

Senate Bill 563: Use of a Preauthorization Consent Form to Allow Emergency Decisions by Electronic Transmission

By: Susan M. Hawks McClintic, Esq.

As many associations are aware, Senate Bill 563 (SB 563) will become effective on January 1, 2012. SB 563 makes various changes to board meeting requirements. One of these changes is to prohibit community association boards of directors from taking action on any item of business outside of a meeting. Boards should take note that this change prohibits actions by unanimous consent which had previously been allowed by Corporations Code Section 7211 and most community association bylaws.

A community association board of directors may not conduct a meeting via a series of electronic transmissions, such as electronic mail, except to conduct an emergency meeting. If there is an emergency, each board member must first consent in writing to taking an emergency action by electronic transmission. As a practical matter, this change suggests that use of an electronic transmission preauthorization consent form ("Consent Form") might be helpful in facilitating board decisions in emergency circumstances.

A Consent Form would serve as a pre-approval form for all board members to sign their agreement to conduct emergency business by electronic transmission. This pre-approval could be limited to litigation and assessment collection matters or more broadly cover any emergency business of the community association. The written consent of each board member may be transmitted electronically. A sample Consent Form accompanies this article.

Once each board member consents to conducting an emergency meeting by electronic transmission, a quorum of the board must respond to any request for an emergency decision. Of those responding, a majority must approve the emergency decision unless the association's governing documents require a higher approval percentage of the board members. Therefore, if all board members consent to using electronic mail for an emergency decision, unanimous consent is not required to approve the action item itself.

San Diego

10200 Willow Creek Rd., Suite 100
San Diego, California 92131
858.527.0111 • fax 858.527.1531

Coachella Valley

44-875 Deep Canyon Rd., Suite 3
Palm Desert, California 92260
760.836.1036 • fax 760.836.1040

Inland Empire

43460 Ridge Park Dr., Suite 200
Temecula, California 92590
951.461.1181 • fax 858.527.1531

For purposes of this new law, emergencies are defined as “circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impractical to provide notice as required” by the statute. (Civil Code Section 1363.05) Before taking action on an emergency item, we recommend that the board create a record in the emergency meeting minutes of the facts which the board believes make the need for action an emergency.

As noted above, the impact of SB 563 is not limited to the areas discussed in this article. Boards of directors are strongly encouraged to consult with their associations’ legal counsel regarding the multiple changes to board meeting requirements and related statutes affected by SB 563.

***[See the following page for sample Consent Form,
a Program Guide Supplement to our Community Association Legal Symposium 2011]***

**“ABC” HOMEOWNERS ASSOCIATION
ELECTRONIC TRANSMISSION PREAUTHORIZATION CONSENT FORM
 (“Consent Form”)**

As of January 1, 2012, California Civil Code section 1363.05 prohibits a Board of Directors from conducting association business via electronic transmission, such as e-mail, except when an emergency exists. In order to conduct business via e-mail, the Board must unanimously consent to conduct emergency business via e-mail. **This unanimous written consent to conduct emergency business via e-mail must be filed with the minutes of the next Board meeting every time the Board acts by electronic transmission.**

An emergency exists if both of the following conditions apply:

- 1) There are circumstances that could not have been reasonably foreseen by the Board; and
- 2) The circumstances require immediate attention and possible action by the Board making it impracticable to provide a 4 day notice for an open Board meeting or a 2 day notice for an executive session Board meeting.

This form serves as your consent for the Board to conduct emergency business, via electronic transmission, such as e-mail, in situations that meet both of the conditions listed above.

All Board members agree that prior to taking any action by electronic transmission, all Board members shall be sent an e-mail or other electronic transmission setting forth the item of business to be considered. Then, at least a quorum of the Board members must consider the facts that may make this item of business an emergency and determine whether an emergency exists.

Emergency action may only be taken if:

- 1) At least a quorum of the Board responds to the request for emergency action;
- 2) A majority of those responding agree that an emergency exists; and
- 3) A majority of those responding approve the item of business, unless the law or the Association’s governing documents require a greater number of Board member approvals for the item of business.

The minutes of the emergency meeting conducted by electronic transmission shall set forth the facts which the Board believes constitute an emergency.

_____ Printed Name	_____ Signature	_____ Date
_____ Printed Name	_____ Signature	_____ Date
_____ Printed Name	_____ Signature	_____ Date
_____ Printed Name	_____ Signature	_____ Date
_____ Printed Name	_____ Signature	_____ Date