## Owner Action by Mail Ballot

The Colorado Revised Nonprofit Corporations Act ("Nonprofit Act") allows associations to conduct membership voting using a mail ballot instead of holding a membership meeting.

An action by written ballot, for example, may be useful when voting on a declaration amendment, which typically requires approval from owners representing at least 67% of the total votes in the community. Given the hectic schedules of owners, it is highly unlikely for owners representing 67% of all the voting power to attend the meeting, much less vote in favor of the amendment. Therefore, voting via written mail ballot proves to be a more effective method to obtain owner approval as it allows the vote to be spread out over time.

In order to take advantage of the mail ballot process, associations must comply with all the requirements set forth in the Nonprofit Act.

The Nonprofit Act requires associations to provide every member with enough information regarding the subject of the vote to make an informed decision on how to vote. Written ballots must further allow members to vote either for or against the proposed measure. This requirement however does not apply to elections of directors, as this type of vote should only contain a list of candidates.

Additionally, the Nonprofit Act requires the voting packet to contain a deadline by which all ballots must be received by the association to be counted (date and time), the number of approvals required for the vote to pass, and quorum requirements, even if irrelevant to the vote. Any decisions made utilizing this process, has the same effect as action taken at a meeting of owners.

It is important to note that this process may only be used when the vote occurs outside of a meeting. Additionally, if the governing documents specifically prohibit use of mail ballots, this process cannot be used.

## Board Action Outside a Meeting

As stated above, meetings are not always possible to hold for board members given everybody's schedules and commitments. Therefore, for those times when an open meeting is simply not possible (typically a last minute unplanned meeting), action outside a meeting is a viable alternative.

When deciding whether the board should take action (i.e. vote) outside of a meeting, the association's governing documents must be reviewed. In most cases, this process is addressed in the bylaws. If the bylaws contain a specific process for the board to follow, the board must comply with it. For example, the bylaws could read as follows:

Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action approved shall have the same effect as though taken at a meeting of the Directors.

If this language is found in the bylaws, unanimous director consent will be required to take action outside of a meeting.

In the alternative, if the governing documents are silent on this topic, an association may rely on the Nonprofit Act, which allows board action to be taken outside a meeting if notice is transmitted in writing to each director, with a deadline for response, and each member of the board (by the deadline stated in the notice):

- (1) votes in writing for such action;
- (2) votes in writing against such action;
- (3) abstains in writing from voting; or
- (4) fails to respond or vote and fails to demand in writing that action not be taken without a meeting.

Such action outside a meeting will be valid if the affirmative votes equal or exceed the required number of votes needed for the action to pass at a meeting.

For more information or if you have any questions concerning action outside of a meeting, please contact one of our attorneys at 303.432.9999 or at [hoalaw@altitude.law](mailto:hoalaw@altitude.law).

POSTED

Friday, July 1st, 2022

SHARE

Share 0

Tweet



AUTHOR