



NEW RULE CHANGES REGARDING GOVERNANCE OF MA NON-PROFIT CORPORATIONS

Last week, Governor Baker signed into law temporary, but sweeping changes to the rules regarding governance of Massachusetts non-profit corporations, significantly relaxing notice requirements for meetings of directors and allowing, for the first time ever, remote meetings of members. These changes were put into effect immediately but expire sixty (60) days after the end of the current state of emergency in Massachusetts. The full text of the relevant section of the law is below:

SECTION 16.

Notwithstanding any general or special law or any bylaw of the corporation to the contrary, for the duration of the governor's March 10, 2020 state of emergency and 60 days thereafter and unless the articles of organization provide otherwise, the board of directors of a corporation defined in section 2 of chapter 180 of the General Laws may:

- (i) provide notice of a meeting of the board of directors: (A) only to those directors it is practicable to reach; and (B) in any practicable manner;
- (ii) cancel a meeting of the members, as defined in section 2 of said chapter 180, with notice of cancellation given in any practicable manner;
- (iii) allow a director or officer to continue to serve during the governor's March 10, 2020 state of emergency and until the director's or officer's successor is elected, appointed or designated; provided that directors and officers whose term is extended pursuant to this section shall continue to serve until the director's or officer's successor takes office, despite the expiration of a director's or officer's term;
- (iv) allow a director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating are able to simultaneously communicate with each other during the meeting;
- (v) allow members at a meeting of the members to vote in person or by proxy; provided that any member voting by proxy shall be considered present at the meeting for purposes of any quorum requirement;
- (vi) appoint successors to any of the officers, directors, employees or agents;
- (vii) relocate the principal office or designate alternative offices; and
- (viii) allow members to participate in any meeting of members by remote participation, even if not physically present at the meeting.

Participation by remote communication at any meeting of the members shall constitute presence at such meeting only if: (i) reasonable measures are implemented to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxyholder; (ii) reasonable measures are implemented to provide such members and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear to 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 during the meeting; and (iii) if any member or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Directors who participate in a meeting of the board of directors pursuant to this section shall constitute a quorum. In a corporation with members, the corporation shall notify the members, as soon as reasonably practicable, of any action taken by the board of directors pursuant to this section.

If you or your non-profit corporations have any questions about these temporary changes, the attorneys at Bulkley Richardson are prepared to guide you through them.

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