

GROSS SHUMAN P.C.
ATTORNEYS AT LAW

Memorandum

To: Bishop John Macholz
Upstate New York Synod

From: Jeffrey A. Human

Date: January 15, 2021

Re: Holding Virtual Meetings of Members of Congregation

Prior to the Covid 19 pandemic, New York Not-for-Profit Corporations (including religious corporations) were required to hold meetings of members in person.

Under legislation signed by the Governor on June 17, 2020 (Bill S.8412), Section 603 of the Not-for-Profit Corporation Law was amended to permit virtual meetings on a temporary basis. The legislation permits virtual meetings through December 31, 2021, for the duration of the State Disaster Emergency declared by Executive Order 202. As of the date of this memo, the State Disaster Emergency has been extended by Executive Order through January 29, 2021. Under New York Executive Law Section 29-a, the Executive Order 202 may only be extended for 30 days at a time and not beyond April 29, 2021, in the absence of further authorization by the New York Legislature.

The decision to hold a virtual meeting of members must be made by the Board of Directors (Church Council).

In authorizing a virtual meeting of members, the Church Council should “determine that meetings of members may be held partially or solely by means of electronic communication”.

The meetings of members will be subject to guidelines and procedures that the Church Council adopts. The Church Council should implement reasonable measures to (1) verify that each person participating electronically is a member; (2) provide each member participating electronically with a reasonable opportunity to participate in the meeting, including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read or hear the proceedings of the meeting substantially concurrently with those proceedings; and (3) record and maintain a record of any votes or other actions taken by electronic communication at the meeting.

That same legislation also amended the Religious Corporation Law to provide that meetings of the Board of Trustees (Church Council) may be held virtually, notwithstanding any provision of law, the Certificate of Incorporation or By-Laws (Constitution) of the religious corporation. The decision to hold the meetings solely as a virtual meeting should be made by the Church Council including the electronic service and/or platform through which the meeting is to be held which constitutes the “place of meeting”.

As congregations plan for annual meetings, they should consider the following:

1. Some congregations are concerned that members will not be able to attend virtual meetings because they do not have internet access. However, participation in a virtual meeting by telephone conference call is permissible provided that the conditions described under the statute are satisfied.
2. If a congregation is unable to obtain a quorum for its annual meeting, a best practice would be to hold the meeting at the specified date and if a quorum is not present, to adjourn the meeting to a later date when it may be possible to have a quorum present either in person or virtually.
3. Note that under the Religious Corporation Law, meetings of members may be “hybrid” meetings allowing some people to participate in person and others to participate electronically.
4. Under New York law, generally the terms of Church Council members continue until the next annual meeting at which their successors are elected. If there is a resignation or other vacancy, then that position may be filled pursuant to the provisions contained in the Constitution of the congregation.
5. If the budget for the congregation is to be approved at a congregational meeting and the meeting cannot be held, the authority of the Church Council to act on financial matters under the Constitution of the congregation should be reviewed to determine what actions the Church Council may take so that the congregation can continue to operate until a budget has been ratified or approved at a meeting of the members.

JAH/mp

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