



## **AN INTRODUCTION TO THE NEW D.C. NONPROFIT CORPORATION ACT**

By: Katharine Meyer, Esquire  
Partner, Association Practice Group  
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Earlier this year, the new District of Columbia Nonprofit Corporation Act of 2010 (the "New Act") went into effect. While the New Act is more detailed than the old statute, it ultimately can provide an organization with more flexibility with its corporate structure. Many of the new requirements are default rules, which only apply if an organization's Articles of Incorporation or Bylaws do not address the situation. Additionally, the New Act updates the law to provide for the use of new technologies for recordkeeping and communications.

The New Act applies to all nonprofit corporations incorporated in the District of Columbia after 1962. Any District of Columbia corporation incorporated prior to 1962 will have until December 31, 2013 to file a notice with the District of Columbia stating that it does not wish to be governed by the New Act. In the event an organization does not file this notice, it will be subject to the New Act.

Set forth below are a few of the material changes contained in the New Act:

### **A. General Provisions.**

1. Change to Biennial Reports Deadline. Biennial reports are now due April 1st, as opposed to January 15th. Reports may now be filed online.
2. Use of New Technologies. The New Act is designed to let organizations use modern technology to conduct its business and communications. For instance, if it is authorized in an organization's Articles or Bylaws, member meetings may be held electronically. Additionally, the New Act states that corporate records can be maintained electronically.
3. Restated Articles. Restated Articles of Incorporation are now accepted by the D.C. Department of Consumer and Regulatory Affairs. Therefore, a nonprofit that has amended its Articles multiple times now has the option of codifying those amendments into one main document.

4. Creation of Nonprofit LLCs. Limited liability companies may now be formed for a nonprofit purpose. This gives a nonprofit corporation the ability to create a domestic LLC for certain activities, while at the same time protecting the nonprofit corporation from liability.

## **B. New Governance Provisions**

1. The Ability to Create a “Designated Body”. Members may now appoint “delegates” to vote in a representative assembly for the election of directors and other matters. This body may be vested with some powers of the Board or members.
2. Board Quorum Requirements. The New Act has established new quorum requirements. A quorum may be set forth in the organization’s Articles or Bylaws, as long as such quorum is not less than one-third of the directors in office, or two directors, whichever is greater. If the Articles and Bylaws are silent as to quorum, the default quorum is now a majority of directors in office before a meeting begins.
3. Change in Officer Requirements. Every nonprofit must have at least two officers. One must perform the duties of a President and one must perform the duties of a Treasurer. These positions cannot be held by the same person.
4. Committees. An organization can have two types of committees, Advisory Committees and Board Committees. The members of Advisory Committees do not need to be members of the Board. However, they have no authority to exercise any power of the Board. On the other hand, Board Committees are comprised exclusively of Board members, and have some limited authority to act on behalf of the Board. The New Act decreases the minimum number of directors required to be on a Board Committee to one.
5. Fiduciary Duties. Common law fiduciary duties are now codified into the New Act. The New Act states that, in their performance of duties to the organization, directors and officers must act in good faith, in a manner that person reasonably believes to be in the best interests of the organization, and with the care that a person in a like position would exercise under similar circumstances.
6. Indemnification. Under the New Act, an organization must indemnify a director or officer to the extent he or she was successful in the defense of any proceeding to which he or she was made a party because of his or her position with the organization. In such a case, the organization must pay for the reasonable expenses incurred by the director or officer in that proceeding. Additionally, an organization has the authority to limit or broaden indemnification of its directors and officers in its Bylaws. However, with non-mandatory indemnification,

certain procedures must be followed in order to properly authorize the indemnification of a director or officer.

Ultimately, the New Act provides D.C. nonprofit organizations with more flexibility. This flexibility will give many organizations the ability to create a governance structure that works for their organization. However, because the New Act contains many material changes from the prior act, it is important for any D.C. nonprofit organization to review its Articles of Incorporation and Bylaws to determine if these documents need to be updated or revised.