



CLIENT ALERT

NEW EMERGENCY GOVERNANCE PROCEDURES FOR NONPROFIT CORPORATIONS

On Friday, April 3, 2020, Governor Baker approved temporary modifications to the nonprofit corporate statutes, to be in effect for the duration of the Governor's March 10, 2020 state of emergency, and 60 days thereafter. The modifications are designed to make it easier for nonprofit boards of directors to exercise their governance responsibilities, notwithstanding the stay-at-home advisory in effect throughout the Commonwealth of Massachusetts and restrictions on travel and assembly in effect in most other states. Many nonprofit corporations will find helpful relief in the new legislation.

The new legislation allows nonprofit corporations to take advantage of existing statutory flexibilities not incorporated into their governance documents, and affords nonprofit corporations some additional flexibilities not reflected in the current nonprofit corporate statute. Specifically, the new legislation permits the board of directors of a nonprofit corporation to take the following actions, unless the nonprofit corporation's articles of organization provide otherwise:

1. Provide Notice of Board Meetings. The board of directors may provide notice of board meetings only to those board members it is practicable to reach, in any practicable manner.
2. Cancel Membership Meetings. The board of directors may cancel membership meetings by providing notice of cancellation in any practicable manner.
3. Extend Director and Officer Terms. The board of directors may permit any director or officer to continue serving during the state of emergency, despite the expiration of his or her term, until the director's or officer's successor is elected, appointed or designated, and until the successor takes office.
4. Use Remote Participation. The board of directors may permit a director to participate in or conduct any regular or special meeting by means of any communication by which all directors participating in the meeting are able to communicate with each other simultaneously during the meeting.

5. Appoint Successors. The board of directors may appoint successors to any officers, directors, employees or agents.
6. Relocate or Designate Offices. The board of directors may relocate the principal office, or designate alternate offices.
7. Allow Members to Use Proxies. The board of directors may permit members to vote in person or by proxy at membership meetings, and any member voting by proxy shall be considered present at the membership meeting for purposes of any quorum requirements.
8. Allow Members to Use Remote Participation. The board of directors may permit members to participate in any membership meeting by remote participation, even if not physically present at the meeting if:
 - (a) reasonable measures are implemented to verify that each person present and voting is a member or proxyholder;
 - (b) reasonable measures are implemented to provide a reasonable opportunity to participate and vote, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings, pose questions, and make comments, regardless of whether the members can simultaneously communicate with each other during the meeting; and
 - (c) a record of each member and proxyholder vote is maintained by the corporation.

Directors who participate in a meeting of the board of directors pursuant to the new legislation constitute a quorum, regardless of quorum provisions in the nonprofit corporation's governance documents. A nonprofit membership corporation must notify its members as soon as reasonably practicable of any action taken by the board of directors pursuant to the new legislation.

If you have any questions about the new legislation, or nonprofit corporate governance, please contact Attorneys Elka Sachs, esachs@kb-law.com, or Eric Reustle, ereustle@kb-law.com.