

## Nonprofit Law Jargon Buster: What is Proxy Voting

Proxy voting is a legal mechanism for a member of a voting body to delegate his or her voting right to another member of the voting body. In the context of nonprofit corporations, voting bodies include the board of directors as well as voting members. Some nonprofit corporations rely on proxy voting to ensure a quorum at meetings where all the directors cannot attend because it allows directors or members who have confidence in the judgment of other directors or members to vote for them. In proxy speak, the individual delegating his or her voting authority is referred to as the “principal” and the individual exercising the delegated voting authority is referred to as the “proxy” for the principal.

State Law. Many state nonprofit corporation statutes permit proxy voting. However, some state statutes limit proxy voting to member votes while others, such as Arizona, permit proxy voting for directors as well as members. Typically, the principal grants the proxy by signing an appointment form. The proxy’s authority is generally limited to a specific time period noted in the statute unless a different period of time is noted in the appointment and is revocable by the principal. For example, Arizona law states as follows:

G. The articles of incorporation or [bylaws](#) may authorize a director to vote in person or by proxy. The following provisions apply to voting by proxy:

1. A director may appoint a proxy to vote or otherwise act for the director by signing an appointment form, either personally or by the director’s attorney-in-fact. The appointment does not relieve the director of liability for acts or omissions imposed by law on directors.
2. An appointment of a proxy is effective when received by the secretary. An appointment is valid for one month unless a different period is expressly provided in the appointment form.
3. An appointment of a proxy is revocable by the director.
4. The death or incapacity of the director appointing a proxy does not affect the right of the corporation to accept the proxy’s authority unless written notice of the death or incapacity is received by the secretary before the proxy exercises its authority under the appointment.
5. Subject to any express limitation on the proxy’s authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy’s vote or other action as of the shareholder making the appointment.

Parliamentary Procedures. Interestingly, [Roberts Rules of Order](#) and other sources of parliamentary procedure generally prohibit nonprofit directors and members from voting by proxy. The rationale is that “. . . proxy voting is incompatible with the essential characteristics of

a deliberative assembly in which membership is individual, personal, and nontransferable.” See, Robert, Henry M. (2000). Robert’s Rules of Order Newly Revised, 10th ed., p. 414–415. Thus, nonprofit corporations that have incorporated parliamentary procedures such as Roberts Rules of Order or Sturgis into their bylaws may have indirectly prohibited proxy voting as a result.

Alternates. Many boards and associations permit board members to appoint “alternates”. The use of alternates is especially common in the context of organizations whose members represent various companies, governmental agencies, funders, or other stakeholder organizations. Designating an “alternate” authorized to vote on behalf of the primary member is the designation of a proxy and requires compliance with the laws governing for proxy designation.

Attendance Requirements. Proxy voting, even if allowed, may be limited to infrequent use if the nonprofit corporation has an attendance policy specifying minimum attendance requirements. For instance, bylaws may prescribe that a member can be dropped for missing three consecutive meetings or a certain percentage of meetings during the year.

Nonprofit organizations that permit the use of proxies or alternates should consider whether permitting proxies is conducive to engaging the board of directors in hands on governance of the organization. They should also check their state nonprofit corporation statutes, their governing documents, and if applicable, any parliamentary procedure they may have adopted to determine whether current practice is in compliance with the laws governing proxy use.