

## PROXY VOTING FOR NONPROFIT BOARDS IN MARYLAND

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### What is Proxy Voting?

A proxy is a written statement that authorizes a specific person to vote on another's behalf. Proxy voting is often used when an individual is unable to attend a meeting at which he or she has a right to be present and vote. In the case of a general proxy, the voting member leaves the vote to the discretion of the proxy voter.<sup>1</sup> In the case of a specific or limited proxy, the voting member gives the proxy voter specific instructions on how to place his or her vote.<sup>2</sup>

### Proxy Voting in Maryland

Proxy voting is regulated differently state by state. Additionally, voting rights, particularly proxy voting rights, are evaluated differently for board members (fiduciaries) and general members such as exist in "membership" organizations. It is important to understand the law in your organization's state. In the State of Maryland, board members are prohibited from proxy voting pursuant to the [Maryland Corporate Code, which requires directors to be present in person for votes. The Code provides that](#) "the action of a majority of the directors **present at a meeting** at which a quorum is **present** is the action of the board of directors." The law reflects the principle that the deliberative process of a board of directors is individual, personal, and nontransferable, characteristics which are incompatible with proxy voting. Because the board of directors is a deliberative body and because fiduciary duties are personal to each board member, board members cannot delegate their authority to a proxy. Board members must be present in person to express ideas that are personal to that individual and the discussion and exchange of ideas by the fiduciaries is an essential aspect of the voting process.

While proxy voting by board members is prohibited, proxy voting by members of a membership nonprofit, such as an association (which the law considers equivalent to "shareholders" in the MD Corporate Code), is allowed. General members do not have fiduciary obligations and do not have the same personal investment or governing powers that members of a board of directors have, therefore nonprofit members are able to vote by proxy.

### Other Circumstances

As stated above, when it comes to voting rights for nonprofit boards of directors, Maryland law requires that voting directors be "present in person" in order to vote.<sup>3</sup> However, MD Code Corporations & Associations Section 2-409 also specifies that telephone participation and other forms of simultaneous communication count as being "present in person."<sup>4</sup>

Boards of directors may also vote without a meeting, however, requirements are much stricter. Maryland law permits "informal action by directors," or "action without meeting," but only if the vote is unanimous and the outcome is recorded in writing.<sup>5</sup> When these requirements are met, boards of directors may conduct voting by email or other writing.

Boards should ensure that their bylaws are consistent with the law, and reflect any additional preferences that are consistent with best practices.

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<sup>1</sup> Price, Nick. BoardEffect.com. "What is a Board Meeting Proxy," June 2017. <https://www.boardeffect.com/blog/board-meeting-proxy/>

<sup>2</sup> Ibid.

<sup>3</sup> MD Corp & Assn Code § 2-409 (2019)

<sup>4</sup> MD Corp & Assn Code § 2-409 (2019)

<sup>5</sup> MD Corp & Assn Code § 2-408 (2019)

