NONPROFIT GOVERNANCE
FAQs ABOUT BOARD VOTING

A nonprofit organization is governed by its Board of Directors. Nonprofit boards can range in size from very small\(^1\) to very large.

Because directors of nonprofit boards are considered fiduciaries, they have a duty of care and a duty of loyalty. Generally their duty of care requires that they attend board meetings and familiarize themselves with matters before the board.

Despite differences in size, one thing that these boards may share in common is a difficulty in obtaining the necessary board votes to take actions that are required of a board under D.C. law.

As explained below, under D.C. law board members may not delegate to anyone else their responsibility to attend meetings and vote on matters before the board. However, there are other actions that a nonprofit board may take to facilitate required board actions.

**How many directors must vote to take action?**

Unless a nonprofit’s articles or bylaws indicate otherwise, a majority of the directors in office at the time of the meeting must be present in order to establish a quorum. D.C. law does allow an organization to set the quorum at less than 50% in its articles of incorporation or bylaws. However, any quorum set must provide that at least one-third of the board members (but no less than two directors) are present.

**What if all of the board members are not physically present?**

Under D.C. law, a quorum of directors does not need to be physically present in order for the board to take action. Being “present” at a board meeting includes both participating in person as well as by remote communications that permit all of the other directors at the meeting to hear each other at the same time.

Thus, board members who are not able to attend a particular meeting in person may participate by phone or skype. When members are not participating in person, it is important to note their presence in the minutes of the meeting.

**Can a board member send an “alternate” or give another director his or her proxy to vote at a meeting?**

If board members cannot be present at a meeting, they may not give other directors a proxy to vote on their behalf, or send someone in their place. While the practice

\(^1\) Under D.C. law, a nonprofit corporation must have a minimum of three directors.
of using proxy voting is common for shareholder votes, it is not permitted of board members – regardless of whether or not their proxy is delegated in writing.

This rule against proxy voting is identical to the rules under the old D.C. Nonprofit Code, and is not unique to D.C. It is the law in other states as well.

**Can board members vote by a ballot or email?**

As noted above, board members must be “present” to vote. If a board meeting is called to consider a matter on which the board must act, this also means that they may not submit their votes to the board by email or paper ballot.

**Are there alternatives to facilitate board action?**

There are a variety of strategies that nonprofit organizations can implement when they may have difficulty obtaining the necessary quorum to take board action.

- **Unanimous Consent.** Instead of holding a meeting, a board may act by using unanimous written consent (i.e., signed by all members entitled to vote on the action). For example, if a Board has seven members, the Board may act if all seven directors agree in writing to take the proposed action. If the organization hears from five of the seven directors, and all five agree to take the action, it is not sufficient, since the organization did not get the agreement of all seven directors.

- **Delegation to Board Committees.** Large boards that have difficulty attaining quorums may operate more efficiently by delegating certain responsibilities to board committees comprised of a smaller group of qualified board members. All the members of the committee must be members of the Board. However, as noted below, under D.C. law certain responsibilities may not be delegated to these committees.

- **Advisory Boards.** Large boards often are the result of efforts by the nonprofit to encourage involvement of donors and respected members of the community. An alternative for nonprofits seeking broad involvement of non-board members is to form advisory boards. Advisory committees provide a consulting role to the board. These boards may provide a valuable service to the nonprofit board and offer a means to engage participants, without being subject to the same governance requirements and responsibilities as board members.

Under the D.C. Nonprofit Code, advisory committees cannot be given the authority to exercise any of the powers of the board. Instead, an advisory committee makes a recommendation for the board’s approval. Therefore, non-board members may serve on an advisory committee. However, an advisory committee can have the authority to exercise the duties a board could also delegate to an officer, employee or agent.

For example, suppose an organization is planning a fundraising dinner. The Board of Directors would normally approve the budget for the event, but it could delegate to an advisory committee – just as it could delegate to its staff – the authority to select the
venue, hire the caterer and entertainment, send out invitations, and raise funds for the event.

- **Designated Bodies.** Finally, in some instances, the nonprofit’s articles of incorporation or bylaws may provide for certain actions or responsibilities normally taken by a board to be delegated to a “designated body”.

A designated body consists of individuals (not all of whom need be directors) that have the authority to exercise some, but not all of the powers of the board.

While amending the bylaws or articles of incorporation of an organization to permit this kind of delegation will require careful consideration, it can have the effect of removing from the board all authority, responsibility, and fiduciary duties related to powers vested in the “designated body”.

For example, suppose the board of an organization creates a designated body with the responsibility to review the executive director’s performance and set the executive director’s salary. Under D.C. law, once the designated body makes its decision, it is final. By creating the designated body, the board has given up its authority to act in this area, and the members of the designated body take on all of the fiduciary duties and authority of the board.²

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² Because of these restrictions, very few organizations make use of designated bodies. These bodies are typically reserved for organizations, such as medical societies and bar associations, which employ them for the purpose of disciplining members, and by religious denominations that use them to sanction members of the clergy.

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**How are board committees formed?**

A vote of a majority of all directors in office is required to create a board committee. A majority of the directors must also approve who is appointed to the committee. Under D.C. law, a board committee may consist of one or more directors.

**What kinds of actions may be delegated to a committee of the board?**

While committees and subcommittees may be used for many different functions, under D.C. law a board may not delegate the power to:

(i) adopt, amend or repeal bylaws,

(ii) fill vacancies on the board or on any board committee,

(iii) authorize distributions of a substantial portion of the organization’s assets, or

(iv) (with respect to membership organizations), take any other action that the law requires the members to approve.

Examples of functions that boards might be able to delegate to committees include:

(i) selecting the independent auditors for the organization,

(ii) approving the CEO’s compensation,

(iii) approving the annual budget; and

(iv) appointing investment advisors to supervise the investment of the organization’s reserve fund or endowment.
Additional Information

Welcome to the Board of Directors, an orientation manual for Nonprofit Board members.


See also several Board Source Publications at:

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