

## THE NEW WASHINGTON NONPROFIT CORPORATION ACT TAKES EFFECT JANUARY 1, 2022: **IS YOUR ORGANIZATION READY?**

The new Washington Nonprofit Corporation Act, signed into law earlier this year, will take effect on January 1, 2022. The new Act, now codified in Chapter 24.03A RCW (found [here](#)), will govern all nonprofit corporations currently governed by Chapter 24.03 RCW. The new Act is intended to modernize current law governing nonprofit corporations and to harmonize it with other relevant provisions of Washington law, provide clarity where uncertainty has existed, and create clear fallback rules for when a corporation's organizational documents do not provide specificity on a given topic.

The new Act contains a number of provisions that are important for existing nonprofit organizations, including:

- **Charitable and other nonprofit corporations:** The new Act distinguishes, in numerous provisions, requirements applicable to "charitable corporations" as opposed to the other nonprofit corporations governed by it. A charitable corporation is a domestic nonprofit corporation operated for purpose that would make the corporation eligible for 501(c)(3) status or is considered charitable under other applicable law.
- **Electronic and other notices:** The new Act contains revised rules permitting electronic notices as a default method of notice (as opposed to requiring director or member consent to receive electronic notices). The new Act also includes other changes pertaining to notices, such as requirements that certain notices be given where no such requirement previously existed (e.g., notices of meetings at which removal of a director will be considered).
- **Membership provisions:** As under existing law, the new Act does not require a nonprofit corporation to have members. But for corporations that do have members, the new Act provides much more robust membership provisions. The new Act specifies what the organizational documents must say to establish that there are members and includes other specific rules or clarifying provisions on member admission and classes, rights and duties, meetings (including remote meetings), voting and quorum requirements, and procedures for action without a meeting, among other topics.
- **Charitable assets:** Taking a new approach to regulation and protection of charitable assets, the new Act will govern charitable assets not held in trust, and it clarifies when charitable assets are held in trust (such that the Washington Trust Act Chapter 11.110 RCW would apply). The new Act further differentiates between restricted and unrestricted gifts, and provides rules concerning modifications of restrictions without court approval. Specific provisions provide protection for charitable assets in connection with merger, dissolution and other "fundamental transactions". The Attorney General's supervisory powers are clarified under the new Act, and a new charitable asset protection account, funded by additional fees paid in connection with annual report filings and certain other transactions, is established to fund Attorney General enforcement and education programs.

- **Major changes by charitable corporations:** Under the new Act, a charitable corporation must report, in the corporation's next annual report, major changes to its purposes, programs or activities, with certain exceptions. Such changes include amendments of the articles to include a new or substantially different corporate purpose, as well as the operation of a significant program or activity that is substantially different from those previously operated and those described in the corporation's application to the IRS for 501(c)(3) status.
- **Distributions:** The new Act includes provisions clarifying both permitted and restricted distributions of corporate assets, including distributions of property held for charitable purposes, and liability for unlawful distributions.
- **Boards of directors and officers:** The new Act contains numerous new or clarifying provisions regarding directors, including the number of directors required (501(c)(3) public charities must have at least three directors), their terms, procedures for removal, advisory committees, and unanimous written consents. The new Act also contains clearer standards of conduct for directors and officers, provisions regarding liability of directors to the corporation or members (and certain limits on liability), and specific rules concerning conflicts of interest and business opportunities.

**Washington Secretary of State Updates:** Nonprofit corporations will also want to note that the Washington Secretary of State recently advised that responsive to the new Act, it is updating its nonprofit corporation documents and making significant changes to the online filing process, which will be unavailable beginning December 30, 2021. It has advised that nonprofit corporations should plan to use paper filing options in January and February 2022, and that the new form documents will be available with instructions starting December 28, 2021.

In conjunction with the new Act's January 1, 2022 effective date, many organizations are updating their articles of incorporation, bylaws, policies and procedures to conform to the new Act. HCMP attorneys would be pleased to discuss the new Act in more detail and how it may affect your organization. Please do not hesitate to contact us.



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