



CENTER FOR NONPROFIT LAW



## ORS Chapter 65 Changes: What Oregon Public Benefit Nonprofits Need to Know

### OVERVIEW

From 2014-2018, a work group of the [Oregon State Bar](#) reviewed [ORS Chapter 65](#), the laws that govern the nonprofit corporations in Oregon. This group identified provisions that needed clarification or modernization. (Yes, Oregon law still referenced notice by “telegraph or teletype!”) Law professors at the University of Oregon and Willamette University, esteemed attorneys from across the state, representatives of the Oregon Department of Justice and a representative from NAO all participated in the work group. The final result of that work culminated in [Senate Bill 360](#) which was passed in the 2019 legislative session and was signed into law by Governor Kate Brown.

### WHAT YOU NEED TO KNOW

The changes to ORS 65 go into effect on January 1, 2020.

These statutory changes will impact the way *all nonprofits in Oregon* work.

### FREQUENTLY ASKED QUESTIONS

#### Q: Does this law apply to all nonprofits?

ORS Chapter 65 applies to all nonprofit corporations. This fact sheet however refers only to changes that affect Public Benefit Nonprofit corporations (whether or not they have 501(c)(3) tax exempt status).

#### Q: What are the most important changes for nonprofits?

##### 1. Board of Directors

**Selection of Directors.** Clarifies the 5 different ways that Directors can be selected or removed: board elected directors, member elected directors, appointed directors, ex-officio directors and designated directors.

**Board Action Using Email.** Allows a Board to make decisions by email if a motion is approved by the affirmative vote of a majority of the directors in office. Certain procedures must be followed for email voting.

- All directors must provide an email address
- Email notice to directors must describe proposed action and when it will be effective
- Must give directors at least 48 hours to vote
- Director can change vote anytime up to deadline
- An affirmative vote of majority of directors in office is needed to pass the proposed action, unless Articles or bylaws requires greater number
- Record of notice and email vote must be kept in minutes

**Meetings of Directors.** Directors are deemed present in person and count for quorum and voting purposes if they participate by any telephonic or electronic method by which all directors can simultaneously communicate with each other.

**Quorum.** A quorum consists of a majority of directors in office immediately before the meeting begins. The articles or bylaws can provide otherwise but cannot provide for a quorum of less than one-third.

**Board Committees.** All voting members of committees exercising the authority of the board must be directors.

**Conflict of Interest Transaction.** New subsection clarifies that a director has an indirect interest, therefore a conflict of interest, in a transaction if it involves a person related to the director or a business associate of the director.

**Right to Inspect Records.** Confirms director’s legal rights to defined (under that section of the law) corporate documents.

**Officers.** Requires that each nonprofit corporation have a treasurer, adding treasurer to president and secretary. The same person cannot hold all 3 offices. There must be at least two people filling the three officer positions.

**Election of Directors.** A new subsection clarifies that if a corporation has no directors and no members who can elect directors, the Attorney General can ask a court to appoint one or more directors.

2. **Notice Provision.** Notice (communications and announcements) may be delivered orally (in person or by telephone) or in writing (electronically, by mail or by private carrier). The statute includes effective date rules for each type of notice.

### 3. Members

**Member Action by Email.** Action can be taken by email, and if the requirements are followed, the decision need not be unanimous. If ballots are submitted electronically, the number of votes cast constitutes a quorum if the number of members present at a meeting would constitute a quorum.

**Super-majority Removed.** Removes the super-majority requirement for member voting in public benefit corporations and permits those members to take action with a majority of the votes cast.

**Member definition and their Voting Rights.** A member is someone entitled to exercise one or more of the rights identified in ORS 65.144. Under the amended definition a corporation could, for example, decide to give its members the right to vote to dissolve the corporation, but not to elect directors.

**Members' Right to Inspect List of Members.** Each member has the right to inspect the list. Due to concerns about personal safety and privacy, ORS 65 now permits a member to provide only an email address as contact information.

**Removal. Members may be removed without a hearing** for nonpayment of dues; otherwise ensure a fair and reasonable process.

**Changing to a Nonmember Corporation.** Not infrequent problem of a nonprofit corporation that was set up to have voting members but no longer has a record of members, has not had member action for some years, and has no way to determine who members are. Two new mechanisms added.

4. **Definition Changes.** Several changes reflect the use of electronic tools. A new definition for "document" provides for both tangible documents and electronic documents. A new definition of "written" explains that written means embodied as a document, so reading the definitions together, something written can be written electronically. A new definition of "sign" includes electronic signatures.

**Dissolution.** Strengthened ability of the Attorney General to protect charitable assets when a corporation dissolves.

#### Q: Where can a nonprofit get additional information?

NAO will update this information as rule setting is made and new information becomes available. **Subscribe to NAO's newsletter** on our website to stay updated.

- You can find a complete list of all changes made through SB360 to ORS 65 on the [Oregon State Bar website](#).

Look for one of the trainings on these changes being offered across the state by:

- [Nonprofit Association of Oregon](#)
- [Oregon Department of Justice Charitable Activities Section](#)
- [The Center for Nonprofit Stewardship](#)
- [Nonprofit Board Training and Resources](#)

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#### ORS Chapter 65 Tip Sheet Contributors

The following organizations provided advice and feedback on the creation of this document.

*David Atkin, Senior Attorney, [Center for Nonprofit Law](#) (Eugene)*

*Rosalie Westenskow, Attorney, [Nonprofit Law Northwest](#) (Eastern Oregon)*

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