

CAPLAW FAQ

A series of common legal questions and answers for the CAA network



May tripartite board members have alternates or vote by proxy?

November 2014 When a board member is unable to attend a meeting, s/he may wish to either designate an **alternate** to serve in his or her place for that board meeting or establish a **proxy**, which often involves giving another person the authority to vote on his or her behalf for a specified number of board meetings. The federal CSBG Act does not address the use of alternates and proxies by tripartite boards. While both public and nonprofit CAAs are subject to a state's CSBG statutes and regulations, if any exist, other applicable state and/or local laws differ with regard to using alternates and proxies depending upon whether the CAA is nonprofit or public. Thus, the analysis for each type of CAA is discussed in greater detail below.

Nonprofit CAAs: For nonprofit CAAs, the state CSBG laws, if any exist, and the state nonprofit corporation laws govern the use of alternates and proxies. Very few states have nonprofit corporation laws that allow for alternates or proxy voting by board members of a nonprofit corporation. Most states require that board members must vote in person (or by some other electronic means if certain requirements are met) because under state nonprofit corporation laws, board members have a fiduciary duty to exercise reasonable care when making decisions on behalf of the organization. This duty cannot be exercised without the information and opportunity for discussion provided by regular attendance at board meetings. Thus, the right of a board member to vote typically cannot be passed on via an alternate or a proxy, and a vote made in such a manner could be challenged.

Often, a state's CSBG laws are silent as to the use of alternates and proxies but, if they are not, they must be read in tandem with state nonprofit corporation laws. Only if both the state nonprofit corporation law and the state CSBG law both permit alternates or proxy voting by board members may such be used. If a nonprofit CAA is unclear about whether it is permitted under its state laws to use alternates and/or proxies, it should work with an attorney in its state with expertise in nonprofit corporation laws to determine what is permissible. CAPLAW is also available to assist attorneys working with CAAs to better understand the CSBG laws applicable to CAAs and tripartite boards.

Even if proxies and alternates authorized to vote on behalf of a board member are permitted under state laws, CAPLAW generally recommends that CAAs not use them because, as previously discussed, board members need to keep informed of the organization's ongoing issues. If an alternate serves only when a primary board member is absent, the alternate is less likely to be familiar with current and past issues considered by the board, making it difficult for the board member to fulfill his/her fiduciary duty of care. For this same reason, CAPLAW also recommends that a representative designated by an elected or appointed public official pursuant to the federal CSBG Act serve as the actual public official sector board member and not as an alternate.

A tripartite board may consider using alternates who are not given the authority to vote but may attend board meetings and fill board vacancies,

if such use is not prohibited under state laws. If an alternate will be used to fill a vacancy, it is important that the selection of that alternate follow the different selection requirements for each sector of the board. For example, an alternate chosen to fill a vacancy in the low-income representative sector must have been democratically selected pursuant to the board's selection procedures.

If a CAA board intends to permit alternates or proxy voting, circumstances in which they are to be used should be detailed in the CAA's bylaws. The bylaws should be reviewed by an attorney who is familiar with the CSBG and state's nonprofit corporation laws.

Public CAAs: For a public CAA, state CSBG laws, if any exist, and local ordinances or laws govern the use of alternates and proxies. Often, tripartite boards of public CAAs are permitted to use alternates and proxies. Nevertheless, CAPLAW still encourages public CAAs, if possible, to limit the use of alternates and proxies as one way to help board members be fully engaged in the planning, development, implementation and evaluation of the CSBG program as required by the federal CSBG Act.

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