

Topic: Nonprofits: Electronic meetings, notice of meetings and voting

Question by: Tung Chan

Jurisdiction: Hawaii

Date: 20 December 2010

Jurisdiction	Question(s)		
	Do you allow voting by ballot through email by members?	Do you allow email notice for directors meetings (instead of snail mail)?	Do you allow electronic meetings of members (not directors, but members in a membership org)?
Manitoba			
Corporations Canada	The Canada Not-for-Profit Corporations Act permits electronic voting by ballot, e-mail notices for director meetings and electronic meetings of members. The statute takes the approach that electronics may be used by the corporation and its members as a tool to serve the rights of members to notice of members meetings, voting by members, and the calling and conduct of member meetings. While the Act is permissive and not mandatory about using electronics, it does require the corporation to meet guiding principles such as the rights of the member to participate in a meeting and to access the communication that is sent.	Yes	Yes
Alabama			
Alaska			
Arizona			
Arkansas			
California	California would permit both the Board and members to use electronic mail for voting	Yes	Yes

	and meetings, including the election of directors for stock and nonprofit corporations, as specified by the applicable Code sections. There also are federal laws applicable for electronic communications by and to corporations.		
Colorado	<p>7-127-203. Proxies</p> <p>(1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.</p> <p>(2) Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, the following shall constitute valid means of such appointment:</p> <p>(a) A member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact.</p> <p>(b) A member may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy or to the nonprofit corporation; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the member transmitted or authorized the transmission of the appointment.</p> <p>(3) An appointment of a proxy is effective</p>	<p>Yes. However, section 7-121-402, C.R.S., provides the following requirement.</p> <p>7-121-402. Notice</p> <p>(1) Notice given pursuant to articles 121 to 137 of this title shall be in writing unless otherwise provided in the bylaws.</p> <p>(2) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or private carrier. The bylaws may provide that if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published.</p> <p>....</p>	<p>Yes.</p> <p>7-127-108, C.R.S. Meetings by telecommunication</p> <p>Unless otherwise provided in the bylaws, any or all of the members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.</p>

	<p>against the nonprofit corporation when received by the nonprofit corporation, including receipt by the nonprofit corporation of an appointment transmitted pursuant to paragraph (b) of subsection (2) of this section. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form.</p> <p>(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.</p> <p>(5) An appointment of a proxy is revocable by the member.</p> <p>(6) Appointment of a proxy is revoked by the person appointing the proxy:</p> <p>(a) Attending any meeting and voting in person; or</p> <p>(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.</p> <p>(7) The death or incapacity of the member appointing a proxy does not affect the right of the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises</p>		
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	<p>the proxy's authority under the appointment.</p> <p>(8) Subject to section 7-127-204 and to any express limitation on the proxy's authority appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.</p>		
Connecticut			
Delaware			
District of Columbia			
Florida	<p>Florida statutes allow for voting by “means of remote communication”.</p> <p>Note: this is an issue that is not under the authority of our filing office. We don't take a position one way or the other regarding the internal affairs and procedures followed by individual corporations.</p>	<p>Yes, “notice” is defined in statute and includes “electronic transmission”.</p>	<p>A meeting may be conducted “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”. I'm not sure if this applies to meetings of members.....the statute is silent on this issue.</p>
Georgia			
Hawaii			
Idaho			
Illinois			
Indiana			
Iowa			
Kansas	<p>Please see Statute 17-6501 which I believe represents Kansas' support for allowing voting and notification through electronic means.</p> <p>http://www.kslegislature.org/legsrv-statutes/getStatuteFile.do?number=/17-6501.html</p>		
Kentucky			

Louisiana			
Maine			
Maryland			
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri	There was legislation in the last legislative session to specifically allow electronic notifications and balloting, but it never passed.		
Montana	Montana doesn't specifically allow or prohibit any of these.		
Nebraska			
Nevada			
New Hampshire	New Hampshire statutes also don't specifically allow or disallow. By-Laws would be outside of the SOS office purview beyond the statement that by-laws may not be inconsistent with the laws of this state or the articles of agreement.		
New Jersey			
New Mexico			
New York			
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon	Oregon doesn't specifically allow or prohibit any of these, but allows the bylaws to specify procedures, if the statutory default is overridden. It's a little dim, but I thought UETA would allow parties to agree to use electronic means for these purposes? A NP couldn't unilaterally require it, but if the parties agree, wouldn't the notice and votes be legal?		
Pennsylvania			

Rhode Island			
South Carolina			
South Dakota			
Tennessee			
Texas	<p>Texas law provides for email voting by nonprofit corporations under the following circumstances:</p> <p>Sec. 22.160. VOTING OF MEMBERS. (a) Each member of a corporation, regardless of class, is entitled to one vote on each matter submitted to a vote of the corporation's members, except to the extent that the voting rights of members of a class are limited, enlarged, or denied by the certificate of formation or bylaws of the corporation.</p> <p>(b) A member may vote in person or, unless otherwise provided by the certificate of formation or bylaws, by proxy executed in writing by the member or the member's attorney-in-fact.</p> <p>(c) Unless otherwise provided by the proxy, a proxy is revocable and expires 11 months after the date of its execution. A proxy may not be irrevocable for longer than 11 months.</p> <p>(d) If authorized by the certificate of formation or bylaws of the corporation, a member vote on any matter may be conducted by mail, by facsimile transmission, by electronic message, or by any combination of those methods.</p>	<p>Texas law provides for email notice of meetings of the members or board of directors of a nonprofit corporation under the following circumstances:</p> <p>Sec. 6.051. GENERAL NOTICE REQUIREMENTS. (a) Subject to this code and the governing documents of the entity, notice of a meeting of the owners, members, or governing persons of a domestic entity, or a committee of the owners, members, or governing persons, must:</p> <p>(1) be given in the manner determined by the governing authority of the entity; and</p> <p>(2) state the date and time of the meeting and:</p> <p>(A) if the meeting is not held solely by using a conference telephone or other communications system authorized by Section 6.002, the location of the meeting; or</p> <p>(B) if the meeting is held solely or in part by using a conference telephone or other communications system authorized by Section 6.002, the form of communications system to be used for the meeting and the means of</p>	<p>Texas law provides for electronic meetings of nonprofit members or board of directors under the following circumstances:</p> <p>Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY. Subject to the provisions of this code and the certificate of formation and bylaws of a corporation, a meeting of the members of a corporation, the board of directors of a corporation, or any committee designated by the board of directors of a corporation may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, only if:</p> <p>(1) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and</p> <p>(2) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.</p>

		<p>accessing the communications system.</p> <p>(b) Subject to this code and the governing documents of a domestic entity, notice of a meeting that is:</p> <p>(1) mailed is considered to be given on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the entity; and</p> <p>(2) transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.</p>	
Utah			
Vermont			
Virginia	<p>Virginia's Nonstock Corporation Act authorizes the electronic transmission of notice if consented to by the recipient or if authorized or required by the articles of incorporation. See Va. Code section 13.1-810.</p> <p>It also authorizes members and directors to participate and vote at meetings by means of remote communication. See Va. Code sections 13.1-844.2 and 13.1-864.</p>	Yes	Yes
Washington	Our State Bar Association has a committee working on the Model Act for introduction	RCW 24.03.009 - Notices are allowed to be by electronic transmission,	RCW 24.03.075 allows for participation

	<p>to the legislature in 2012. They will most likely address electronic voting, notices, and meetings in the new law more than our current law has done. But I have listed the statutes that currently address these things below.</p> <p>RCW 24.03.085 does allow voting by electronic transmission, http://apps.leg.wa.gov/rcw/default.aspx?cite=24.03.085</p>	<p>http://apps.leg.wa.gov/rcw/default.aspx?cite=24.03.009</p>	<p>in a meeting by conference phone or similar communications equipment so that all persons participating can hear each other at the same time.</p> <p>http://apps.leg.wa.gov/rcw/default.aspx?cite=24.03.075</p> <p>There are some other statutes in Washington that relate to electronic transmission and may be of interest:</p> <p>24.03.005 – Definitions</p> <p>24.03.007 – Standards for electronic filing – Rules</p>
West Virginia			
Wisconsin			
Wyoming			

Additional comments:

Full text of email:

Aloha and happy holidays!

There is a legislative proposal to make the following changes to our laws for nonprofits. Does any other states allow the following? or actively disallows the following? Any strong pros or cons?

- 1) Voting by ballot through email by members. So the change would allow any vote that can be taken at an annual or special meeting to be done by ballot through email. We don't allow ballot votes at all right now.
- 2) Email notice for directors meetings (instead of snail mail).
- 3) Electronic meetings of members (not directors, but members in a membership org). Right now, I think we require physical presence.

Any help would be much appreciated!

Best,

Tung

Tung Chan

Commissioner of Securities

Department of Commerce and Consumer Affairs

335 Merchant St.

Honolulu, HI 96813

Phone: (808) 586-2744