



FPLG: BLOG

## Special Meetings: What Are The Rules?

11.02.15 | Linda J. Rosenthal, JD



We've recently covered news stories about two nonprofits in which leadership abruptly – and unexpectedly – asked their boards to close down the organizations. In each case – Virginia's Sweet Briar College and the San Diego Opera – the board chair, in cooperation with the CEO – called a special meeting in which the closure vote was suddenly presented and then voted on immediately.

Newspaper reports of the San Diego Opera case suggested there were irregularities in connection with the special meeting, including: (1) failure to give proper and adequate notice of the special meeting; (2) failure to disclose ahead of time the subject matter of the meeting; and (3) scant information, i.e., directors were given only a single-sheet summary of reasons for this important decision. But – happily – a majority of the S.D. Opera directors had buyers' remorse and voted quickly to overturn the closure decision and to oust the leadership, so the details of any such purported irregularities became moot.

On the other hand, in the Sweet Briar College case, there was ugly and emotional litigation in which abuse of the special meeting procedure was just one of many contentious issues.

### ***Special Board Meetings***

It's necessary, of course, to have a procedure by which interested people can call a special meeting of a nonprofit's board of directors; there are critical matters that come up suddenly, and need immediate attention.

But there's also the possibility – as happened in the San Diego Opera and Sweet Briar College cases – that the special meeting option may be used improperly and unfairly to ram through ill-advised and hurried decisions. In addition to the damage cause by a bad decision, board members could be held liable for breach of fiduciary duty for not exercising due care.



So – well ahead of any possible shenanigans – each board member of a nonprofit should know about the special meeting laws and procedures that apply.

### ***What Rules Apply?***

In “[A Nonprofit’s Bylaws Checkup: Where to Start](#),” we explained that a California Nonprofit Public Benefit Corporation has the power to “adopt, amend, or repeal” bylaws on a variety of items concerning the governance and operation of the organization.

If the organization doesn’t adopt a bylaw on a particular matter, then the California Nonprofit Public Benefit Corporation Law may establish (by statute) a default rule. The bad news: these default statutes are “one-size-fits-all.” The good news: they are generally well-drafted, useful guides on how to govern properly.

### ***Special Meeting Statutory Rules***

We don’t usually include a statute’s full text, but – here – it’s important to highlight the exact language.

California Corporations Code section 5211 is the default rule on special meetings in the absence of a contrary bylaw:

*5211 (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:*

*(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.*

*(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days’ notice by first class mail or 48 hours’ notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.*

So here’s the gist of the default rule: There may be special meetings in addition to regular meetings – so long as there is proper notice. For special meetings, notice is mandatory. Adequate notice is the minimum in the statute; it cannot be changed in the articles or bylaws to a different — that is, *shorter* — period of time.

The final sentence in this statutory default rule is that the notice of the special meeting “need not specify the purpose . . .” Although not legally required, we think that’s something an organization may want to affirmatively include in its bylaw about special meetings. The San Diego Opera and Sweet Briar College cases demonstrate why it’s never a good idea to ambush the directors with too little (or no information) before they arrive.

The “section 20” reference in section 5211 refers back to the definitions in the California Corporations Code; specifically, section 20 explains the meaning of acceptable electronic alternatives to notice by mail.

The Legislature is slowly acknowledging the electronic age, and updating the rules to take reasonable advantage of technology. If a special meeting truly is needed because of an emergency



or other sudden set of circumstances, then time may be of the essence, and the option of electronic notice is certainly helpful. The best practice is to give as much notice (and information) as possible in advance of any special meeting.

#### ***Additional Points***

There are some more important paragraphs in this default “meetings” statute in the California Nonprofit Public Benefit Corporation Law.

#### ***Waiver of Notice or Consent***

Paragraph 3 describes “waiver of notice or consent,” a procedure that’s allowed and commonly used as a substitute for the otherwise-mandatory pre-meeting notice. Care must be taken, though, not to coerce such a waiver or consent, either directly or indirectly, in any way.

#### ***Adjournment***

Paragraph 4 discusses the adjournment option: an important safeguard to ensure that there’s a way to halt a meeting that was too-hastily called, or where undue pressure is being applied to one or more attendees.

#### ***Place of Meeting***

Paragraph 5 explains acceptable meeting locations.

#### ***Electronic Participation***

Paragraph 6 includes information about the use of technology for off-site participation in a meeting. We pointed out in [“Next Time, Let’s Text In Our Votes!”](#) and [“It Seemed Like a Good Idea at the Time”](#) that not every modern technological advance has yet been approved for use. Texting-in votes may be on the horizon, but it hasn’t been authorized so far.

#### ***Unanimous Written Consent***

If there is true, unanimous agreement, directors may, after-the-fact, accept and ratify proposed action. This procedure, though, should be used sparingly. It should not routinely take the place of actual, in-person meetings.

#### ***Conclusion***

Occasionally, there’s a legitimate need for a special meeting of a nonprofit’s board of directors. California law has a default statute on this topic that applies in the absence of any corporate bylaw on point. If an organization wants to draft its own bylaw, the default provision includes the minimally acceptable procedures to protect the due process rights of the individual directors.