



**Voting rights and processes are established by state legislatures. Because most states have adopted a version of the Model Nonprofit Corporation Act<sup>1</sup>, I use it as my starting point for this column. However, it is very important that you consult your local statutes for variances.**

them to deliver the resolution to each director by mail, fax, or email. The important elements to include are:

- acknowledgment and consent for the vote to be taken without a meeting,
- acknowledgment of relevant state law and/or a specific provision in the board's bylaws,
- a short statement of the factual background information related to the issue at hand,
- the proposed resolution in plain language, and
- a signature line for each director.

Also, be sure to document the vote as you would any other vote. If the vote is cast by signing and faxing a document, save all transmissions. If it is by an emailed statement of approval—such as, “I vote yes.”—save the emails. If there is any dissension later, you have proof all directors voted, and that all were in favor of the resolution.

### Alternative: Call a Special Meeting

If you cannot achieve unanimity but must act before the next board meeting, call a special meeting by telephone. Follow notice requirements for a special meeting, and provide a call-in conference line so all participants can attend and be heard.

Standard board meeting rules apply. That is, first, you need a quorum in order to conduct business and, second, you need only achieve a majority rather than 100 percent agreement.

### Hybrid and Proxy Voting

I have a few final words of caution.

First, you should never, ever allow ballots to be cast in a hybrid way: partly in-person at a meeting and partly by a mailed, faxed, telephoned, or emailed ballot prior to the meeting. *Robert's Rules of Order* is firm on this.<sup>4</sup>

This is because every board resolution should be thoroughly discussed. Your directors should be confident that they understand the underlying facts, policies, finances, and effects on operations. If you allow them to call in their votes before the discussion begins, they are missing important information that might change the way they look at an issue.

Second, directors should never, ever, ever vote by proxy. Proxy voting means giving one's vote to another person to exercise. This is tolerated as a way to engage shareholders of a for-profit corporation or the members of a nonprofit membership organization, but it is forbidden for the directors of any corporation—be it for-profit or nonprofit.

If you have been permitting proxy voting at your board meetings, you should immediately cease this practice. It is a violation of every state nonprofit corporation law, and a breach of your board's fiduciary duty. ■

#### ENDNOTES:

1. See the Model Nonprofit Corporation Act, Third Edition (August 2008), which is published by the

American Bar Association Section on Business Law's Committee on Nonprofit Corporations.

2. See Section 8.21 of the Model Nonprofit Corporation Act.
3. In Illinois, the board may provide an alternative voting process in its articles of incorporation or bylaws (see the Illinois General Not For Profit Corporation Act of 1986, 805 ILCS 105/108.45). The Model Act does not allow for this kind of variance.
4. See *Robert's Rules of Order*, Tenth Edition, Chapter XIII Voting, p. 409.



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