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Issue #7

New Voting Rules for Non-Profit Boards

Nonprofit organizations often have difficulty bringing together community board members to meet the management requirements of advice and oversight. Action must sometimes be taken between board meetings to meet immediate needs. To accomplish action quickly, nonprofit corporations generally have had to obtain unanimous written consent of the board. This process could be cumbersome, and, if a board member was unreachable, ineffective.

A solution has been fashioned for this problem. Colorado has adopted new legislation, effective August 2008, which will allow the boards of non-profit organizations to take action without a meeting through a written (including email) vote that requires only the same majority of participation as would have been required at a regular meeting.

The new procedure is intended to facilitate board actions between regular meetings and allow volunteer boards to address time-sensitive matters.

Because most non-profit organizations already have specified voting procedures in their bylaws, an amendment to the bylaws (and possibly the articles of incorporation) will likely be required in order to take advantage of this new procedure. The bylaws provisions should be tailored to the needs of the organization. For example, the organization might state that certain types of action may be taken only at a board meeting, if there are sensitive items that the board feels require personal discussion. Further, boards should carefully consider whether this action will be taken regularly. Board of directors' fiduciary duties might not be met by a board that met infrequently and took many actions by electronic meeting, because part of the fiduciary duty of due care includes engaging in deliberation about the business of the organization.

Boards should also ensure that there are sufficient administrative resources to manage this process. A volunteer secretary may be able to keep records of actual meetings, but might not have the time to manage frequent email votes.

The actual text of the statutory amendment is set out below.

7-128-202. Action without meeting. (1) Unless otherwise provided in the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a board of directors' meeting may be taken without a meeting if a notice stating the action to be taken and the time by which a director must respond is transmitted in writing to each member of the board and each member of the board, by the time stated in the notice:

- (a) Votes in writing for such action; or
- (b) (I) Votes in writing against such action, abstains in writing from voting, or fails to respond or vote; and
(II) Fails to demand that action not be taken without a meeting.



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