Nonprofit Corporations in the Digital Age: Using E-Mail and Other Technology for Notice and Voting (Part 2)

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This is the second article in a two part series exploring ways nonprofit corporations can use e-mail and other electronic transmissions. This article will discuss how nonprofit corporations can allow members to vote by electronic transmission.

1. What Types of “Electronic Transmissions” can Nonprofits use for Voting Purposes?

As discussed in part one of this series of articles, our state legislature has defined an “electronic transmission” as an electronic communication that:

(1) Does not directly involve the physical transfer of a record as a tangible medium;

(2) May be retained, retrieved, and reviewed by the sender and the recipient thereof; and

(3) May be directly reproduced in a tangible medium by the sender and recipient.

RCW 24.03.005(12).

Essentially, this means that an electronic transmission could be any communication that is transmitted electronically; does not involve a paper transfer; and may be stored, easily retrieved, and later printed on paper. Id. E-mail is a perfect example of an electronic transmission, but the definition also includes more sophisticated electronic systems such as online ballot systems that produce a storable receipt for voting purposes.

2. Member Voting by Electronic Transmission.

If a nonprofit corporation’s bylaws or articles of incorporation permit, members may vote on proposals, directors, or officers by electronically transmitted votes. Id. Members voting by
electronic transmission are present for all purposes of quorum, count of votes, and percentages of total voting power present. RCW 24.03.085(3). Like voting by postal mail, the name of each candidate and/or the text of each proposal to be voted on must be set forth in a record accompanying or contained in notice of the meeting in which the election will be held. RCW 24.03.085(3).

\( a. \)  **Establishing an electronic voting system.**

To allow members to vote by electronic transmission, a nonprofit corporation must first designate an address, location, or system to which a ballot may be electronically transmitted. RCW 24.03.085. There are at least two ways in which a nonprofit corporation could establish an electronic voting system.

First, members could potentially send in ballots by e-mail. Such a vote would be “executed” as long as there was sufficient information to determine the sender’s identity with respect to the e-mail vote. RCW 24.03.005(14). For example, members could register their e-mail addresses with a nonprofit corporation, and the corporation could send the members ballots by e-mail. Members could then respond to the ballots by e-mail, stating how they cast their votes.

Second, a corporation could set up an electronic network or website where members could submit their vote. In order to ensure proper voting under the statute, the website would need to be set up so that:

1. The online ballot system was accessible to all members wishing to vote online;
2. Notice of the location of the online ballot and specific instructions on how to vote were sent to members wishing to vote online; and
3. There would be sufficient information to determine the voter’s identity;
4. Vote results could be stored and reprinted on a tangible medium if necessary.

The time and expense of creating a system for voting by electronic transmission will vary depending upon the sophistication of the voting system. Nonprofit corporations considering creating a system for electronically transmitted voting should consider the voting system’s benefits to members, the security concerns regarding casting votes by way of the voting system, and the cost of creating and maintaining a voting system. An electronic voting system could be as simple as replying to an e-mail or much more sophisticated to ensure votes are authentic and secure.
b. **Director’s inability to vote by electronic transmission.**

Meetings of the board of directors must be held at a physical location within or without the state. RCW 24.03.120. Washington’s Nonprofit Corporation Act does not provide for board members to vote by electronic transmission. RCW 24.03.085. Although directors may not vote by e-mail, directors may participate in a board meeting by means of a conference call. RCW 24.03.120.

c. **Action without a meeting taken by electronically transmitted votes.**

Although directors may not vote in board meetings by electronic transmission, members and/or directors may take action without a meeting so long as there is unanimous consent in the form of a record. RCW 24.03.120. Because a “record” as defined by Washington’s Nonprofit Corporation Act includes information inscribed in an electronic transmission, an action by members or directors without a meeting may be taken by a unanimous e-mail vote. See RCW 24.03.005(18).

3. **How Can Your Nonprofit Corporation Best use Electronic Transmissions for Voting and Notice?**

If your corporation feels that e-mail or other technology can assist in allowing members to vote, it may be in your nonprofit organization’s best interest to revise your bylaws and/or articles of incorporation. Once the bylaws or articles are amended, members can choose if they would like to electronically vote. By creating a process for electronic voting, your nonprofit corporation may be able to use modern technologies to save on costs and resources.

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