

Major Changes to Pennsylvania Corporate Law Part 5: Internal Corporate Procedures

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This is Part 5 of a multipart series which will provide a summary of the key changes coming to Pennsylvania as a result of changes to the Pennsylvania Business Corporation Law (Title 15). Part 5 discusses the recent changes to internal corporate procedures.

On January 2, 2023, Act 122 went into effect, incorporating a number of changes to Pennsylvania's Business Corporation Law, which sets forth the governing laws for all domestic and foreign entities operating under the laws of Pennsylvania. Parts 1-4 of this series discussed the following topics:

- [Part 1](#): The repeal of decennial filings in favor of an annual reporting requirement;
- [Part 2](#): How business executives are losing their ability to maintain anonymity;
- [Part 3](#): How entities will have more control over significant aspects of corporate governance if their organizational documents are updated accordingly; and
- [Part 4](#): The fiduciary duties of officers and directors and changes to internal fundamental processes.

In an attempt to remain current on the use of technology to the benefit of entities and as entities move into a post-COVID-19 pandemic economy, many of the changes to Pennsylvania's Business Corporation Law update existing protocols or account for the uncertainty which emerged during the pandemic. Some of the recent changes concern the use of electronic communications and emergency procedures, such as:

- The ability to transmit records by electronic transmission;
- The power to adopt and the effect of adopting emergency bylaws;
- The increased obligations when providing notice; and
- The capability to hold shareholder meetings virtually.

Record Form and Delivery of Documents

The recent changes to the Business Corporation Law include the expansion of the form of records of a corporation or other association to include information that is maintained or *administered by or on behalf of* the corporation or association in the regular course of business. This modification was to address the use of a distributed ledger or blockchain technology (shared/distributed database) which allows participants across a network to access shared records. Further revisions to the Business Corporation Law allow for delivery of these record form documents to be accomplished through electronic exchanges, rather than having an entity resort to personal or mail delivery in an age of evolving technology.

Emergency Bylaws

Following the COVID-19 pandemic, amendments to the Business Corporation Law permit emergency bylaws to be adopted either before an emergency or during an emergency. Should an entity wish to restrict the ability of the board of directors to adopt bylaws in emergency situations, the existing bylaws must state in substance that the corporation shall have no emergency bylaws. The amendments also codify existing law that actions taken in accordance with emergency bylaws are valid and binding on the corporation, and further broadens situations that fall under the "emergency" category to include pandemics, hurricanes, earthquakes, and floods.

Notices and Shareholder Meetings

The revisions to the Business Corporation Law increase obligations when providing notice, and grant corporations greater flexibility to conduct shareholder meetings virtually.

- The language in the Business Corporation Law was revised to state that notice must be given personally or *delivered* (instead of sent) through first class mail, express mail, or courier service, postage/charges prepaid, or by facsimile transmission, email, or other electronic means. This change indicates that merely *sending* any such notice is not sufficient, rather, such notice must be personally given or *delivered* to the intended recipient. However, where a corporation is registered with the Securities and Exchange Commission (SEC), and such corporation has provided shareholders with notice that the corporation utilizes an online website to post proxy materials (in conformance with SEC requirements), the corporation may post a notice of a shareholder meeting on the same website where the proxy materials are located.
- The authority to determine the location for shareholder meetings includes the authority to decide that the meeting will be held solely through electronic means, in compliance with the requirements set forth below.
- The recent changes eliminate the need to hold shareholder meetings at a physical location, and instead, such meetings may be held entirely by electronic technology, unless the bylaws state otherwise. However, any shareholder meeting conducted through electronic means must provide shareholders with the reasonable opportunity to:
 - Participate in the meeting;
 - Read or hear the proceedings simultaneously (to a substantial extent) with their occurrence;
 - Vote on matters submitted to the shareholders; and
 - Make motions and comment on the business of the meeting (subject to the procedures and guidelines adopted by the directors).

If you have any questions about the recent changes to the Pennsylvania Business Corporation Law, or if you would like assistance in updating your corporate documents to address these changes, please contact attorneys [Charmaine E. Nyman](#), [Rachael E. Shaw](#) or any member of the [Barley Snyder Business Practice Group](#).

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