

# THE COMMUNITY BUILDER

## Are Email Decisions a Valid Vote?

Email has made our lives easier in many ways. It provides a means of almost instant communication. It can be used to inform a group of people of an issue simultaneously, especially if it relates to a situation that requires an immediate response or resolution. But should it be used by a Board to make decisions on contracts, services, purchases or other official business of the Board outside of a meeting? This is where it gets complicated.

The first question one should ask when this occurs is, "Why are we doing this?" Is it an emergency? Can it wait until the next meeting? Is it important enough to hold a special meeting?

At a Board meeting when the Board makes a decision it is the business of the association and is recorded as a motion. The motion is then seconded and a vote is then taken. If the majority votes in the affirmative, the motion is passed. If the motion does not receive enough affirmative votes, the motion fails. Officially, the business of the association has now been transacted and is recorded in the Minutes of the meeting. The Minutes are retained for a period of not less than 7 years and are considered official records of the Association. In all states, members of the Association have the right to review the official records of the Association. If decisions are made outside of this process, who is to say that it legally constituted a direction or action? Are you putting yourselves at risk? If this decision proves to be a bad one, would your D&O insurance cover you if the members disagree?

If a decision is made by email does that then make all email transmissions, even those emanating from the individual Board members' computers, official records? If there is a decision made that spends association funds, that makes a commitment, that alters someone's assessment, isn't this an "official" act of the Board and shouldn't it really be made at a meeting? For those states that require a notice of meeting to the members, that require an agenda be posted and have open meetings to the members, isn't the act of making a decision via email a violation of these requirements? Even for those states that do not require notices of meetings to members and have specific requirements that meetings are open

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to all members, making decisions via email is not exactly in keeping with the spirit of the statues or documents.

Given that the Board should have specifically adopted written policies and procedures to guide the manager in the day-to-day operation of the business of the Association, unless it is an absolute emergency, the decisions of a Board should be made at a meeting so that the motions and the votes can be recorded. If the Board chooses to discuss proposed agenda items or issues that may arise at the meeting, email can cover a lot of ground and perhaps raise some questions or make it clear that additional information is needed prior to the meeting so the Board can make an informed decision.

Because this issue is somewhat controversial, and in some states and cases could create a question of liability for the Board or the Association, we urge Board members to consider a consultation with legal counsel on how to effectively protect the integrity of decisions made through email. At the very least, when a decision is made via email, that decision should then be ratified by the board and made a part of the Minutes of the next regularly scheduled Board meeting.