

The Show Must Go On - Alternative Methods for Taking Corporate Action

April 17, 2020

This content was published prior to the combination of Dentons Davis Brown. Learn more about Dentons Davis Brown.

Essential client services and other pressing business matters of a non-profit organization are often inconsistent with social distancing and quarantines. In many cases, these organizations are the front-line of defense against the virus and the first responders of health care service providers. But policy decisions and programming adjustments may still need to be made by a non-profit's Board of Directors at a time when in-person meetings, whether regular or specially called, are inadvisable or impractical.

Remote meetings

Fortunately, Iowa law (and that of many other states) provides alternatives to in-person meetings that are well-suited to these challenging times. Before using any of these techniques, however, the organization will need to review its articles of incorporation and bylaws to make sure they are not limited or prohibited.

A non-profit's Board of Directors is permitted to hold remote, electronic meetings that are treated as if all the participating directors were present in a single location. Meetings can be conducted by "any means of communication" which allows all the directors who are participating to simultaneously hear each other.

In other words, a conference call, Skype, Zoom, or similar e-meeting is perfectly permissible. Any director who participates in such an e-meeting is deemed to be present in person for both quorum and voting purposes.

Informal action

Additionally, Iowa law authorizes informal action by a non-profit's Board of Directors. Under this statute, any action that is required or permitted to be taken by the board can be taken without a meeting if all (100%) of the directors sign a consent to the action and deliver it to the corporation. Again, this technique is only available if each and every board member consents to the action. It is not enough to simply have a majority or other quorum threshold satisfied by those consenting to the action.

Proxy voting

It should be noted that a non-profit's Board of Directors is not allowed to vote by proxy. Directors are selected in order to provide their independent judgment with respect to the affairs of the corporation, and they are not allowed to delegate this evaluation and decision-making authority to another because of their absence or inability to participate in a meeting of the board.

If a non-profit corporation has members, they may take action by written consent under Iowa law if at least 80% of the membership's voting power approves of the action. In addition, members are authorized to use proxies for both

quorum and voting purposes relating to membership meetings. Finally, members may also vote by ballot where a membership vote is required.

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