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Options for Nonprofit Corporate Management in an Emergency

In light of the fires currently erupting in and displacing communities all over the Bay Area, we thought it might be useful for directors, officers, and senior managers of California nonprofit organizations to know the options available for taking corporate action when some or all of them are displaced or otherwise unreachable due to an emergency.

California Corporations Code Section 5140(n) (for public benefit corporations), Section 7140(m) (for mutual benefit corporations), and Section 9140(n) (for religious corporations) establish a set of default rules that apply during an emergency (unless the corporation already has emergency bylaws in place that provide otherwise). An “emergency” for these purposes includes fires and natural catastrophes, as well as any state of emergency proclaimed by a governor or the President, as a result of which, and only so long as, a quorum of the corporation’s board of directors cannot be readily convened for action.

California Corporations Code Sections 5140(n), 7140(m), and 9140(n)—Default Rules for Emergency Actions

The default rules provide that, during an emergency, a nonprofit corporation may take any of the following actions that are “necessary to conduct the corporation’s ordinary business operations and affairs”:

- › Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency;
- › Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so;
- › Give notice in any practicable manner under the circumstances (including by publication and radio) when notice of a meeting of the board cannot be given to a director or directors in the manner prescribed by the bylaws or the California Corporations Code; and/or
- › Deem that one or more officers of the corporation present at a board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum for that meeting.

These emergency rules free up the directors and officers to carry out the actions specified above when necessary in an emergency to conduct the corporation’s ordinary business and affairs—the board is prohibited from taking any action that requires the vote of the members or that is not in the corporation’s ordinary course of business,

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS



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unless the required vote of the members was obtained prior to the emergency.

Any actions taken in good faith in anticipation of or during an emergency under this provision bind the corporation and may not be used to impose liability on a corporate director, officer, employee, or agent.

California Corporations Code Sections 5151(g), 7151(g), and 9151(g)—Emergency Bylaws

The California Corporations Code also permits the corporation's bylaws to include special "emergency only" provisions for the management and conduct of the ordinary business affairs of the corporation, including procedures for calling a board meeting, quorum requirements, and designation of additional or substitute directors. These emergency provisions apply only for as long as the emergency lasts, and apply together with the provisions of the regular bylaws that are consistent with the emergency bylaws.

As in the default rules described above, the board is prohibited from taking any action that requires the vote of the members or is not in the corporation's ordinary course of business, unless the required vote of the members was obtained prior to the emergency.

The California Attorney General prepared [a summary of the emergency governance rules for charities](#). Although the summary is directed at charities navigating the shelter in place requirements of the pandemic, it provides an overview of these rules that should be useful for California nonprofits facing displacement by the current Bay Area fires.