



January 2021

New York State Nonprofit Virtual Membership Meetings

This past spring, as the COVID-19 pandemic spread, many New York organizations shifted to meeting virtually by video conference. Since the enactment of New York's Non-Profit Revitalization Act in 2013, the Not-for-Profit Corporation Law (NPCL) has permitted board meetings to be held via video conference, but the NPCL did not have a similar provision addressing membership meetings. To address this gap, on April 16, 2020, through Executive Order 202.18, Governor Cuomo suspended NPCL §603(b) "to the extent necessary to permit annual meetings of members to be held remotely or by electronic means." This permission originally expired on May 16, 2020, but has been extended throughout the pandemic through a series of monthly Executive Orders.

To codify the Governor's Executive Order, the state legislature then passed an amendment to the NPCL temporarily allowing meetings of members to be held partially or solely by electronic communication at the discretion of the board of directors. Under the revised NPCL §603, if a board determines that a meeting of the members will be held solely virtually, the virtual platform is considered the "place of the meeting."

For all meetings that are either solely or partially virtual, the board should implement reasonable measures to:

1. Verify that each person participating electronically is a member or a proxy of a member;
2. Provide each member participating electronically with a reasonable opportunity to participate in the meeting, including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read or hear the proceedings of the meeting substantially concurrently with those proceedings; and
3. Record and maintain a record of any votes or other actions taken by electronic communication at the meeting.

The amended NPCL language is effective June 17, 2020, and continues "for the duration of the state disaster emergency". However, the amendment was part of legislation that is set to expire on December 31, 2021. So, for the time being, the NPCL permits virtual membership meetings. However, depending on the eventual end date of the state disaster emergency, it remains somewhat unclear how long virtual membership meetings will be permitted under the NPCL.

Note also that in April 2020, the New York State Attorney General Charities Bureau issued guidance setting out best practices for nonprofits considering conducting annual or special meetings of members either entirely or partially through virtual means. This guidance



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provides practical approaches to accomplishing the three measures above, and can be referenced [here](#).

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