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## Board Meetings and Business Conducted Via Conference Call and Email

jamie · Tuesday, April 14th, 2020

At the time of this writing, the residents of New York are basically quarantined to their homes due to COVID-19. This has resulted in co-op, condo and HOA boards meeting via video and telephone conference calls and relying more heavily upon email. Although it is great that technology has allowed boards to continue to function without meeting in person, boards need to be careful because the laws and governing documents they are required to follow in order to properly conduct business have potential pitfalls. Cooperative corporations are generally governed by the New York Business Corporation Law (“BCL”) and HOAs are governed by the Not-For-Profit Corporation Law (“NFPCL”) and the provisions of their by-laws pertaining to board actions typically track the language of their controlling statutes, which provide that board members can participate in and vote at meetings via conference calls and similar two-way communication technologies. Although there is no corresponding statute directly on point for condominiums, the by-laws of most condominiums have very similar provisions providing that board meetings can be conducted via conference call. Consequently, board meetings conducted via telephone conference or video conference are pretty straight forward. However, email is a little trickier. Today, many boards rely heavily on email to get business done. The BCL and NFPCL both provide that boards can take actions without holding a meeting subject to all board members unanimously consenting to a resolution authorizing such action, and most cooperative and HOA by-laws track the language of their controlling statutes. Although there is no corresponding statute directly on point for condominiums, the by-laws of most condominiums have very similar provisions providing that boards can take actions without holding a meeting subject to all board members unanimously consenting to a resolution authorizing such action. As a result, if a board is making an important decision without holding an in person meeting and vote, and is instead voting via email, it is critical that the unanimous written consent of all board members be obtained or that the board’s vote is ratified at its next in person board meeting and reflected in the board minutes. On a related note, we advise our clients to keep their board meeting minutes brief, so that there is less potentially harmful written information available in the event there is a lawsuit and the minutes are required to be produced via a discovery demand. In other words, the minutes should just succinctly reflect the matters that were discussed generally and whether any corporate resolutions were passed. Keeping this in mind, if the board is discussing a controversial topic that could result in litigation via email and voting on that issue via email, the board should consider having legal counsel copied on the email, so that the email correspondence is protected by the attorney client privilege and not subject to discovery. Boards would be well advised to follow the maxim that they should consider anything stated in an email could be subject to disclosure in a lawsuit, so

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potentially embarrassing or damaging statements should be avoided.

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