

**WASHINGTON STATE**  
**B A R A S S O C I A T I O N**

**Board of Governors Meeting**  
**Late Late Materials**

**November 13-14, 2020**  
**Webcast and Teleconference**

**WASHINGTON STATE**  
**BAR ASSOCIATION**

Board of Governors

<b>BOARD OF GOVERNORS MEETING</b> <b>Late Late Materials</b> <b>November 13-14, 2020</b> <b>Seattle, WA</b>	
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## **WASHINGTON STATE BAR ASSOCIATION BOARD OF GOVERNORS**

### **IN THE MATTER OF RESPONSE TO MINORITY BAR ASSOCIATIONS REGARDING STATEMENTS MADE AT JUNE 26, 2020 BOARD OF GOVERNORS MEETING**

**WHEREAS**, the Washington Supreme Court’s June 2020 letter stated that “The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will. The injustice still plaguing our country has its roots in the individual and collective actions of many, and it cannot be addressed without the individual and collective actions of us all.”

**WHEREAS**, statements were made by a Governor at the June 2020 meeting that we consider to be offensive and inconsistent with WSBA’s mission and values and about which the Minority Bar Association community has loudly complained.

**WHEREAS**, the Board of Governors does recognize and publicly acknowledge the valuable contribution of the Minority Bar Association community to the WSBA mission of serving the public, ensuring the integrity of the legal profession and championing justice.

1. The Board of Governors formally acknowledges that the statements made at the June 26, 2020 meeting were disrespectful, offensive, and not consistent with WSBA’s commitment to diversity, equity and inclusion. The Board apologizes to the Minority Bar Association community and other members of historically underrepresented groups who were harmed by those comments and our delayed response to them.
2. The Board of Governors commits to funding and engaging in ongoing training on issues relating to diversity, equity and inclusion, including providing orientation to new and current Governors to the history and importance of the Minority Bar Associations and the WSBA Diversity Committee as partners in advancing all aspects of WSBA’s mission.
3. The Board of Governors commits to providing updates on its work to advance diversity, equity and inclusion within our legal profession during each Board meeting.
4. On September 29, 2017, the Board adopted WSBA Statement Denouncing Recent Acts of Violence and A Reaffirmation of Equity and Inclusion Principles. We acknowledge the commitment included in that statement: “The Washington State Minority Bar Association community has been an important partner with the WSBA in this commitment within our legal procession. This community is critical to the continued understanding and

development of laws, practices, and policies intersecting diversity, equality and inclusion. We highly esteem the work of this community and experience them as partners and collaborators in the pursuit of justice. In light of this partnership we express our support as allies in the denunciation of the lethal acts of violence perpetrated in Charlottesville, Virginia. We recognize and appreciate that the First Amendment is a critical facet of our democracy. We unwaveringly support its protections, even if we do not agree with the statements being made. However, violence, threats, and physical intimidation are not protected by the First Amendment and have no place in a civil dialogue.” The Board of Governors confirms the importance of this statement and reaffirms its commitment to the same.

5. On March 2018, the Board of Governors adopted the Race Equity Justice Initiative Commitments. Commitment 3 states “Promote and support legal, systemic & public policy changes that advance race equity & racial justice, recognizing that differently situated groups may require different strategies to achieve more equitable outcomes.” The Board commits to re-focus on and continue developing strategic goals to achieve those commitments.
  
6. The Washington Supreme Court authorizes and supervises the Bar’s activities. On June 4, 2020, the Washington Supreme Court issued a letter to the Judiciary and Legal Community. Near the end of that letter, the Court stated “As we lean in to do this hard and necessary work, may we also remember to support our black colleagues by lifting their voices. Listening to and acknowledging their experiences will enrich and inform our shared cause of dismantling systemic racism.” The Board commits to further engage with the MBAs to lift their voices, acknowledge their experiences, and be reliable and effective allies for lasting change in our profession and the justice system that will finally allow people of color to rest.

Done this 13<sup>th</sup> Day of November, 2020

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Kyle Sciuchetti,  
WSBA President

# Nonprofit Corporation Act Modernization Summary

A major recodification of the Nonprofit Corporations Act is necessary to address changes in law and evolution of practices within the nonprofit community, and to make the law more accessible to nonprofit leaders and consistent with other states' laws and federal tax laws.

## **Incorporation**

- Identifies both mandatory and optional items for articles of incorporation and bylaws.

## **Purposes and Powers**

- Maintains purposes and powers of nonprofits as they exist under the current Act.
- Describes how a nonprofit can modify its purposes by amending its governing documents and establishes standards for judicial review of such modifications.

## **Membership and Non-membership Nonprofits**

- Clarifies distinctions between membership and non-membership nonprofits.
- Describes criteria and procedures for admission of members, membership rights, and for resignation, suspension, and termination of membership.
- Identifies issues and decisions subject to membership vote, and provides requirements for frequency of meetings, notice, conduct, and voting procedures.

## **Directors and Officers**

- Requires that all corporate powers be exercised by or under the authority of a board of directors.
- Provides criteria regarding qualifications, powers, and duties of directors and officers, terms of service, and provisions for removal of a director or officer.
- Describes the fiduciary duties of directors and officers, and liability for breach of duty or misconduct.

## **Charitable Property Defined and Protection of Charitable Assets**

- Differentiates between charitable and all other nonprofit corporations, and defines property held for a charitable purpose by either type of nonprofit corporation.
- Describes permitted and prohibited distributions of a nonprofit's income and assets during the lifetime of the nonprofit and upon dissolution.

## **Restricted Charitable Assets**

- Clarifies how donors create unrestricted or restricted gifts.
- Describes how a nonprofit can modify restrictions on charitable gifts.
- Describes how and when the Attorney General can bring an action to enforce the restriction.

## **Amendments to Charitable Trust Act**

- Revises the definition of "trustee" in the Charitable Trust Act (RCW 11.110.020) to exclude nonprofit corporations that do not hold charitable assets in trust, and to include religious and educational organizations which hold charitable assets in trust but which are excluded from the current definition of "trustee".
- Establishes the authority of the Attorney General to investigate and bring legal action to protect charitable assets under the Proposed Act for organizations that are not governed by the Charitable Trust Act.

## **Role of Attorney General**

- Clarifies the Attorney General's powers to protect charitable assets, including those held by educational nonprofit institutions.
- Describes notice requirements to the Attorney General for legal proceedings, and clarifies the Attorney General's investigative powers, right to intervene, and right to bring action to protect charitable assets.
- Proscribes the authority of the Attorney General over religious corporations but excluding other religious corporations that charge a fee for services.

### **Charitable Asset Protection Account**

- Sets a fee (in addition to filing fees set by the Secretary of State) for filing incorporations, domestications, conversions, and annual reports to fund enforcement and education efforts by the Attorney General.

### **Fundamental Transactions**

- Establishes procedures for “fundamental transactions”: amending governing documents, merging with another organization, entity conversion, domestication by a foreign nonprofit, or dissolution of the nonprofit.

### **Amendment of Articles of Incorporation and Bylaws**

- Establishes the authority and procedures of the boards of both membership and non-membership nonprofits to amend governing documents. Amendments affecting the rights, powers, or privileges of members, or levying dues or fees on members, require a vote of members of a membership corporation.

### **Mergers, Domestications and Conversions**

- Describes procedures by which two nonprofits can merge, whether two Washington nonprofits, or a Washington and foreign (out-of-state) nonprofit.
- Permits a Washington nonprofit to merge with a foreign entity if such a merger is also permitted under the laws of the foreign entity’s jurisdiction.
- Describes notice requirements to the Attorney General if a charitable nonprofit corporation or a non-charitable nonprofit corporation which holds charitable assets is merging with another entity.
- Establishes procedures for a foreign nonprofit to become a Washington nonprofit corporation. Language does not exist for this in the current Act.
- Establishes procedures for a non-charitable nonprofit to become a for-profit entity. The plan of conversion must provide for shares or securities for the nonprofit’s members, if any, and for the protection of charitable assets held by the nonprofit. If the converting nonprofit holds charitable assets, the plan of conversion must be submitted to the Attorney General for approval. Language does not exist for this in the current Act.
- A Washington nonprofit may only convert to new entity type in a foreign jurisdiction if the laws of both jurisdictions governing those entity types permit such a conversion.

### **Dissolution**

- Maintains procedures for voluntary dissolution of a nonprofit corporation, administrative dissolution by the Secretary of State, and judicial dissolution.
- Provides a 120-day timeframe for revocation of a voluntary dissolution. Language does not exist for this in the current Act.

### **Record Keeping Requirements**

- Provides guidance on the types of records to be kept by a nonprofit, inspection procedures, and who has the right to inspect, and limits the ability of a nonprofit to sell or distribute its membership list to third parties.

### **Transition Provisions**

- Replaces the Current Act in its entirety as of the effective date to be set by the legislature. Most nonprofits are not expected to require changes to their governing documents as a result.
- Does not replace any other chapter of RCW Title 24 or apply to entities organized under other chapters of RCW Title 24.
- Amends portions of RCW 11.110 (Charitable Trusts), RCW 23.95 (Uniform Business Organizations Code), and numerous other chapters of the RCW to align and implement the Revised Act.

**WASHINGTON STATE**  
**BAR ASSOCIATION**

**TO:** WSBA Board of Governors  
**FROM:** Kyle D. Sciuchetti, President  
**DATE:** November 4, 2020  
**RE:** Presidential Appointments

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**ACTION:** Affirm the President's ability to make special appointments

These members are entrusted with this role to strengthen the bridge between the WSBA, Board of Governors and the President with various important key stakeholders within the legal community. The WSBA will benefit greatly from your service. I am pleased to announce that I have appointed the following presidential appointments:

- Brian Tollefson, Envoy to the Superior Court Judges Association, Alternative Dispute Resolution Section, and the Court Rules and Procedures Committee
- Kim Hunter, Envoy to the Member Engagement Committee