



DEPARTMENT CIRCULAR NO. 2020-003
Series of 2020 (November 20, 2020)

TO : ALL CONCERNED

FROM : THE SECRETARY

SUBJECT : AUTHORIZING AND PROVIDING GUIDELINES FOR THE USE OF ALTERNATIVE MODES OF CONDUCTING MEETINGS AND VOTING FOR HOMEOWNERS ASSOCIATIONS UNDER EXTRAORDINARY CIRCUMSTANCES

RATIONALE/BACKGROUND:

The Department's Advisory issued on 01 May 2020 directed homeowners associations, including federations, to cancel all elections, referenda, meetings, and other association activities and/or events scheduled during the ECQ/GCQ period and its extensions, without incurring any liability or penalty for such actions on the part of the incumbent directors who shall continue to serve and perform their functions in holdover capacity until the election of directors had been cleared by this Department. With the extension of the State of Calamity in the country due to the Covid-19 pandemic until 21 September 2021 unless earlier lifted or extended as circumstances may warrant, it appears that the end of restrictions on mass gathering is at this point not in sight. It has therefore become imperative that the governing boards of homeowners associations be afforded a means to conduct their organizational businesses and meet with their constituents without being perturbed by the limitations of their bylaws on the manner of conducting these meetings. Further, there are now mounting clamors from association members that elections be already allowed in order to avoid unduly extending the term of office of their board members. These guidelines, providing for alternative modes of conducting meetings and voting exercises such as in elections, are intended to address these concerns.

RULE I
OBJECTIVES, COVERAGE AND DEFINITION

Section 1. Objectives.

1. To provide homeowners associations, neighborhood associations, federations and other umbrella organizations of homeowners associations alternative modes of conducting meetings and voting under extraordinary circumstances in cases where their bylaws do not provide for the same.



2. To ensure that qualified members are given an accessible voting mechanism or system that will allow them to participate in matters requiring voting and to cast their votes in a convenient manner without compromising the sanctity of these votes during extraordinary circumstances.
3. To enable officers and Board of Directors of homeowners associations, neighborhood associations, federations and other umbrella organizations of homeowners associations to virtually meet under extraordinary circumstances in order to continuously perform their functions/mandates and provide essential services.
4. To enable and encourage the active participation of all association members despite the prohibition against mass gatherings due to the pandemic, and other extraordinary circumstances where, upon the determination of the Board of Directors, a physical/face-to-face general assembly or meeting, election or voting is rendered difficult, impossible or would result in the undue non-participation or disenfranchisement of some of the members.

Section 2. Coverage. These guidelines shall cover all homeowners associations, neighborhood associations, federations and other umbrella organizations of homeowners associations. They shall hereafter be collectively referred to in these guidelines as “homeowners associations” or “HOAs.”

Section 3. Definition of Terms.

- a. **ALTERNATIVE MEETING or VOTING MODES** – refers to unconventional manners or modes of conducting meetings, elections and other voting exercises as substitute for personally or physically convening or gathering the directors, officers and/or members to meet or vote together on-site in a single location or venue, by employing any or a combination of remote means of communication such as but not limited to those using the internet, fixed line, mobile cellular networks, and radio, and the casting of votes through electronic systems, applications or means or through a mobile ballot box.
- b. **COUNTERFOIL or BALLOT STUB** – refers to a part of the ballot that is torn off upon voting and placed by the voter in a separate sealed transparent ballot box.
- c. **ELECTRONIC COMMUNICATION** – refers to the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system¹.

¹ <https://definitions.uslegal.com>

- d. **EXTRAORDINARY CIRCUMSTANCES** – refer to instances that are not reasonably foreseeable or beyond the control of the association, such as, but not limited to, force majeure, disaster, occurrence of an emergency, pandemic, prohibition on mass gatherings, and other analogous causes of such a nature that the holding of on-site or face-to-face meetings and/or voting cannot be conducted.
- e. **MOBILE BALLOT BOX VOTING SYSTEM** – refers to the “house-to-house” casting of ballots by members at their residence where a sealed transparent ballot box is brought for the member to personally deposit the pre-numbered ballot and the counterfoil.
- f. **ONLINE VOTING SYSTEMS** - refers to software platforms that enables casting of votes from any place, any time within a given period using electronic means.
- g. **POLLING PLACE** – refers to the area designated by the Election Committee where the sealed transparent ballot box is placed after the casting of votes, where it will be opened thereafter, and where counting of the votes cast will take place.
- h. **REMOTE COMMUNICATION** – refers to communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.²
- i. **TELECONFERENCE** – refers to the holding of a conference among people remote from one another by means of telecommunication devices such as telephone or computer terminals. The term includes any interactive group of communication (three or more people in two or more locations) through an electronic medium.³
- j. **VIDEO CONFERENCE** – refers to the holding of a conference among people at remote locations by means of transmitted audio and video signals.⁴

RULE II MEETINGS OF THE BOARD OF DIRECTORS

Section 4. Meetings. Regular and/or special meetings of the Board may be conducted through remote communication such as teleconferencing, videoconferencing, or other alternative modes of communication under extraordinary circumstances where directors cannot attend personally, or are prevented from physically attending such meetings, even if not specified in the association’s bylaws.

² www.lawinsider.com

³ *Id.*

⁴ www.merriam-webster.com

The choice of means and/or platforms of participation by the Board must consider availability, accessibility and ease of use for the board members, to the end that no Board member shall be deprived of the right to fully participate in the discussion and decision-making process.

Section 5. Notices. The Notice of Meeting which shall state the purpose thereof, the time, and how it would be held, shall be sent to each director in accordance with the manner provided in the association's bylaws or through all possible means available such as, but not limited to electronic mail, or messaging through SMS, Messenger or Viber at least five (5) days prior to the meeting. When applicable, the URL link, meeting ID, passcode, password and other details for accessing the meeting and verifying the Board member's identity must be disseminated at least two (2) days before the scheduled meeting.

Section 6. Participation of Directors. Directors who will attend or participate by remote communication shall inform the Association Secretary of their intention to participate and the means of their participation through electronic mail, Facebook, Messenger, SMS, Viber or any other means available, at least two (2) days before the scheduled meeting.

A director who participates through remote communication shall be deemed present in the meeting. As in face-to-face meetings, directors cannot participate or vote by proxy in board meetings.

For validation purposes, at the start of every meeting, the director who attends the meeting by remote communication shall state for the record the following:

1. His/her full name and position;
2. Address and present location; and
3. The details of the device and online or electronic account being used.

Section 7. Quorum. The presence of a quorum shall be established by roll call at the beginning of all meetings through remote communication. Directors are deemed present when they respond to the attendance roll call cross-referencing the directorship roster.

Unless the Articles of Incorporation or the Bylaws provide otherwise, the presence of a majority of the number of directors or trustees as fixed in the Articles or Bylaws shall constitute a quorum. The decision of at least a majority of the directors present at such meeting at which there is a quorum shall be valid as a corporate act, except for those acts that require a higher majority vote or the vote of a majority of all the members of the Board as may be provided by the association's bylaws.

Section 8. Minutes. Proceedings of meetings held fully or partly through remote communication shall be recorded and this shall be announced at the start thereof. Audio recordings and minutes of all meetings of the Board of Directors shall be kept and preserved by the Association Secretary.

**RULE III
MEETING OF ASSOCIATION MEMBERS**

Section 9. Meetings. Regular and/or special meetings of the association members may be conducted through remote communication such as teleconferencing, videoconferencing, or other alternative modes of communication, under extraordinary circumstances, or where members cannot attend personally, or are prevented from physically attending such meetings even if not specified in the association's bylaws.

The choice of means and/or platforms of participation allowed by the Board must consider availability, accessibility and ease of use for the members to the end that no member shall be deprived of the right to participate in the discussion and decision-making process.

Section 10. Notices. The Notice of Meeting shall be disseminated and sent to every member through all possible means available, such as but not limited to electronic mail or messaging through SMS, Facebook, Messenger or Viber at least five (5) days prior to the meeting. When applicable, the URL link, meeting ID, passcode, password and other details for accessing the meeting and verifying a member's identity and/or authorization to attend must be disseminated at least two (2) days before the meeting.

The notice must also be posted in the official website of the association, if any, at the office of the association, on bulletin boards, on tarpaulins, posters or other medium posted near the gates and other common areas, and in conspicuous places within the subdivision, village or community.

The Notice shall state the agenda or purpose of the meeting, date, time, and how the meeting shall be conducted, and the official electronic mail address of the association. No other business shall be transacted at a special meeting except as stated in the notice unless by consent of a majority of the members present, either in person or by proxy.

Section 11. Participation of members. Members in good standing who will attend or participate by means of remote communication allowed by the Board shall notify or inform the Association Secretary of their intention to participate in person or by proxy through electronic mail or messaging through Facebook, Messenger, SMS, Viber or any other means available, at least two (2) days before the meeting.

Only members in good standing who notified or informed the Association Secretary of their intention to attend or participate in the meeting by means of remote communication, in person or by proxy, shall be allowed to participate and vote on issues during the said meeting. For this purpose:

- 11.1 A member who will personally attend the meeting through remote communication shall submit to the Association Secretary, at least two (2) days before the meeting, a copy of his/her valid ID showing photo

preferably with his/her residence address, contact number and email address.

11.2 A member who will attend the meeting by proxy through remote communication shall submit to the Association Secretary, at least two (2) days before the meeting, the following:

1. Written authorization allowing his/her proxy to attend the meeting and vote on issues raised during the meeting on his/her behalf;
2. His/her residence address, email address and/or contact number of and that of his/her proxy;
3. Scanned copy of his/her, and the proxy's valid ID with photo preferably with residence address and signature.

At the start of every meeting by remote communication, the Association Secretary shall make a roll call of the member who attends, in person or by proxy, for validation purposes, determination of the quorum, and to allow attendees to know who is participating. If the member is represented by proxy, the proxy shall state his/her name and shall be validated by the Association Secretary from the list of proxies submitted prior to the meeting.

Section 12. Quorum. The presence of a quorum shall be established by roll call at the beginning of all meetings through remote communication. Members are deemed present when they respond to the attendance roll call cross-referencing the membership roster. Unless the Articles of Incorporation or the bylaws provides otherwise, the presence of the majority of the members in good standing, in person or by proxy, shall constitute a quorum for all meetings. The decision of at least a majority of the members in good standing present at such meeting at which there is a quorum shall be valid as a corporate act.

For members attending through remote communication, only those who complied with Section 11.1 or 11.2 above, as the case may be, shall be included in determining the quorum.

Section 13. Minutes. Proceedings of meetings conducted fully or partly by remote communication shall be recorded and this shall be announced at the start thereof. Audio recordings and minutes of all meetings of the members shall be kept and preserved by the Association Secretary.

**RULE IV
ELECTION OF MEMBERS OF THE BOARD OF DIRECTORS**

Section 14. *Holding of Elections.* Regular and/or special elections for the members of the Board of Directors may be held through any alternative voting system, such as electronic or online voting, or mobile ballot box voting, or a combination of both, even if not specified in the association's bylaws, provided that, the voting system/s to be used has/have been approved by the Board of Directors.

The Election Committee (Elecom) tasked to conduct the election shall be created in accordance with the procedure under the association's bylaws.

Section 15. *Notices.* The Elecom shall send or deliver the Notice of Election to all members through all possible means available, such as, but not limited to, electronic mail or messaging through SMS, Facebook Messenger or Viber, at least thirty (30) days but not more than sixty (60) days prior to the date of the election.

The notice shall state the following:

1. The date and time of the election proper and all other election activities;
2. The alternative voting system adopted, and the link or URL address of the voting system, in case of electronic or online voting;
3. The manner of distribution of ballots and casting of votes, in case of mobile ballot box voting;
4. The period during which votes by online or electronic voting will be accepted;
5. The manner or method of counting of votes; and in case of mobile ballot box voting, the designated polling place where the counting of ballots will be conducted; and
6. The contact information of the Elecom who can be notified by the member of his/her intention to participate in the election in accordance with Section 18.

Section 16. *Election Rules.* The Elecom shall formulate and promulgate the election rules and shall cause the dissemination thereof to all members through any available means at least thirty (30) days prior to the date of the election. The Rules shall likewise be posted in the official website of the association, if any, at the office of the association, on bulletin boards, posters or tarpaulins posted near the gates and other common areas and conspicuous places within the subdivision, village or community.

The Rules shall include, among others, the procedure on the conduct of online or electronic voting and/or mobile ballot box voting, the specific dates and time of all election activities, the manner or method of counting of votes, the designated polling

place where the counting of votes will be conducted for mobile ballot box voting, and the restrictions and health protocols that should be strictly complied with, if any.

Section 17. *Additional responsibilities and duties of the Election Committee.* In addition to those provided in the association's governing documents, the Elecom shall have the following responsibilities, among others:

- a. In utilizing electronic or online voting system, the Elecom shall ensure, among others, that:
 1. The identities of qualified members or proxies were properly validated;
 2. Only qualified members and/or validated proxies can vote;
 3. The votes are secured and no one can alter someone else's vote;
 4. The system can be accessed by voters from any location using the internet and/or any mobile devices;
 5. The qualified member can verify if his/her vote was included in the final tally; and
 6. Each and every ballot or vote is recorded and counted.

- b. When mobile ballot box or "house-to-house" voting system is used or adopted, the Elecom, together with the representatives of the candidates or parties, the total number of persons shall not be more than the maximum number allowed under the prevailing government-mandated health protocols or measures, shall have the following responsibilities, among others:
 1. Ensure that all members are notified of the different manners or modes of voting adopted; and the date and time of all election activities;
 2. Distribute pre-numbered ballots to the qualified members or validated proxies who have opted for the mobile ballot box system, or have no means or facilities for online or electronic voting, at their residences at least one (1) day before the election proper, and provide the members or validated proxies the list of qualified candidates;
 3. On the day of the election, bring the sealed transparent ballot boxes to the respective residences of the members or validated proxies who shall personally drop his/her ballot paper and counterfoil into the sealed transparent ballot box;
 4. Ensure that the members or validated proxies who received the ballot papers, and dropped the ballot paper and counterfoil into the sealed transparent ballot box have affixed their signatures opposite their names, or the member's name in case of proxies, in the master list of qualified voters;

5. After the member or proxy had cast his/her vote, the Elecom member shall indicate on the voter's list next to the name of the member or proxy "voted at the place of residence" and the ballot number. The member or proxy shall sign the list opposite his/her name as confirmation thereof;
6. Immediately after conducting the mobile ballot box or "house-to-house" voting, return the sealed ballot box to the designated polling place not later than one hour after the end of the voting period but in no case later than the designated time;
7. Ensure that counting of votes shall be conducted at the designated polling place, start at the designated time, and in the presence of the representatives of the candidates or parties;
8. Ensure that only the Elecom and the representatives of the candidates or parties are in the designated polling place; that the total number of persons physically present shall not be more than the maximum number allowed under the prevailing government-mandated health protocols or measures; and that all other mandated health protocols or measures are strictly complied with; and
9. To protect the confidentiality of the votes cast and/or secrecy of the voter's identity, immediately after the counting of ballots, all ballot papers and counterfoils shall be placed in separate sealed boxes or envelopes and shall be opened only if necessary and by the designated HOACD Division Staff of the DHSUD Regional Office.

The Elecom shall take the necessary measures to protect the confidentiality of the votes cast and preserve the integrity of the voting process.

The failure of the Elecom to comply with the above, and the disenfranchisement of any qualified member shall be a ground for the nullification of the election.

Section 18. Participation of Members. Members in good standing who will participate in the elections through online or electronic voting or mobile ballot box or "house-to-house" voting shall notify or inform the Elecom through electronic mail or messaging through Facebook, Messenger, SMS, Viber or any other means available at least two (2) days before the scheduled election of their intention to participate, in person or by proxy, and his/her preferred manner of participation.

A member who will participate in the election by proxy shall submit to the Elecom through any available means at least two (2) days before the scheduled election, the following:

1. His/her written authorization for his/her proxy to participate in the election in his/her behalf;

2. His/her email address and/or contact number and that of his/her proxy;
3. Scanned copy of his/her and his/her proxy's valid IDs with photo with residence address and signature.

Section 19. Quorum. At all elections of directors, the presence or participation, either in person or by proxy, of a majority of the members in good standing shall be required.

Only those members in good standing who notified or informed the Elecom of their intention to participate in the election, in person or by proxy, have submitted the required documents to the Elecom, and complied with all other requirements, shall be included in determining the quorum, and shall be allowed to participate in the election.

Section 20. Term of Office. When the first election to be conducted pursuant to these guidelines does not coincide with the schedule of the regular election, as provided in the association's bylaws, due to the Department's suspension of election activities, the following shall be observed:

1. When the remaining term of office for the newly elected members of the Board of Directors/Trustees or officers is less than fifty percent (50%) of the term of office as provided in their bylaws, reckoned from the date indicated therein, they shall be allowed to serve the unexpired portion of the current term plus the full incoming term.
2. When the remaining term of office for the newly elected members of the Board of Directors/Trustees or officers is more than fifty percent (50%) of the term of office as provided in their bylaws, reckoned from the date indicated therein, they shall serve only the unexpired portion of the current term.

The next election shall then be called and held on the schedule as provided in the bylaws.

Section 21. Election Reports. Within fifteen (15) days from the date of the election, the Elecom shall submit the following to the DHSUD Regional Office concerned through personal service, registered mail or electronic means:

1. Copy of the notice of election sent to the members and posted in conspicuous places in the subdivision;
2. Proof that the members received the Notice of Election;
3. Notarized Certification issued by the Elecom attesting that notices of election were sent and/or delivered to all members, and the notices were posted at the office of the association, on bulletin boards and other common areas and conspicuous places within the subdivision, village or community at least thirty (30) days prior to the election proper;

4. Master list of qualified members certified by the Association Secretary and attested to by Association treasurer;
5. List of members who participated in the election as certified by the Elecom;
6. Notarized minutes of elections prepared and signed by the Elecom, stating among others, the following:
 - a. Mode or modes of conducting the election;
 - b. Total number of qualified voters, the number of voters who cast their votes or participated in the elections through electronic or online voting and/or through mobile ballot box or "house-to-house" voting;
 - c. Names of the representatives of the candidates or parties;
 - d. The number of votes garnered by each candidate, ranking and result of the voting.
 - e. For mobile ballot box or "house-to-house" voting system:
 1. Date and time the Elecom and the representatives of the candidates departed from the polling place to conduct mobile ballot box voting;
 2. Number of ballots distributed to the members or their proxies and the number of ballot papers and counterfoil dropped in the sealed transparent ballot boxes, the name of the Elecom member who issued the ballots, and the name of the Elecom member who collected the ballots and brought the sealed ballot boxes to the designated polling place for counting; and
 3. List of members who voted at the place of residence, ballot number with the corresponding signature of the member or proxy who received and dropped the ballot in the sealed ballot box.

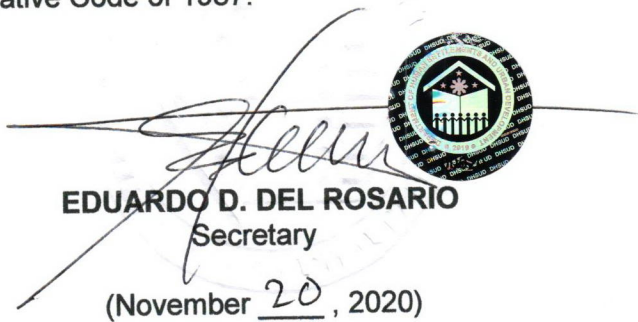

Sec. 22. Election Protests. All election-related issues, controversies or complaints shall be brought before the Election Committee within three (3) days from the date of the election. The Election Committee shall resolve all complaints or election protests brought before it within five (5) days from the receipt thereof. Any party aggrieved by the decision of the Election Committee may file an election protest or complaint with the Regional Adjudication Branch of the Human Settlements Adjudication Commission within ten (10) days from the receipt of the decision of the Election Committee and in accordance with its Rules of Procedure.

**RULE V
FINAL PROVISIONS**

Section 23. Non-disenfranchisement of Members. The Association may adopt any or a combination of the above alternative modes of conducting meetings and voting under extraordinary circumstances for the purpose of ensuring maximum participation of members, **provided** that clear procedures, mechanics and guidelines thereof shall be fully disseminated to the members, and no member is prevented from participating by reason of lack of access to any of the platforms or electronic means adopted. The Board may set up solutions such as prescribing a specific mode for certain members and sharing of resources by not more than ten (10) members in a single location or venue, subject to strict compliance with the prevailing government-mandated health protocols or measures as may be applicable under the circumstances.

Section 24. All homeowners associations whose elections were cancelled under the Advisory of 01 May 2020, or where the term or office of its Board of Directors had expired, are now allowed to call and conduct elections in accordance with these guidelines.

Section 25. Effectivity. These guidelines shall take effect immediately after certified copies hereof are furnished to the Office of the National Administrative Register of the University of the Philippines Law Center pursuant to Executive Order No. 292, otherwise known as the Administrative Code of 1987.



EDUARDO D. DEL ROSARIO
Secretary
(November 20, 2020)

