

NY Charities Bureau Issues Guidance for Nonprofits Conducting Virtual Meetings of Members

April 30, 2020

As discussed in our previous [blog post](#), on April 16, 2020 New York's Governor Cuomo issued Executive Order No. 202.18 which, among other things, modified Not-for-Profit Corporation Law ("N-PCL") § 603 to permit annual meetings of members to be held remotely or by electronic means, effective through May 16, 2020. Absent such modification, the N-PCL explicitly permits directors to attend Board meetings by conference telephone or other electronic means (unless otherwise restricted by the organization's certificate of incorporation or bylaws) but it does not expressly provide for such remote participation at member meetings.

The modification addressed a serious challenge faced by New York nonprofit membership organizations unable to meet in person due to coronavirus social distancing restrictions. Recognizing the need for further guidance regarding how to conduct annual and special membership meetings remotely, the New York Attorney General's Charities Bureau has now issued *Guidance for Conducting Virtual Meetings of Members of New York Not-for-Profit Corporations* (the "Guidance").

As summarized below, the Guidance describes best practices that should be considered by nonprofits when planning and conducting virtual membership meetings. The specific procedures that should be followed will vary depending upon numerous factors (e.g., requirements in the organization's bylaws or certificate of incorporation, the number of voting members, the matters to be voted on, etc.), but the key is to ensure that all members attending the meeting can "hear and be heard" and have the ability and information necessary to participate and to vote.

In addition to complying with general requirements for membership meetings as specified in the organization's governance documents and/or the N-PCL (e.g., requirements regarding meeting notice, determination of members entitled to vote, achieving a quorum, recording minutes, counting and recording votes, etc.), the Guidance advises nonprofits conducting membership meeting by virtual means to, among other things,:

Planning the Meeting:

- Identify an accessible platform (i.e., a video or phone conference platform) for the meeting and provide information about it to all members in advance of the meeting. Members should have the option to dial-in if they are unable to access to a video conference.
 - Prepare and disseminate, before the meeting, notice of the date and time of the meeting, the platform on which the meeting will be conducted, and instructions on how to access the platform.
 - Test the system being used for the virtual meeting, and determine the methods for taking attendance and counting votes.
 - Appoint someone to manage the meeting to make sure that the meeting adheres to the agenda and allows an opportunity for attendees to participate.
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- Appoint someone to help members who are having trouble joining the meeting (a separate phone number should be disseminated to allow reporting and resolving problems in real-time).
- Maintain a record of calls or complaints about dialing or logging-in.

Conducting the Meeting:

- Ensure that participants can hear (and, if applicable, see) the proceedings and communicate to the full group in real-time (e.g., via a text-based "comment" function or otherwise).
- Give members the opportunity to communicate, bring motions or nominations from the floor, consistent with the organization's by-laws, and consider challenges to nominations, voting eligibility and requirements, consistent with the organization's by-laws.

According to the Guidance, if the validity of a virtual meeting or participation by members via virtual means is ever challenged, the Charities Bureau will take the position that meetings conducted in accordance with the Guidance should be deemed in substantial compliance with the requirements of the N-PCL. You can read the full text of the Guidance [here](#).

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