



April 7, 2020

Remote Meetings for Members – New COVID-19 Relief for Nonprofit Governance

On March 25, 2020, we issued an [alert](#) discussing the inability of many nonprofits with members to hold meetings during the COVID-19 crisis. In particular, Massachusetts law has long allowed directors, but not members, of nonprofits incorporated in the Commonwealth to meet remotely by teleconference or videoconference. While Massachusetts law does allow members to vote by proxy, many Massachusetts nonprofits' bylaws preclude proxy voting for members, leaving members without any legal way to make decisions during the crisis. A new emergency law provides relief to nonprofits in this situation.

On Friday, April 3, 2020, Governor Baker signed [Chapter 53 of the Acts of 2020](#) (An Act to Address Challenges Faced By Municipalities and State Authorities Resulting From COVID-19), which includes an emergency provision (Section 16) intended to make it easier for nonprofits to function remotely for the time being. In particular, Section 16 provides that, during the current state of emergency and for 60 days thereafter, a nonprofit board may take certain actions **regardless of what the nonprofit's bylaws may say**, so long as the nonprofit's Articles of Organization do not expressly forbid it. These actions include:

- **Service of Directors and Officers:**
 - A board of directors may allow directors and officers to continue to serve beyond their designated terms during the state of emergency and until their successors are elected and take office.
 - Alternatively, a board may appoint successors to any officers or directors (as well as employees or agents), even if bylaws do not otherwise provide for that.
- **Board Meetings:**
 - A board may provide notice of board meetings in whatever manner is practicable under the circumstances, and to whatever directors it is practicable to reach.
 - Directors may participate in board meetings through the use of any means of communication by which all directors participating are able to communicate simultaneously.
 - Although it is advisable to use a means of communication whereby all directors can hear and speak to one another simultaneously, the word "communicate" in Section 16 allows for other methods of simultaneous communication.
 - Directors who participate in a meeting of the board of directors held according to Section 16 are deemed to constitute a quorum, regardless of what the bylaws say.





April 7, 2020

- **Member Meetings:**

- The board may cancel a meeting of the members with notice given in any practicable manner.
- The board may permit members to vote in person or by proxy, even if the bylaws currently forbid voting by proxy. Any member voting by proxy shall be considered present for purposes of meeting a quorum.
- The board may allow members to participate in a members' meeting by remote participation, even if not physically present at the meeting.
- Members will be treated as present for a remote meeting if:
 - Reasonable measures are implemented to verify that each participant is in fact a member (or the holder of a valid proxy);
 - Members are given a reasonable opportunity to participate in the meeting and to vote on matters submitted, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, pose questions, and make comments, regardless of whether the members can simultaneously communicate with each other; and
 - Votes or other actions taken remotely are adequately documented and records retained.

Importantly, this new law simply *authorizes* the board to permit members this additional flexibility – it does not *automatically* provide that flexibility to members. Accordingly, if the members of a nonprofit want to meet remotely, the board must first authorize that pursuant to Section 16. A nonprofit corporation with members must notify the members, as soon as reasonably practicable, of any actions taken by the board under Section 16.

While Section 16 allows a board to override (temporarily) a nonprofit's current bylaws in this regard, it does not allow a board to override the nonprofit's Articles of Organization. Accordingly, it is vital to confirm that nothing in the Articles would preclude whatever a board is attempting to allow under Section 16.

These relaxed requirements for valid actions of directors and members are in effect only for a limited time – once the crisis is over (and the additional 60 days has expired), members will no longer be allowed to meet remotely, unless this change in the law is made permanent in the future. For the time being, however, members and directors can comply with public health guidelines while ensuring that the business of the nonprofit can continue.





April 7, 2020

Additional Resources

- [SBA Issues Interim Final Rules on Paycheck Protection Program](#) (April 6)
- [Complying with Paid Leave Requirements Under the Families First Coronavirus Response Act](#) (April 1)
- [The CARES Act and Nonprofits](#) (March 31)
- [UPDATED: Treasury Department Extends April 15 Tax Filing and Payment Deadlines](#) (March 25)
- [Managing Contractual Relationships During the COVID-19 Crisis: Force Majeure Clauses and Other Approaches](#) (March 18)

Please visit our [COVID-19 resource page](#) for additional resources related to COVID-19.

Contact Us

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