

# Welcome

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## Our Presentation

### Will Begin at 10am

- All viewers are muted. Audience cameras cannot be turned on.
- Who's with us today? Feel free to share your nonprofit's name in the chat box.



# How Updates to the Nonprofit Code of Georgia Could Impact Your Nonprofit

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# Mission of Pro Bono Partnership of Atlanta

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

# Client Criteria

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

Visit our website at [www.pbpatl.org](http://www.pbpatl.org) to apply.

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# Legal Information

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This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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# Goals of Session

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- Not a complete review of the Georgia Nonprofit Corporation Code
- An overview of the major changes to the Georgia Nonprofit Corporation Code
- Focus is operational activities of the nonprofit corporation
- Not reviewing changes to: merger, dissolution, foreign corporations, and other provisions that are not day-to-day provisions

# Agenda - Changes

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1. Definitions
2. Directors and Director Meetings
3. Board Committees
4. Officers
5. Indemnification Provisions
6. Disclaiming Business Opportunities
7. Amending Articles and Bylaws
8. Assets and Distributions
9. Records and Reports
10. Members
11. Meeting of Members

# Definition Changes

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- Definition Changes
  - Delegate – clarifies that a person is not a member of the corporation by virtue of being a delegate. For a delegate to be a member, it must be specifically stated in the articles or bylaws
  - Chief Executive Officer & Chief Financial Officer
  - Document, Electronic and Electronic Network – modernized to match with our electronic world

# Directors & Director Meetings

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- All corporations created after 7/1/23 that do not have members must have at least 3 directors
- If there are classes of members (in a membership corporation), directors can be elected by specific member classes.
- If, at any time, there are no directors of a non-membership corporation, the Attorney General or any interested person can go to court for the appointment of at least three directors
- A director may now condition their resignation based upon the happening of an event, but such a resignation is irrevocable.
- Now, GA Code Section 51-1-20 applies to directors, so if a director of a nonprofit charity is a volunteer, the director is now clearly immune from civil liability for acts or omissions arising out of the director's service if the director was acting in good faith
  - D&O Insurance still recommended
  - Impact if director is paid

# Directors and Director Meetings

(cont.)

- Regular v. Special meetings
  - Regular: time/place “fixed” by bylaws or board
  - Special: all other meetings
    - Chair, CEO or at least 20% of directors may call special meeting
- For Director Actions without a Meeting
  - Director can now revoke vote prior to last written action needed for final vote
  - Signatures can be manual, facsimile, conformed or electronic
- New specific notice needed to vote on an article or bylaw amendment or to remove a director (unless articles or bylaws provide otherwise)
- Oral notice of meetings is permitted if authorized in articles or bylaws
- NO DIRECTOR SHALL VOTE BY PROXY

# Board Committees

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- Clarifies the types of committees, their potential responsibility and authority, and who must serve on them
- Committee that can exercise the authority of the Board of Directors
  - Must consist only of current and former directors
  - Must have at least 2 committee members with one being a current director
  - Committee members are appointed by the Board unless the articles or bylaws provide otherwise
  - However, unless the articles or bylaws provide otherwise, a committee may not elect, appoint or remove directors on a committee that can exercise authority of the Board.

# Officers

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- Must have CEO, CFO and Secretary
  - Secretary of State
- Officer titles officially: Chief Executive Officer, Chief Financial Officer, Secretary – but articles/bylaws can define another name for CEO and CFO
- CEO and Secretary cannot be the same person
  - Ensures signatures can be certified
  - Ensures at least 2 separate people as officers (incapacitation issue)
- Executive Director is now an officer unless otherwise stated in bylaws
  - Must comply with fiduciary duties and conflicts of interest rules but also now under indemnification protections

# Officers (cont.)

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- Now, GA Code Section 51-1-20 applies to officers, so if an officer of a nonprofit charity is a volunteer, the officer is now clearly immune from civil liability for acts or omissions arising out of the director's service if the director was acting in good faith
  - D&O Insurance still recommended
- Officer removal and filing vacancies provisions clarified regarding who may do either:
  - Articles/bylaws may designate the board, a specific officer
  - The officer who appointed such officer
- To confirm a document was duly authorized on behalf of the Corporation, the Secretary must attest regarding the signature and that the signing was duly authorized

# Indemnification Provisions

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- New definition of “disinterested member”
  - Patterned after the definition of “disinterested director” and intended to more comprehensively exclude members with an interest in an indemnification issue from voting on it.
  - Only disinterested members, without any conflicts of interest, can make decisions regarding advancing litigation expenses (where decision to be made by members)
- If the Court determines a director is entitled to indemnification or advancement of expenses, the court can also order the corporation to pay the director’s litigation expenses to get that determination.
  - Court can do this without a jury

# Indemnification Provisions (cont.)

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- Additional measure of Director indemnification was added to the Nonprofit Corporation Code which brings nonprofit directors in line with for-profit directors.
  - If authorized by the articles or bylaws, a contract or resolution, a corporation may indemnify or obligate itself to indemnify a director who was a party to a proceeding brought by or in the right of the corporation regardless of any limits in other sections of the Code. The corporation may also advance or reimburse expenses.
  - But not if the director was found liable to the corporation
- Provisions can be made in the articles and bylaws that obligate the corporation to indemnify directors and officers to the “fullest extent of the law”

# Disclaiming Business Opportunities

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- New Provision:
  - A corporation may now say “we are not interested in (specific types) of business opportunities” in its articles or bylaws or by resolution of the board
  - Then, if a director or officer takes such a business opportunity for themselves, the organization won’t need to deal with each situation as a potential conflict of interest.
  - The new section provides detailed procedures for such disclaimers and addresses how to deal with interested persons involved in the process.
  - Example: family visitation services – provided by nonprofit in County A only, board member who works in another county provides same services; could disclaim providing family visitation services outside of County A

# Amending Articles and Bylaws

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- If a non-membership corporation, proper notice must be given to directors for any meeting at which a bylaw amendment is to be approved.
- The corporation may amend its articles or bylaws modifying particular rights conferred on members by the corporation so long as it doesn't modify vested property rights

# Assets & Distributions

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- Sale or Disposal of Assets in Usual Course of Activities
  - The board of directors of a membership corporation may now transfer a corporation's assets to a corporation or entity that the corporation owns or controls without first getting member approval
- Distributions
  - Distributions defined to include corporation's assets, income or profits
  - Corporation may not pay dividends or make distributions to members, directors or officers

# Records and Reports

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- Added that the corporation can impose restrictions on the confidentiality, use or distribution of corporate records provided to members
- Added inspection rights for directors.
  - Directors now have a right to access corporate books and records
  - Goal is to facilitate nonprofit directors' performance of their duties to supervise management and exercise good judgement in their decisions

# Members

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- Member - a person must be defined in the articles of incorporation as a member including the right to vote for directors
  - Also defines who is not automatically a member: delegates, certain persons who can nominate, appoint or confirm directors, a person who contributes to the corporation
- Notice to Members – reasonableness standard
  - 2 consecutive annual meetings and all notices in between – returned undeliverable or could not be delivered
  - If member provides new address, reinstated

# Members (cont.)

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- Membership corporation may levy dues, assessments and fees on members so long as the articles or bylaws authorize it
- The amount may be fixed or the board of directors may determine the amount – depending on what is stated in articles or bylaws
- Articles or bylaws may provide reasonable means to enforce collection of dues, assessments and fees including termination of membership

# Meetings of Members

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- Calling a special membership meeting
  - Holders of 5% of membership or any amount listed in articles or bylaws BUT cannot be greater than 25%
- Action By Written Ballot
  - Must provide opportunity to vote for, or withhold vote for each candidate for election as a director
- Approval of Action Without a Meeting (“written consent”)
  - Changes the votes required for action without a meeting of members to whatever number is required by the articles or bylaws to attain the minimum number of votes needed for such action if an in person meeting was held.
  - The amendment also clarifies the electronic transmission provisions in subsection (f) are in addition to, not a substitute for, others in the Code

# Meetings of Members (cont.)

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- Membership meetings can be held partly in person and partly by remote communication but membership lists must be made available to all members or the corporation may be charged costs
- Quorum – changed!
  - The default is now majority instead of 10% BUT articles or bylaws may set quorum
    - Grandfathering 10% for corporations in existence before 7/1/23
  - Now 1/3 of voting power must be present (was 20%) in person or by proxy to vote on matters besides what's required at an annual or regular member meeting or those matters identified in the notice

# Meeting of Members (cont.)

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- Now the articles OR bylaws may define voting requirements for election of directors
- If the articles or bylaws authorize dividing members into classes, it may also authorize the election of all or a specified number of directors by one or more class of members.

# Next Steps

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- NOTE: All changes currently apply unless specified that they apply to organizations formed after 7/1/23
- Review articles and bylaws and determine whether changes are needed
- Reach out to your PBPA attorney or, if not a client, your attorney
- Make these changes as time permits

Questions?

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