



## **Taking Action Without a Board Meeting In New Mexico**

**By Lynn Krupnik**

With the ease of communication via e-mail, it is often easy for boards to fall into habits of wanting to make board decisions via e-mail rather than actually holding meetings. However, before boards take action without a meeting, they should keep the following issues in mind:

Is the association a New Mexico nonprofit corporation? If so, the association is subject to the New Mexico Nonprofit Corporation Act. According to Section 53-8-97 of the New Mexico Nonprofit Corporation Act, any action that is either required to be taken at a meeting or may be taken at a meeting of the board may be taken without a meeting “if a consent in writing, setting forth the action so taken, is signed by all” of the directors of the Association. Accordingly, if the association wishes to take action without a meeting, it must obtain the unanimous written consent of all of the board members.

Someone may ask, well, isn’t the discussion via e-mail a board meeting? Under the New Mexico Nonprofit Corporation Act, the only methods that the Act discusses for attending a board meeting is either in person or by conference call, whereby all board members can hear each other at the same time. When being involved in an e-mail discussion, not all board members can “hear” each other at the same time. Therefore, if taking an action by e-mail, it needs to be accomplished by unanimous written consent.

In addition to the law, don’t forget to check your governing documents. Some association documents set forth requirements for board meetings that would preclude the use of e-mail to make decisions. For example, some governing documents require all board meetings to be open to the members. Taking action by e-mail precludes members from knowing what is happening and, essentially, prevent the members from attending board meetings. Therefore, be sure to check your governing documents and comply with any requirements set forth in them.