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The Top Ten Things You Need to Know about the New District of Columbia Nonprofit Corporation Act

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On January 1, 2012, the District of Columbia Nonprofit Corporation Act of 2010 (the “New Act”) went into effect. As a general rule, the New Act provides D.C. nonprofit corporations with considerable flexibility to structure their corporate governance, and for the most part will not require changes to day-to-day operations. However, numerous default rules have changed under the New Act and new, more detailed provisions governing matters like director standards of conduct and liability, indemnification, member voting rights and ballot voting procedures, and numerous other topics require D.C. nonprofit corporations to familiarize themselves with the new law, and determine whether changes to their governing documents or practices will be necessary to comply. The following highlights many of the significant changes that are in store. The District of Columbia Code can be found online, [here](#).

- (1) Applicability** (*D.C. Code §§ 29-414.01, .02*) – The New Act is applicable to nonprofit corporations incorporated in the District of Columbia. Except for some limited provisions, such as the change of filing date for the Biennial Reports and an expansion of the registered agent provisions, the provisions in the New Act do not affect foreign corporations authorized to do business in the District of Columbia.
- (2) Expanded Corporate Records** (*D.C. Code §§ 29-413.01 to .05*) – The New Act specifies expanded recordkeeping requirements for D.C. nonprofit corporations, and also permits records to be kept in digital form. Additionally, numerous records must be maintained at the corporation’s principal office, including the Articles of Incorporation, bylaws, minute books for the most recent three years, all formal notices to members for the most recent three years, a current list of names and business addresses of the corporation’s officers and directors, and a copy of the corporation’s most recent biennial report.
- (3) Ability to Create Designated Body** (*D.C. Code §§ 29-404.30, -406.12*) – The New Act allows an organization to create, through a provision in an organization’s Articles of Incorporation, a new governing body, called a “Designated Body,” that may exercise “some, but less than all” powers of the board of directors. This is helpful for committees which exercise the power of the board but include non-directors.
- (4) Different Minimum Officers** (*D.C. Code § 29-406.40*) – Previously, D.C. nonprofit corporations needed to have a President and a Secretary; now they need to have at least a President and Treasurer, with one officer having the responsibilities of a Secretary.
- (5) Codified Standards of Conduct** (*D.C. Code §§ 29-406.30, -406.32, -406.42, -406.70, -406.80*) – The New Act codifies traditional common law concepts of fiduciary duties for directors and officers, and provides procedures for approaching conflict of interest transactions.
- (6) New Indemnification Provisions** (*D.C. Code §§ 29-406.50 to .58*) – The New Act provides very detailed provisions governing when a corporation must, may, and may not indemnify a director or officer. Organizations should review their current indemnification provisions to ensure the provisions are compliant with these new standards.
- (7) Limitation of Liability for Non-501(c)(3) Directors Must Be in Articles** (*D.C. Code § 29-402.02(c)*) – Liability of directors of 501(c)(3) organizations is automatically limited under the New Act for certain actions or inactions. Directors of associations and other non-501(c)(3) corporations must rely on the inclusion of a specific provision in their organization’s articles of incorporation to have the same limitation of liability.
- (8) Reaffirmed Provisions for Board Committees** (*D.C. Code § 29-406.25*) – Executive Committees and other committees exercising board authority must consist solely of members of the board of directors who are appointed to such committees by a majority of the directors in office.

(9) Switched Default and Higher Quorum for Member Voting (D.C. Code §§ 29-405.21, -405.24) – The new default is that members are entitled to one vote on each matter submitted to members; the default quorum for member voting is now a majority of the votes entitled to be cast on a matter.

(10) Allows for Electronic Membership Meetings and Action by Ballot for Member Vote (D.C. Code §§ 29-405.01(e), -405.09) – If authorized by the Articles or Bylaws, the New Act allows for meetings of members to be held through electronic means; the New Act also authorizes ballot voting by members without a meeting if specific requirements are met.

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The authors are attorneys in the law firm of Venable LLP. This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific fact situations.