

The following is a short summary of Iowa law that governs how nonprofit corporations may conduct their business. The guidance which was prepared by Des Moines Attorney Willard L. Boyd III, has been provided to The American Legion, Department of Iowa, by Department Judge Advocate Dwight Dinkla. Mr. Dinkla serves as the Executive Director of the voluntary Iowa State Bar Association and Mr. Boyd is the current President of The Iowa State Bar Association. Mr. Boyd was recognized as “Lawyer of the Year in Non-Profit/Charities Law” in 2012, 2018 and 2020.

Iowa nonprofit corporations are governed by the Revised Iowa Nonprofit Corporation Act (“Iowa Nonprofit Act”), which provides various means by which members and boards of directors are able to take action through virtual meetings and otherwise.

### **Virtual or Telephonic Meetings of Members**

The Iowa Nonprofit Act provides that the articles of incorporation or bylaws of a nonprofit corporation may provide that an annual or regular meeting of members is not required to be held at a geographical location if the meeting is held by means of the internet or other electronic communication technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments. Iowa Code section 504.701(7). The same rule applies for special meetings of members. Iowa Code section 504.702(6). Notices of meetings may be communicated in person, by mail, other method of delivery, or by telephone, voice mail, or other electronic means. If these forms of notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication. When electronically transmitted, the notice needs to be sent to the member in a manner authorized by the member. Iowa Code section 504.142.

### **Voting of Members – Alternatives to In-Person Voting and Voting by Virtual or Telephonic Meetings**

There are various ways for members to vote without attending a meeting in person or a virtual or telephonic meeting. They include voting by written ballot or proxy as well as by a written consent.

#### **Written Ballot**

Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. A written ballot must (1) set forth each proposed action and (2) provide an opportunity to vote for or against each proposed action. Approval by written ballot is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot need to do all of the following: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the corporation in order to be counted. Unless prohibited by the articles or bylaws, a written ballot may be delivered and a vote may be cast on that ballot by electronic transmission, including email. Iowa Code section 504.708.

#### **Proxies**

Unless the articles or bylaws of the corporation prohibit or limit proxy voting, a member or the member’s agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission (such as email). Iowa Code section 504.715.

## **Written Consent**

Unless limited or prohibited by the articles or bylaws of the corporation, action required or permitted under the Iowa Nonprofit Act can be approved by the members of the corporation without a meeting of members if the action is approved by members holding at least 80 percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least 80 percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporation action. A written consent may be submitted by a member through electronic transmission, which should include email. Iowa Code section 504.704.

## **Virtual or Telephonic Meetings of Board of Directors**

The Iowa Nonprofit Act provides that unless the articles or bylaws provide otherwise, a board may permit any or all 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 may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. Iowa Code section 504.821(3).

## **Action by Email**

Under the Iowa Nonprofit Act, a board to take action pursuant to a written consent signed by all of the directors. The written consent may be signed and transmitted electronically. The Iowa Nonprofit Act does not expressly address email voting. Still, a board is able to use email communication for purposes of complying with the written consent requirements of the Iowa Nonprofit Act. This means that each director needs to consent to the proposed course of action. An email vote in which not all of the directors vote in the affirmative is not effective under the Iowa Nonprofit Act. It needs to be unanimous. It is also necessary that each director “sign” the consent and deliver it to the association. Iowa Code section 504.822. Under the Iowa Nonprofit Act, the term “sign” is defined to include an “electronic signature.” Iowa law defines an “electronic signature” very broadly to mean an electronic sound, symbol or process attached to or logically associate with a record and executed or adopted by a person with the intent to sign the record. With such a definition, a director could electronically “sign” a consent in a variety of ways. Iowa Code section 504.141.

Although emails can be very helpful to ensure quick communications to directors and to receive board of director approval on actions, it is extremely easy for such communications to be less formal than other types of communications. For example, a board chair might seek action from the board by asking the other directors what they think about a certain issue and treat it as board action if the other directors are supportive in their responses. If the proposed course of action is not clearly stated, there is risk of a dispute as to whether the board actually took action or what action was taken. Thus, it is important to present a proposal in a manner similar to how it would be presented in an in-person or telephonic meeting. An example would be sending the board the proposed resolution: “Resolved, that the board of directors approves the filing of the application for tax-exempt status with the Internal Revenue Service.” Such email also might request that each director send a reply email stating “I hereby consent to the resolution” and, in order to meet the “sign” requirements, type the director’s name below such statement.

Action by email is to be treated in the same manner as board action at an in-person or telephonic meeting from a record keeping standpoint. As a result, any email action should be included as part of the minutes of the nonprofit.

Finally, although it is possible to effectuate action of the board via email, it is important to recognize that this is not the preferable way for a board to act. A board is most effective when directors are able to consult and exchange views. This is accomplished through in person or telephonic meetings of the board. For this reason, email voting is often viewed as an alternative only when it is not possible to have the board meet either in person or by telephone.