

Prepare Now for Life after Zoom: COVID-19 Governance Flexibilities for Mass. Nonprofits Ending Soon

Governance flexibilities expire December 15, 2021

Massachusetts Governor Charlie Baker has [announced](#) that his March 10, 2020 [COVID-19 State of Emergency](#) will end on June 15, 2021. The governance flexibilities afforded Massachusetts nonprofit corporations – including the authority to hold member meetings via Zoom – have been extended to December 15, 2021.

As discussed in our previous alert [Remote Meetings for Members – New COVID-19 Relief for Nonprofit Governance](#), the emergency legislation, [Section 16 of Chapter 53 of the Acts of 2020](#) (“Section 16”), provides that, during the Commonwealth’s COVID-19 state of emergency and as extended until December 15, 2021, the board of a Massachusetts nonprofit corporation 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 those actions.

Among other things, Section 16 temporarily permits the board of a Massachusetts nonprofit corporation to allow the corporation’s members to meet remotely by audio- or videoconference. As a result, for the last year, many Massachusetts nonprofits have been holding their member meetings via Zoom or similar videoconference technology. Section 16 also permits members to vote by proxy even if the organization’s bylaws require them to vote in person. (In this context, the term “member” refers only to members who have voting rights under Massachusetts nonprofit corporate law, and not to contributors or supporters of the nonprofit that the nonprofit calls “members” but who do not have legal voting rights.)

Review Your Bylaws and Make Changes Now

After December 15, the nonprofit governance flexibilities permitted under Section 16 will no longer be effective and the “regular” provisions of Massachusetts nonprofit corporate law will apply. Under those provisions, members of nonprofits incorporated in the Commonwealth must vote either in person or by proxy. Many Massachusetts nonprofits’ bylaws preclude proxy voting for members, however, meaning that their members must meet in person. *Now is a good time to review your organization’s bylaws and, if they include such a provision, to consider removing it to provide members with a means of making decisions at a distance after Section 16 expires.*

Boards of Directors May Continue to Meet Remotely

Even after the emergency legislation expires, under the regular provisions of Massachusetts nonprofit corporate law, boards of directors (but not members) of Massachusetts nonprofit corporations may meet via audio- or videoconference where everyone participating in the meeting can hear one another, as long as neither the articles of organization nor the bylaws specify otherwise.

Unanimous Written Consent Needed for Voting by Email

Note that under Massachusetts nonprofit corporate law, voting by email is *not* permitted for nonprofit members *or* directors unless the vote meets the requirements of a *unanimous* written consent. Members and directors (where not prohibited by the nonprofit's articles of organization or bylaws) may take an action without a meeting if *all* members or directors, as applicable, entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the member or board of directors meetings (e.g., in the nonprofit's minute book).

It is possible to circulate a vote via email to all members or directors, as applicable, for them to consent to in writing. However, for the vote to be valid, *all* members or directors, as applicable, entitled to vote on the matter must return the consent. The action becomes effective on the date the last consent is returned. For nonprofits with a large number of voting members, voting by unanimous written consent may not be a practical option.

Contact Us

Please contact the authors of this alert or a member of our Nonprofit Group if you have questions about how the expiration of the emergency legislation will affect your nonprofit's governance procedures.

[Eleanor A. Evans](#)

Counsel

617.557.9711

eevans@hembar.com

[Brad Bedingfield](#)

Partner

617.557.9704

bbedingfield@hembar.com

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