Electronic “Meetings” and Votes for Nonprofits

The use of electronic process to give notice and to conduct votes can be a valuable tool for nonprofit associations to conduct business of the corporation for which member approval is required. North Carolina’s Nonprofit Corporation Act (Chapter 55A) (the Act) permits electronic process and electronic votes. Under the Act, a vote includes authorization by written ballot and written consent, including electronic ballot and electronic consent.

To utilize these processes, an association must formally adopt a policy and a member must agree in some way to the use of electronic process. An association may agree to conduct a transaction by electronic means by providing for the same in its articles of incorporation or bylaws, or by the board of directors adopting a policy for that process.

A member must agree to the use of electronic process in some manner, which can be informally provided. A member can agree by accessing the association’s website and registering their name and an email address for these purposes. A membership application or renewal form can also contain the member’s agreement. Or, a member can simply affirmatively respond with consent to an email from the corporation requesting to use that member’s email account for electronic process.

Once the association provides for electronic process and the member consents, meeting notices can be provided by email and, for most associations, votes can be taken by email. The Act provides that unless a corporation’s articles of incorporation or bylaws provide otherwise, any action that can be taken at a meeting of the members can be taken through the use of a written ballot. A written ballot can be used to vote for directors or officers, or for other questions before the membership. This mail ballot can be provided with the meeting notice by email to those members who have consented to electronic process. The association would need to mail the notice and written ballot to the physical address of any members who have not consented to electronic process.

A written policy for electronic process can be simply stated, but the more detail the better. And, the best practice is for the association to provide the policy to the member in seeking the member’s consent as provided in the association’s policy. While a written ballot can be used in lieu of a meeting of the members, to the extent that some members do not consent to the use of electronic process, a physical, in-person meeting must be noticed and held.

In developing a policy, the board of directors should consider including the following:

1. A broad statement authorizing the use of electronic process to the fullest extent permitted by law, as determined by the board of directors from time to time.

2. That electronic process will be used for giving of notices and taking of votes by members and for written consents of all Board members for Board action (note that a Board of Directors cannot take a vote using email but that the written consent of each and all directors provided by email is board action; also, a board can also use a conference call or any other means of communication to conduct its meeting if all board members can simultaneously hear each other).

3. That member consent can be obtained by any reasonable means.

4. That member consent may be withdrawn or a change in email address may be made in writing to the Secretary or executive director of the association.

5. That the Secretary shall maintain a list of all members and the email address provided by the member for the use of electronic process and shall update the list as consent is provided or is withdrawn.

6. That any member who withholds consent or withdraws consent previously given must be provided with notice by means other than electronic notice.

7. That any member who fails to consent to the use of electronic process or who later withdraws previously given consent and thereafter casts a vote pursuant to the use of electronic process shall be deemed to consent to the use of electronic process for that vote.

8. Whether or not a proxy can be used in connection with electronic voting. An association may determine that there is not a great need for proxies for electronic voting. If so, and if an association otherwise permits proxies, a specific prohibition on the use of proxies for electronic voting should be stated.

9. If the association’s policy is proposed to be part of an amendment to its bylaws or articles of incorporation, that policy can also authorize the board of directors to adopt further policies for the use of electronic process.

To use a written ballot, the association must deliver a written ballot to every member entitled to vote on the matter. If the association has adopted a policy and the member has consented, then the ballot may be submitted to the member by email or by other electronic transmission (such as reference to a website portal by which the member can access the ballot and vote). For the association to accept an email ballot from a member, it must also be able to determine that the email ballot was authorized by the member. If the member uses the same email to cast a ballot as the email address the association uses to provide the ballot, that is a sufficient determination of this authorization.

The ballot can be in the body of an email to the member and a member can also return a ballot by email as a scanned pdf file. More sophisticated document authenticating software can also be used. A written ballot must set forth each proposed action, provide an opportunity to vote for or against each action, and must state the time by which a ballot must be received by the association in order to be counted. Quorum requirements and member approval requirements are the same for an in-person meeting or for a written ballot.

The use of a written ballot and electronic process does not eliminate an association’s requirement to conduct an annual meeting of the members. But, if each and all of the association’s members consent to electronic process, then a virtual annual meeting could be held. Even in that instance, votes would still need to take place by written ballot and electronic process.

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*The foregoing article does not constitute legal advice; any association contemplating the use of electronic process should seek legal counsel*.