MEMORANDUM

DATE: April 2, 2020
TO: Southern California Nevada Conference UCC
FROM: Thomas M. Buchenau, Conference Attorney
RE: HOW TO HANDLE EMERGENCIES WHEN A PHYSICAL CONGREGATIONAL MEETING ISN’T POSSIBLE

What follows is not intended as legal advice to your individual Church. It is not intended to be relied upon as such, but it can be a starting point for research and discussion. In order to provide actual advice, I would have to review your Church’s governing documents, and a formal attorney/client relationship would need to be established.

The California Corporations Code provides procedural guidance for non-profit religious corporations, beginning with section 9140. The Code provides the Board of Directors (in most instances this will be the Church Council referred to in the code and in this memorandum as “Board”) with the ability to meet electronically, and also allows for electronic congregational meetings (subject to limitations which are explained below).

In the case of an emergency, the Board has the power to take specified actions, primarily related to the conduct of the Church’s ordinary business operations and affairs. In addition, the code specifically prohibits the Board from taking any action without prior authorization of the membership where such action in the normal case would require a vote of the Church membership (congregational meeting) unless the Board receives prior authorization of the membership. Actions taken in good faith during an emergency bind the Church, even if the Board otherwise lacked authority for the action taken, and may be used to impose liability on a director, officer, employee or agent.

CONGREGATIONAL MEETINGS

Starting with Section 9410, the California law outlines general provisions, which would apply unless otherwise provided for in the Church’s bylaws. This includes specifically permitting electronic meetings. There should be, at a minimum:

- Reasonable provisions for all members to participate and vote, and a record kept of any vote.
• Where notice to the members is electronic, there must first be “…an unretracted consent to the use of those means of transmission for communications under or pursuant to… the code.”
• Notice of the electronic meeting, complete with an agenda of items to be discussed and acted upon.
• For those who may not be able to participate or may choose not to participate, it is recommended that there be a proxy given to the Board by those members to assure a quorum and the ability to act on the agenda items.
• The notice to members shall include a statement that if a member refuses to consent to the electronic meeting, that absent consent of the member pursuant to the electronic meeting, the meeting shall be held at a physical location. (This provision in 9411(f) is troubling, as it states that a single member could refuse to consent and trigger the requirement of the meeting at a physical location. According to the legislative history of the section: “It is further the intent of the Legislature that a meeting of a corporation or limited liability company shall include a physical location unless the corporation … has obtained the consent of all of the … members of the corporation … to conduct a meeting by electronic transmission.”[emphasis added])

One-third (1/3) of the voting class, in person (including virtual), by written ballot, or by proxy, constitutes a quorum.

If your bylaws require notice to set a Congregational Meeting, that notice can be waived by the Members, by proxy, written waiver, electronic waiver.

If your bylaws require a notice period which the emergency situation cannot accommodate, then every effort must be made to give every member notice of the proposed meeting and proposed action to be taken at that meeting.

Action taken to reduce notice periods or to allow additional emergency powers to be granted to the Board should be specified, should be limited to the extent possible, and all notice efforts should be documented by whatever means are possible.

A possible scenario would be:

1. Church sees need to (insert emergency here, such as borrow funds, consider closing programs/meetings, etc.)
2. Bylaws provide for lengthy notice of Congregational Meeting.
3. Board meets, decides to hold emergency Congregational Meeting.
4. Notice is given by any and all means required to notify EVERY MEMBER.
5. Proxy, written consent, etc. is solicited (in writing, electronically, verbally—
   with more than one witness to the conversation). For email notification,
   request a reply confirming receipt, even if recipient does not agree with the
   proposed action. Where there is no paper trail, either electronic or written,
   keep written notes, and follow-up with emailed, or mailed, as appropriate,
   written verification of the consent.
6. Consent should specify both the action(s) to be taken (including
   modification of bylaws/governing documents to change notice procedures),
   and also provide express consent to the meeting being electronic, as well as
   consent to future electronic meetings with the shortened notice, which may
   be accomplished by other-than-written notice (or announcement at 3
   consecutive worship services, etc…).

These are difficult times, and we need to keep in mind that it is extremely
important to act with caution and deliberation, and to make every effort to keep
every member notified of the Church’s actions.