

CHAPTER 3.

SUMMARY OF MEMBER RIGHTS IN CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATIONS

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The California Nonprofit Corporation Law defines a "member" as any person, including a corporation, who pursuant to the corporation's articles or bylaws has the right to vote for the election of one or more directors, or the disposition of the corporation's assets, or a merger or dissolution, or changes to the corporation's articles or bylaws. Members who are corporations may authorize in writing one or more individuals to vote on their behalf.

Members need not be given equal voting power; a member may be given more or less than one vote on any matter presented to the members for a vote. Members may be divided into classes, with different rights and privileges for each class. Members may also be divided for voting on the basis of region or other geographic grouping. No person may hold more than one membership unless the articles or bylaws permit a person to be a member of more than one class.

Any person may be admitted to membership except as limited in the articles or bylaws. The bylaws should also specify who has the power to admit or reject new members. Usually, the board of directors, or a committee thereof, has this power. If a prospective member meets the criteria established for membership, it is unclear whether the board has the power to deny membership.

The board may establish a charge for membership, and may levy dues, fees, and assessments. Memberships are generally nontransferable. Members are not liable for the corporation's debts, except to the extent that a member is indebted to the corporation.

Members may resign from membership at any time, but may not be expelled or have their membership rights suspended or terminated unless a fair and reasonable procedure is followed. The statute describes one such procedure. The articles or bylaws may not be amended to terminate all memberships or any class of memberships without the approval of the members. To do so requires compliance with certain notice provisions.

On most corporate matters, the approval of the members is not required. However, certain bylaw amendments affecting the rights of members as to voting or transfer require member approval. When members have such approval rights, if one class of members is adversely affected in a manner different from another class, that class must also approve.

Even though members are given the right to vote for directors, any number of directors may be designated or selected as provided in the articles or bylaws, rather than elected by the members. The bylaws may permit directors to be removed without cause. The members must approve such removal of directors elected by the members. Members may also remove directors for cause. The bylaws should specify whether the board of directors or the members fill vacancies on the board.

As a membership organization, the corporation must hold a regular membership meeting in each year in which directors are scheduled to be elected. For example, if all elected Board members are elected at the same time for two-year terms, then a membership meeting must be held every two years. Other regular membership meetings are held with the frequency stated in the bylaws. Most organizations do not provide for other regular meetings. Special meetings may be called by the board, the chairperson, the president, any other person specified in the bylaws, or by 5 percent or more of the members. Special meetings are rarely called.

Members must be given written notice of all meetings. The statute specifies the timing and manner of giving notice. Certain major actions must be specified in the notice or they cannot be acted on. Meetings at which directors are to be elected must include the names of all persons who have been nominated at the time notice is given. Members may sign a waiver of notice.

The bylaws or the board may fix in advance a record date for determining the members entitled to receive notice of a membership meeting. This date must be not more than 90 nor less than 10 days before the meeting date. If no record date is fixed, notice must be given to all members as of the day preceding the day notice is sent. Similarly, the bylaws or the board may fix in advance a record date for determining the members entitled to vote at a meeting. This date cannot be more than 60 days before the meeting date. If no record date is fixed, all members as of the meeting date are entitled to vote. Also, a record date for determining members entitled to cast written ballots may be fixed in advance by the bylaws or the board. This date cannot be more than 60 days before the day on which the first written ballot is mailed. If no date is fixed, members as of the day the first written ballot is mailed are entitled to cast written ballots.

Ordinarily, a quorum is a majority of the members entitled to vote for the election of directors. Members may be represented in person, by proxy, or by written ballot. The bylaws may authorize the board to lower the quorum requirement. In a statewide or other broad based organization, a lower quorum requirement is recommended. However, if the quorum requirement is less than one-third (1/3) and if the quorum represented at a meeting is in fact less than one-third, the only matters that can be acted on at that meeting are matters specified in the notice of the meeting. If there is a quorum, ordinarily the affirmative vote of a majority of the members represented, entitled to vote, and voting on the particular matter is the act of the members. The bylaws may require a supermajority vote of the members, or of any class of members.

The articles or bylaws may authorize cumulative voting for the election of directors, that is, a member may give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the member is entitled, or distribute the member's votes among as many candidates as the member thinks fit. For example, if there are five directors to be elected, the member may give one candidate all five votes, or may give one candidate three votes and another candidate two votes.

Director elections, whether held at a member meeting or by written ballot, must provide reasonable nomination and election procedures, including a reasonable means of nominating persons, a reasonable opportunity for a nominee to communicate to the members, a reasonable opportunity for all nominees to solicit votes, and a reasonable opportunity for all members to choose among the nominees.

If the corporation has 500 or more members, it must permit nomination by petition signed by two percent (2%) of the voting power. If there is a meeting to elect directors, it must permit nominations from the floor by members present in person or by proxy. Nomination is also permitted by any other method authorized by the bylaws or by the board of directors. Also, if the corporation has 500 or more members, and if the corporation at its expense distributes any written election material soliciting a vote for any nominee for director, it must make available at its expense to each other nominee in the same material the same amount of space.

The board of directors may appoint inspectors of election in advance of a meeting or written ballot. Members may demand that inspectors be appointed. The inspectors receive votes or ballots, hear and determine all challenges in connection with the right to vote, count all votes, etc.

Any action that could be taken at a member meeting may be taken by written ballot without a meeting. Ballots must be distributed to every member entitled to vote on that matter. The ballot must describe the proposed action, provide an opportunity to specify approval or disapproval, and provide a reasonable time within which to return the ballot. Directors may be elected by ballot. The nomination procedure may include a cut -off date for the closing of nominations before the printing of ballots. The quorum and voting requirements for meetings also apply to ballots. The statute prescribes various requirements concerning the form of written ballot that must be used.

Members may also act without a meeting by unanimous consent. However, the corporation will likely have far too many members to make such a procedure practical.

Other than voting rights, members have certain other rights, as follows:

(a) To receive from the corporation an annual report not later than 120 days after the close of the fiscal year. The report must include appropriate detail of the corporation's assets and liabilities as of the end of the fiscal year, the principal changes in assets and liabilities during the fiscal year, the unrestricted and restricted revenues for the fiscal

year, the general and restricted expenses during the fiscal year, and a statement of any self-dealing or other interested director transaction or any indemnification of directors during the fiscal year. If independent accountants made a report on the annual report, the accountants' report must accompany the annual report. An annual report need not be sent in certain circumstances, but in those circumstances the corporation must send its report to any member upon request. Reports may be included in a newsletter regularly sent to members. Also, on a member's request, the corporation must send the member, at the member's expense, a copy of any report filed with the Registry of Charitable Trusts (e.g., Form RRF -1).

(b) To inspect and copy the record of all the members' names, addresses, and voting rights, or to obtain from the secretary upon payment of a reasonable charge an alphabetized list of the names, addresses, and voting rights of members entitled to vote for the election of directors. Since a membership list is a corporate asset, the statute restricts the use of the membership list to purposes reasonably related to a member's interest as a member.

(c) To inspect the corporation's articles and bylaws at the corporation's principal office in California during office hours.

(d) To inspect the accounting books and records and minutes of proceedings of the members, the board, and committees of the board.