

---

# Is Your Nonprofit Corporation Up To Date?

By Robert D. Kaplow

As attorneys, we are often given the opportunity to serve on boards of nonprofit corporations and many of our clients are also very active in various charitable entities. However, it is important to understand the laws related to nonprofit corporations and their impact to ensure that nonprofit corporations remain up to date and in accordance with the law.

For example, recently, Governor Rick Snyder approved three laws that affect nonprofit and charitable corporations under Michigan law – Acts Nos. 557, 558 and 559 of 2014. In general, Act No. 557 adds many concepts to the Nonprofit Corporation Act that are contained in the Michigan Business Corporation Act. According to the Senate Fiscal Agency's analysis, Act No. 557 does the following, among other things:

- Allow electronic voting on, and notice of, various corporate matters.
- Revise voting requirements for the merger or dissolution of a corporation.
- Allow a corporation's board, or an individual the board designated, to appoint one or more nonexecutive committees to assist in conducting the board's affairs.
- Allow a nonprofit corporation to provide "services in a learned profession" (i.e., services provided by a dentist, osteopathic physician, physician, surgeon, doctor of divinity or other clergy, or an attorney at law).
- Limit members' and shareholders' ability to obtain certain corporate information.
- Revise a provision that allows a corporation's articles of incorporation to eliminate a volunteer's liability to the corporation for money damages, and extend this provision to a director.
- Revise and expand upon provisions concerning the indemnification of a director, officer, employee, non-director volunteer, or agent, who is or is threatened to be made a party to a civil, administrative, or criminal suit, action or proceeding.
- Delete a filing fee applicable to foreign corporations and add other filing fees that would apply to foreign corporations.

---

In addition, Act No. 558 prohibits a nonprofit corporation or other entity organized for charitable purposes from merging, converting or dissolving without the consent of the Attorney General. Therefore, any nonprofit corporation that is going to be terminated must first apply to the Attorney General and obtain the Attorney General's consent. The Department of Licensing & Regulatory Affairs will not file a certificate of dissolution or merger without the accompanying written consent of the Attorney General, or an affidavit indicating that the Attorney General has failed to provide his consent within 120 days after the request for the consent.

The Michigan Nonprofit Corporation Act was amended a few years ago to provide for electronic transmission and remote communications. This has now been broadened so that a member of a nonprofit corporation or a shareholder of a nonprofit corporation can participate in a meeting through conference telephone or other electronic means, unless the articles of incorporation or bylaws restrict this ability. This is a change from prior law which required that such participation be authorized in the articles of incorporation or bylaws. Now, this will be allowed unless otherwise prohibited in those documents.

Nonprofit corporations in Michigan are either shareholder corporations or member corporations. If the entity is a member corporation, then there are differences as to whether the directors are elected by the members or are elected by the directors themselves.

The articles of incorporation of a nonprofit corporation may provide that any action by the shareholders or members may be taken without a meeting, without prior notice and without a vote, if written consents approving the action taken are signed and dated by the shareholders or members, having not less than the minimum number of votes necessary to approve the action. This written consent can be provided through electronic transmission. Interestingly, there is no similar provision allowing for action without a meeting by less than unanimous consent by the directors of the nonprofit corporation.

The new law also allows for voting by ballots and having voting trusts. It would appear that many of the new law provisions are aimed at the larger nonprofit corporations.

The new law also restricts the ability of a shareholder or member to obtain records of the nonprofit corporation. The person who wants to obtain the records must submit a written demand describing with reasonable particularity the purpose of

---

the inspection, the records that are desired to be inspected, and that the records sought are directly connected with that purpose. Furthermore, the purpose must be a “proper purpose.” A proper purpose means a purpose that is reasonably related to the person’s interest as a shareholder or member.

Of course, if you have any questions regarding a nonprofit corporation that you are involved with, please feel free to contact me.

---

© Maddin Hauser Roth & Heller P.C. All Rights Reserved. | 248.354.4030 | 248.354.1422 Fax