

Massachusetts Nonprofit Corporate Governance – Emergency Powers

April 7, 2020

Massachusetts General Laws Chapter 180, the Massachusetts corporate statute governing nonprofits, does not currently provide for emergency powers included in many of the model nonprofit acts adopted in other states. As a result, with the current social distancing and stay home orders, many nonprofits are unable to hold meetings or conduct necessary business. For example, member meetings are generally required to be held in person. Massachusetts public companies have the same limitation. On Friday, April 3, Governor Baker signed legislation to provide emergency powers to address several of these operational and governance obstacles immediately. The new emergency legislation allows a board of directors to take the following actions (unless the articles of organization provide otherwise) but only for the duration of the governor's March 10 state of emergency and 60 days thereafter:

1. provide notice of a board meeting only to those directors it is practicable to reach and in any practical manner;
2. cancel a meeting of the board by giving notice in any practical manner;
3. allow directors and officers whose terms would otherwise have expired to continue in such capacities until such person's successor is elected, appointed or designated and takes office;
4. allow directors to participate in meetings through any form of communication that allows all directors to simultaneously communicate;
5. allow members to vote in person or by proxy and any member voting by proxy shall be considered present for all quorum requirements;
6. appoint successors to any of the officers, directors and employees;
7. relocate the principal office of the nonprofit or designate alternative offices; and
8. allow members to participate in meetings by remote participation with members deemed to be present at such meeting but only if reasonable verification measures are implemented to ensure that (a) such persons are in fact members or proxyholders, and (b) such members or proxyholders have a reasonable opportunity to participate in the meeting including an opportunity to hear or read the proceedings, comment and ask questions. It is important to note that, unlike directors, members are not required to be able to simultaneously communicate.

The Boston Bar Association has established a Working Group to draft a revised Chapter 180 which is expected to include some elements of the emergency legislation.

