

# 2/8/22 Membership Organizations and the New Washington Nonprofit Corporation Act

As a friendly reminder, this presentation is intended for educational purposes. Legal information is NOT the same as legal advice. This presentation is not intended to create an attorney-client relationship. All situations are unique, so please consult with an attorney to obtain advice about how the law applies to your specific question.

## **Q: Will there be a training for condo associations?**

A: OSOS will be hosting a webinar for community associations (COA, HOA) on Apr 8! Send your email address to [teresa.glidden@sos.wa.gov](mailto:teresa.glidden@sos.wa.gov) and Teresa will make sure you get an invitation. The event will be listed here:

<https://www.sos.wa.gov/charities/training/workshops.aspx>

There are other laws that apply to HOAs

<https://app.leg.wa.gov/rcw/default.aspx?cite=64.38>. For condos, see

<https://app.leg.wa.gov/RCW/default.aspx?cite=64.32> and

<https://app.leg.wa.gov/RCW/default.aspx?cite=64.34>. It may be best to talk with a lawyer familiar with these laws.

## **Q: Is this applicable to 501c(6) orgs?**

A: The WA Nonprofit Corp act distinguishes between a nonprofit and a “charitable” nonprofit (see slide 4 of the presentation). There are specific provisions under the Act that apply only to charitable nonprofits. Generally, membership rules apply to all nonprofits as long as a nonprofit has statutory members. 501(c)(6) is a federal tax determination, not a state law issue.

## **Q: Did you define Statutory member?**

A: Statutory member definition: 1) Mentioned in the Articles (Post-1/1/22), 2) Consented to membership, 3) Rights and obligations (typically voting). See

<https://app.leg.wa.gov/RCW/default.aspx?cite=24.03A.315>

**Q: What if a person is a member of the national organization and by virtue of that becomes a member of a constituent society? Constituent society cannot have members separate from the National Organization.**

A: This is something that you would need to work with an attorney on. Likely the national organization and the local organization have bylaw provisions that dictate who the member belongs to.

**Q: After reading the new RCW, it "appears" members must be allowed to vote on changes to Bylaws that change dues, fees and assessments. Is my assumption correct?**

A: By default, this is true.

**Q: Do pre-2022 organizations need to change existing bylaws? If so, by when?**

A: They don't need to specifically change their bylaws to say if they have members because pre-Jan 1 will be read to include members. It is recommended to have the bylaws reviewed to be sure you are in compliance with new law. It would be better to do this sooner than later.

**Q: If a nonprofit was formed prior to 2022, and bylaws that state the organization has members, but does not assign them voting rights, etc, are those members now considered statutory members even though the org did not intend them to be?**

A: There is a high likelihood or risk that they would be considered statutory under the new law. It is recommended to have the bylaws reviewed.

**Q: Can a member resign from a HOA?**

A: There is another law that applies to HOAs: <https://app.leg.wa.gov/rcw/default.aspx?cite=64.38>. For the act that applies to nonprofits, RCW 24.03A.370 Resignation of members. (Effective January 1, 2022.) (1) A member of a membership corporation may resign at any time. (2) The resignation of a member does not relieve the member from any obligations incurred or commitments made before resignation.

**Q: You mention permitting certain inspection of records. Can you elaborate?**

A: A member must reasonably have access to books and records. There are certain ways and timelines that can be laid out for those inspections to take place. Generally there are important documents such as 990's and other financial records so members can understand that the organization is healthy.

**Q: What rights might a non-member have when applying to be a member? What rights does the nonprofit have to deny membership?**

A: As a baseline, the nonmember does not have any rights. The nonprofit is allowed to accept or not based on its own policies and procedures and is held to those.

**Q: Regarding filling a member-elected board vacancy, does 24.03A.535 require an appointee to serve for the full unexpired of the originally elected board member, or can the board provide for a shorter term (e.g., to next regular election)?**

A: This is likely controlled by the bylaws. The organization can adjust their bylaws to what they want to be the term. Otherwise **RCW 24.03A.515** (5) Except as provided in the articles or bylaws, the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.

**Q: If a charitable organization has other organizations as members (say, a "coalition") would those organization members then be represented by delegates?**

A: That is a good use of delegates. The member organizations would elect a representative to be a delegate to then represent their interests at a delegate meeting.

**Q: Is a membership vote required for changing a fee for an optional activity, not affecting all members?**

A: This is something that should be discussed with an attorney. It likely depends on the facts and circumstances.

**Q: Can you challenge a termination under RCW24.03A.375?**

A: This is something that should be discussed with an attorney.

**Q: If the bylaws have a statement that nonconflicting rules in a parliamentary authority (like Robert's Rules of Order Newly Revised) will apply, do the rules in that parliamentary authority satisfy any provision in the Act that says "unless otherwise specified in the bylaws"?**

A: This would be open for debate, especially depending on the matter. It would be best practice to cite to parliamentary section that is controlling.

**Q: Who should be considered by a non-profit to review their by-laws for compliance?**

A: Nonprofit attorneys can review bylaws. Your local bar association may have a referral service. Also try <https://www.wsba.org/for-the-public/find-legal-help>. [How to find a lawyer](#) information by Legal Voice.

**Q: How does our organization find someone qualified to review our Bylaws?**

A: Same answer as above.

**Q: Does this RCW apply to 501(c)(3) that is not a membership nonprofit?**

A: If an organization does not have statutory members, then the provisions on members do not apply. The new WA Nonprofit Corp Act does apply to nonprofits that are 501c3s. You might be more interested in viewing our Dec. webinar on the Act: <https://vimeo.com/652708683>

**Q: Does all of these changes only apply to those orgs that are articles of incorporation are designated in WA or also those who are doing business in WA? I work for an AMC.**

A: This law applies to organizations that are incorporated in Washington State. Out of state organizations that are doing business in WA have some requirements under Article 8 of the new law <https://app.leg.wa.gov/RCW/default.aspx?cite=24.03A>. There are other state laws that may be relevant as well.

**Q: How do you “bring” a membership list to a remote meeting?**

A: You can use a Google Doc, PDF, or a link to where members can access it, given that hard copies cannot be distributed.

**Q: Can you speak to privacy issues regarding the need to include member addresses in a publicly available list**

A: Membership lists are not usually public in the sense of what we think is public. They might be public to the board or other members, but likely would not be disclosed to the state or government.

**Q: How can an officer be a non-board member? Are they not officers of the board?**

A: See the December training on the Act <https://washingtonnonprofits.org/the-washington-nonprofit-corporation-act/>

**Q: Follow-up: So we don't have to invite members to board meeting? Our board meets regularly for "board" meetings. Members are welcome to attend, but they cannot vote. Do they get invitations?**

A: Not unless bylaws or articles state otherwise

**Q: Our current organization does not refer to "Directors", we have "Trustees". Is this a problem (Articles/Bylaws)**

A: State law defines "directors" as "an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position." Director and Trustee is used interchangeably. One can call them Trustees, the law calls them Directors.

**Q: We're an HOA. I know we need not provide notice of board meetings, but I thought we had to allow them to be present at all board meetings?**

A: There are other laws that apply to HOAs  
<https://app.leg.wa.gov/rcw/default.aspx?cite=64.38>. For condos, see  
<https://app.leg.wa.gov/RCW/default.aspx?cite=64.32> and  
<https://app.leg.wa.gov/RCW/default.aspx?cite=64.34>. Talk with a lawyer.

**Q: What if we have an annual meeting but do not get a quorum? is that still a legitimate annual meeting?**

A: If you do not have a quorum the meeting should not proceed. If it does, things can be a little murky depending on the org's facts and circumstances.

**Q: Meeting Proxies: our HOA has had a big problem with certain members going door to door and "forcing" people to give them their proxies. Our original docs allow proxy voting. We also have no way to verify the authenticity & no individual willing to do the leg work to check. To solve this, we decided all proxies should be notarized and mailed in to the principal offices. Thoughts?**

A: There are other laws that apply to HOAs  
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<https://app.leg.wa.gov/RCW/default.aspx?cite=64.34>. Talk with a lawyer.

**Q: If there is not a quorum at the annual membership meeting, when board members are elected. Is that a valid election?**

A: Similar answer as above - quorum needs to be met. But with the shift in statute, pre 2022 orgs don't have clear boundaries around who members may or may not be. Makes sense to meet with an attorney.

**Q: Does everyone have to approve when Unanimous Written Consent is used?**

A: Answered in presentation. For member meetings, action may be taken without a meeting if the action is taken by **all** the members entitled to vote on the action.

**Q: How do you determine who made a motion (and seconded it) when action occurs without a meeting?**

A: Unanimous written consent and written ballots don't require a formal motion or "second".

**Q: If people have an opportunity to vote or withhold a vote for each candidate for director.... Are we still doing yes/no voting on director candidates? Does the new statute not specify plurality for electing directors? Plurality doesn't make sense for yes/no voting for the candidates.**

A: Answered live. Plurality is defaulted or allowed. Vote for what candidate one wants.

**Q: If you have 10k members (non-voting) across the world, is an annual meeting required?**

A: If they meet the requirements as statutory members - yes. Should meet with an attorney to determine this and figure it out from there.

**Q: Is there a records retention requirement for received ballots?**

A: See the Dec. webinar. <https://vimeo.com/652708683> Generally, you want to keep some form of record in the event that it is ever challenged.

**Q: For remote committee meetings and voting, does this also to committee meetings or only member monthly, special or annual meetings?**

A: See the December training. <https://vimeo.com/652708683>

**Q: If a membership is held by a trust, do we have to have something from the trust stating who is eligible to vote? How would that need to be presented to us?**

A: There are other laws that apply to HOAs <https://app.leg.wa.gov/rcw/default.aspx?cite=64.38>. For condos, see

<https://app.leg.wa.gov/RCW/default.aspx?cite=64.32> and <https://app.leg.wa.gov/RCW/default.aspx?cite=64.34>. Talk with a lawyer.

**Q: Could you address term limits for executive board members?**

A: This is covered in the December training. <https://washingtonnonprofits.org/the-washington-nonprofit-corporation-act/>

**Q: Can you describe the difference between “Member” and “Advisory” committees?**

A: Member committee - anyone that can act on behalf of the members. Kind of like a delegate committee. An advisory committee does not have any power, they simply advise and make recommendations.

**Q: Can a board adopt a resolution to allow for majority rule on email voting?**

A: No - unanimous consent or ballot voting. Emailing could be ballot voting but you need to look at your bylaws and procedures.

**Q: Fact check: 501c3 status means your organization is a charity. True or false.**

A: “Charity” is a word people may use broadly. Under WA State law, an organization is organized for a “charitable purpose” if the purpose: would make a corporation organized and operated exclusively for that purpose eligible to be exempt from taxation under section 501(c)(3) of the internal revenue code; or is considered charitable under applicable law other than this chapter or the internal revenue code.

**Q: But the point is that if someone joins AT a meeting, they are not a voting member at that meeting because the record date had to be set well before the meeting, right?**

A: If it is a live meeting, yes.

**Q: In Rights & Obligations, you discussed "fix and collect dues". Do we have to put the amount of dues in the Bylaws or can we just have the amount of dues in our standing rules?**

A: Answered live. Bylaws must specify and point to process for setting of dues (i.e., they can appear somewhere other than bylaws as long as the bylaws point to it).

**Q: To clarify, are remote meetings allowed by default or are they only allowed if they are explicitly included in our bylaws?**

A: Answered live: should be in the bylaws. Might see some shifts for orgs with older bylaws with telecom provisions that have allowed conference calls; this language tends to be broad and can be stretched to include things like Zoom. Next time you make amendments, make sure to include tools like Zoom and that are not explicit to, say, phones.

**Q: If our organization uses electronic ballots for electing board members, are there specific topics we need to discuss at the annual membership meeting?**

A: Answered live - It depends on what articles and bylaws say on whether certain things need to happen at the meeting.

**Q: The law states that written ballots must list individuals pro or con. Does the law eliminate voting for a slate of candidates in all circumstances?**

A: This is true in circumstances for when a ballot vote is used in lieu of an in-person meeting. It should be noted that ballots can be used at in-person meetings in which case the rules for ballots without a meeting under RCW 24.03A.480 do not apply. Ballots at in-person meetings can have slate voting.

**Q: We do a ballot prior to annual meeting to elect directors. Under the old Act, those who voted were considered present to meet quorum. Is that still the case now?**

A: Yes.

## Resources:

- The Washington State Nonprofit Handbook will be updated in Spring 2022. It will be available on Communities Rise's website here: <https://communities-rise.org/resources/nonprofit-cbo/>.
- The WA Nonprofit Corporations Act is available here: <https://app.leg.wa.gov/RCW/default.aspx?cite=24.03A>
- Prior trainings for the new act are available: <https://washingtonnonprofits.org/the-washington-nonprofit-corporation-act/>