

Does an Exchange of Emails Constitute a Board Meeting?

Article By:

Keith Paul Bishop

Under the California General Corporation Law, a board of directors can take action in two different ways - at a meeting or by unanimous written consent. See Cal. Corp. Code § 307. Over a decade ago, I [posed](#) the question of whether a director could consent by email. A decision by the Court of Appeal this summer addressed a different question - does an exchange of emails constitute a meeting of the board of a homeowners association? *LNSU #1, LLC v. Alta Del Mar Coastal Collection Cmty. Ass'n*, 94 Cal. App. 5th 1050, 312 Cal. Rptr. 3d 707 (2023), review filed (Oct. 4, 2023)

The homeowners association involved in the case was a nonprofit mutual benefit corporation. Therefore, it is subject to the Nonprofit Mutual Benefit Corporation Law rather than the General Corporation Law. Homeowners associations are also governed by California's Common Interest Development Open Meeting Act, Cal. Civ. Code, § 4900 *et seq.*, The appellants in the case argued that an exchange of emails constituted a meeting in violation of that Act. They argued that Corporations Code Section 7211 supports the "interpretation that the Legislature in general believes a board meeting is capable of being conducted by email".

The Court of Appeal disagreed:

In sum, we conclude "board meeting," as defined by [Civil Code] section 4090, subdivision (a), is an in-person gathering of a quorum of the directors of a homeowners association at the same time and in the same physical location for the purpose of talking about and taking action on items of association business. E-mail exchanges among directors on those items that occur before a board meeting and in which no action is taken on the items, such as those at issue in this case, do not constitute board meetings within the meaning of that provision. The trial court therefore correctly rejected appellants' claims that the e-mail exchanges were board meetings that violated the OMA.

This holding, of course, does not address whether the exchange constituted a meeting for purposes of the Nonprofit Mutual Benefit Corporation Law or the General Corporation Law.

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