

RECENT AMENDMENTS TO REVISED IOWA NONPROFIT CORPORATION ACT

Willard L. Boyd III
Nyemaster Goode, P.C.
wlb@nyemaster.com

This past session, the Iowa General Assembly passed House File 172, which was one of the Iowa State Bar Association's affirmative legislative proposals. The legislation updates the Revised Iowa Nonprofit Corporation Act, Iowa Code Chapter 504 ("Act"). Many of the amendments are based on the ABA Model Nonprofit Corporation Act, Third Edition ("MNCA"), developed by the American Bar Association Business Law Section Nonprofit Organizations Committee. Below is a description of the amendments to the Act, which become effective July 1, 2015.

General Powers of a Nonprofit Corporation. Iowa Code section 504.302 has been amended to expressly provide that a nonprofit corporation may serve as a trustee of a trust for which the nonprofit is a beneficiary. The purpose of this amendment is to make clear that a nonprofit corporation may serve as a trustee in the situation where it is a beneficiary of a charitable trust.

Registered Agents. Iowa Code section 504.501 has been amended to permit limited liability companies to serve as registered agents for nonprofit corporations. The current pre-amended statute permitted business corporations and nonprofit corporations to serve as registered agents, but was silent with regard to limited liability companies.

Annual Meeting of Members. Iowa Code section 504.701 has been amended to provide that the annual meeting requirement for members can be replaced by annual meetings of delegates to the extent a nonprofit corporation has both members and delegates. The term "members" is defined in the Act to mean an individual or entity who on more than one occasion, pursuant to the corporation's articles of incorporation or bylaws, has a right to vote for the election of a director or directors of a corporation, irrespective of how a member is defined in the articles of incorporation or bylaws. A "member" is distinguishable from a "delegate" in that a "delegate" contemplates individuals elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters. Delegates are typically used with larger trade organizations.

Member Voting. Iowa Code section 504.712 has been amended to clarify the rules for member voting. The amended section now provides that unless provided in the articles of incorporation or bylaws, each member shall be entitled to one vote on each matter submitted to a vote of members.

Terms of Directors. Iowa Code section 504.805 has been amended to clarify that the articles of incorporation or bylaws of a nonprofit corporation may specify the terms of the directors. The Act continues to provide that, to the extent the articles of incorporation or bylaws are silent with regard to the length of the term of a director, the term is to be one year.

Directors Voting. Iowa Code section 504.825 has been amended to provide that a director is presumed to have assented to an action if present at a meeting and the director either does not object at the beginning of the meeting to holding it or transacting business, or dissents or abstains from action. The amendment is similar to a provision in the Iowa Business Corporation Act. It is intended to give certainty with regard to votes taken by the board of directors.

Duties of Directors to Disclose Information. Iowa Code section 504.831 has been amended to incorporate the recently adopted Iowa Business Corporation Act provision that makes clear that, as part of a director's duties, a director must disclose information to other directors that the director knows is not already known to such other directors when such information is material to the discharge of their decision-making and oversight functions. There are exceptions to this disclosure duty, which are identified in the amended section. A director is not required to disclose information to other board or committee members when the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule. Although this duty is "new" to the Act, it is not intended to give rise to a new legal duty, but rather reflect the common law on fiduciary duties of directors of nonprofit corporations. In addition, directors still have the benefit of liability protection under the business judgment rule as well as the liability shield under Iowa Code sections 504.832 and 504.901.

Loans to Directors and Officers. Iowa Code section 504.834 has been amended to incorporate exceptions to the prohibition on loans to directors and officers for those officers and directors who are full-time employees of a nonprofit corporation. The exceptions, which are based on the MNCA, describe situations where there should not be an issue with loans made by the nonprofit corporation. Many states either have no prohibition to loans or have statutes that allow loans in certain circumstances. In addition, while the pre-amended section did not include exceptions, the comments to the Revised **Model** Nonprofit Corporation Act (1988), which the Act is based in part, makes clear that certain loans are permissible. With these exceptions expressly identified, a nonprofit board should be in a better position to determine what it can do in order to attract and retain qualified individuals to serve as full-time employees serving as officers of a nonprofit. For tax-exempt nonprofits, any loan that is made to an officer or director by the nonprofit generally would still be subject to the private inurement/excess benefit transaction restrictions under the Internal Revenue Code.

Mergers. Iowa Code section 504.1104 has been amended to make the requirements for articles of merger more consistent with the Iowa Business Corporation Act requirements. In particular, it will no longer be necessary for the plan of merger to be filed with the articles of merger with the Secretary of State's office.