

No. 69619-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ISLAND LANDMARKS,

Appellant,

v.

MARY MATTHEWS, et al.,

Respondents.

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APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This case is about the removal of the respondents, who together constituted a dysfunctional board of directors, from their long-time¹ self-interested exclusive control over Island Landmarks, a membership-based nonprofit Washington corporation charged with stewardship of the historic Mukai House and Garden located on Vashon Island, Washington. This case is brought by Island Landmarks, acting through its new Board of Directors; this board was duly elected by the Island Landmarks members at a “special meeting” they convened on June 4, 2012. At this same meeting, the respondent board members were removed from office.

Island Landmarks was formed in 1995, CP 112, and purchased the Mukai property in 2000 largely with public funds that required restoration and maintenance of the house and garden, as well as public access and programing. CP 268-269. Since the purchase, very little restoration or renovation of the property has occurred. CP 269-270, 304. In addition to neglecting the Mukai property, the sole asset of the corporation, the absentee board²

¹ Respondent Mary Matthews helped to found Island Landmarks in 1995. She has been board president since 2002. Her husband, Nelson Happy, has also been a board member since 2002. CP 158-169.

² Matthews and Happy have lived in Texas since 2002. CP 302. Owen Ryan lives in North Carolina and has never visited the property. CP 305.

failed to properly steward the organization in many respects, outlined below, and failed to maintain a membership. CP 647. The corporation became a self-perpetuating board of five people—an abuse of the nonprofit structure of Island Landmarks.

This case rests largely on the authority of the corporate governing documents – the Articles of Incorporation and the Bylaws. CP 36-69. In particular, the Bylaws provide a road map for removal of board members “with or without cause”. CP 43-48. Removal of the respondent board members occurred at a “special meeting” of the appellant members on June 4, 2012 convened by eleven members who provided timely notice of the meeting to all the other members at large. At the meeting, the members voted 69 to 0 to remove the respondent absentee board members, and 68 to 0 to elect the appellant board of eleven Vashon residents. In so doing, the appellant members scrupulously followed the letter and the intent of the Bylaws, as well as operative state law. CP 305-307.

The respondents refused to acknowledge this governance change. CP 71-72. Instead, they responded by voting to change the Bylaws to purportedly eliminate the members’ voting rights. Island Landmarks, through its new board, filed this lawsuit seeking a declaratory judgment that the newly elected board is the lawful

governing body of the corporation. CP 1-14. Both parties filed motions for summary judgment on governance, CP 73-83, 84-183, and the appellant also moved to amend its complaint to add a claim under RCW 24.03.1031³ that judicial removal of the respondents was appropriate. CP 324-346. On November 1, 2012, without ruling on the new board's motion to amend the complaint, the trial court granted respondent's motion for summary judgment and denied appellant's motion for partial summary judgment on the basis that "the plaintiff had not given proper written notice of the special meeting to the secretary as required by the Bylaws of the plaintiff nonprofit corporation." Attachment A, page 2.

II. ASSIGNMENTS OF ERROR

1. The corporate Bylaws allow written notice of any special meeting of the members to be given by the secretary *or* persons authorized to call the meeting and also authorize "...not less than ten percent (10%) of the members... to...call special meetings of the members for any purpose." The undisputed evidence confirms that over 10% of the members of Island Landmarks called for, and provided timely notice of, the special meeting at which the former absentee board was removed. The Superior Court erred in

³ Pursuant to RAP 10.4(c), the text of cited provisions of Chapter 24.03 RCW is set forth in the appendix.

granting respondents' motion for summary judgment on the sole basis that the members gave notice of the meeting rather than asking the secretary to give notice of the meeting.

2. The Superior Court erred in denying appellant's motion for partial summary judgment on governance as the members scrupulously followed the letter and intent of the corporate Bylaws in providing notice of the meeting and removing the respondent board members from their positions.

3. The Superior Court improperly failed to consider appellant's motion to amend the complaint to add a claim that the respondents be judicially removed in accord with RCW 24.03.1031.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Island Landmarks Bylaws authorize 10% or more of the members at large to call for a special meeting and to provide notice of this meeting to all the other members. Did the Superior Court err in holding that only the secretary of Island Landmarks can provide notice of a specially called meeting to the members?

2. Island Landmarks is a membership-based nonprofit corporation and the Bylaws bestow on members voting rights, the right to convene a special meeting, the right to give notice of the special meeting to the members, and the right to remove directors

and to elect new directors. Did the Superior Court err in holding that the members did not properly follow the Island Landmarks' Bylaws when they removed the respondents from their board positions?

3. Appellant filed a motion to amend its complaint to add the claim that the respondent board should be judicially removed pursuant to RCW 24.03.1031. Did the Superior Court err by dismissing the lawsuit without considering appellant's motion to amend its complaint?

IV. STATEMENT OF THE CASE

a. The Mukai Property

The Mukai House and Garden is a historically significant property on Vashon Island, Washington; it is both a King County landmark and on the National Register of Historic Places. CP 138, 287, 348-349.

The property was purchased in 1926 by the Mukai family. B.D. Mukai was born in Japan, immigrated to the United States in 1903, and moved to Vashon Island in 1910 with his first wife Sato; their son, Masahiro "Masa", was born in 1911; Sato died in 1922; in 1925 B.D. married Kuni, Sato's sister. CP 267. From 1910 to 1926, the family farmed and processed strawberries on rented

property. In 1926, when Masa turned 15, the family purchased the property at issue here in Masa's name as he could legally own property.⁴ CP 267. The family then built the house, and Kuni Mukai, over the following years, designed and built the Japanese garden; this garden is unique as it is the only garden in the United States created by a Japanese immigrant woman. CP 218.

The family farmed strawberries on this property until 1967⁵. In addition to farming, the Mukai family developed a then-revolutionary technique for freezing strawberries; in 1926, they built the Mukai Cold Process Fruit Barreling Plant⁶ where strawberries were cold-packed for shipping. At its height, the business employed 400-500 seasonal workers and packed 200 tons of strawberries per season which were shipped all over the United States. CP 267. They sold the house in 1949, and the fruit processing business in 1968. CP 268.

b. Island Landmarks

Island Landmarks was formed in 1995 by Vashon Island

4. The law at the time did not permit B.D., Sato, and Kuni, as Issei (first generation Japanese immigrants) to own land. CP 267.

⁵ The family escaped internment by voluntarily moving to Idaho; they returned to the property after the war. CP 267.

6. The Fruit Barreling Plant, adjacent to the house and garden, is not owned by Island Landmarks. Respondents Mathews and Happy purchased it in 2006. CP 289. Appellant asserts that this was an improper "usurpation of corporate interest" and one example of respondents' self-serving leadership of Island Landmarks.

residents including new board member Ellen Kritzman, CP 301,⁷ as a Washington nonprofit corporation to “preserve significant architecture and historic landscape” on Vashon-Maury Island. The Articles of Incorporation and Bylaws adopted in 1995, CP 36-69, specifically designate Island Landmarks as a membership organization. CP 38. Article 2 of the Bylaws states that the membership shall be “open and unlimited to all persons who have an interest in promoting historic preservation of architecture, landscape and heritage of Vashon and Maury Islands.” CP 43.

In an effort to purchase the Mukai House and Garden, Island Landmarks raised \$469,200 in federal, state and county grants and individual gifts, and in 2000 purchased the property for \$314,000. CP 268-269. Since the purchase, very little restoration or renovation of the property has occurred. CP 270, 304. From 2002 until 2012, Island Landmarks became increasingly dysfunctional.

Examples include:

- the IRS withdrew the corporations 501(c)(3) nonprofit status in 2010, CP 171;
- the Washington Secretary of State revoked the corporation's

⁷ Ms. Kritzman suggested the name “Island Landmarks.” CP 301. New board member Bruce Haulman was also on the board in the early years. CP 268.

non-profit status in October 2012, CP 172;

- property tax filings were perpetually delinquent, CP 303;
- the property went into foreclosure in 2010, CP 243, 290;
- no members belonged to the corporation, CP 647, so there would have been no annual meetings of members to select the board;
- over \$150,000 in public funds that were granted for the renovation and maintenance of the property as well as public programming have not been accounted for, CP 269;
- requirements imposed by county, state and federal agencies as a part of the public funding were never met including public tours of the property, garden restoration, development of interpretative exhibits, and annual grant reporting, CP 287-299, 349;
- Matthews and Happy, who moved to Texas in 2002 and visited the property periodically, used the Mukai house for their own personal use including storage of their clothing, cars, and personal effects, CP 290, 305;
- Respondent board members Ellen and Ken DeFrang were paid by Matthews and Happy to caretake the property, CP 302-303 and as such were not volunteer board members;

- in 2010, the former board tried to sell the Mukai property, listing it for for sale on the open market for \$799,000, bundled together with the adjacent Fruit Barreling Plant— part of the historic Mukai Agricultural Complex, which had been privately purchased by Matthews and Happy in 2006, CP 259-265;
- in 2010 King County 4Culture requested the state attorney general to dissolve the corporation, CP 294-299.

c. The New Board's Revitalization Effort

As the property declined, various individuals unsuccessfully sought to address the dysfunction of Island Landmarks as a nonprofit corporation. Vashon resident Joseph Meeker wrote to Mary Matthews, president of the respondent board (hereinafter referred to as the “ousted board”) in March of 2011, asking to become a member; he received no response to his inquiry. CP 214. When the property was listed for sale in 2010, community members attempted to work with the ousted board to transfer it to another Vashon nonprofit, to no avail. CP 260. King County 4Culture attempted to work with the ousted board repeatedly to remedy problems, and in 2010 wrote to the Washington State Attorney General's office requesting dissolution of Island

Landmarks and the appointment of a receiver to transfer the Mukai property to a functioning nonprofit. CP 290.

In the spring of 2012, a group of community members tired of watching the deterioration of the Mukai house and the lost promise of the site as a community resource, and decided to restore Island Landmarks to its charitable purpose through its membership base. CP 38, 43. Over seventy new members⁸ joined Island Landmarks by signing a pledge to support the corporation, and by paying dues of \$25.00, in compliance with Bylaws section 2.2. CP 304-306. The dues payments were all deposited into the Island Landmarks' corporate bank account on Vashon Island, CP 305-306, whereby control over the dues passed to the Island Landmarks treasurer, Mary Matthews, who resides in Texas.

Eleven of these new members then called for a special meeting pursuant to section 2.5 of the Bylaws⁹ for the stated purpose of voting on a new Board of Directors as allowed under Bylaw section 3.18.¹⁰ CP 44, 48. One of the new members, Ellen

⁸ By mid-September 2012, there were over 130 new Island Landmarks members. CP 185.

⁹ Bylaw section 2.5 speaks to "Special Meetings" and allows the the President, any two (2) members of the Board, or not less than ten percent of the members entitled to vote at such meeting, to call a special meeting of the members for any purpose. CP 44.

¹⁰ The text of Bylaw section 3.18 is found on page 16, *infra*

Kritzman, mailed a “notice of the special meeting” including the meeting’s date, place and purpose, CP 315, to all the members at large including the five respondents on May 24, 2012—ten days before the special meeting, CP 306, as required by Bylaw section 2.7 and the statute governing notice of nonprofit members’ meetings.

Ms. Kritzman contacted secretary Ken DeFrang to discuss the special meeting; he indicated that he had received the notice. She offered him the membership list; he declined acceptance of this, stating he “would let it go” with regard to receiving the membership forms so he wasn’t “obligated to report this to Matthews.” CP 306. In another conversation before the special meeting, respondent DeFrang informed Ms. Kritzman that he would probably not attend the meeting because neither Ms. Matthews nor Mr. Happy wanted him to go. CP 306. He did not attend the meeting. CP 307.

On June 4, 2012, the special meeting was held and the members voted 69 to 0 to remove the respondents from their board positions; they then voted to elect a new board of eleven, 68 to 0, in order to restore proper governance to the corporation. CP 306-307. The board refused to step down, and indeed on June 13, 2012

purportedly “amended” the Island Landmarks’ Bylaws to deprive the corporation’s members of voting rights previously stated in the Bylaws. CP 61-69.

d. Procedural history

Appellant filed its Complaint on June 18, 2012 on the initiative of the new Board. CP 2-14. Respondents filed their Motion for Summary Judgment on July 27, 2012. CP 73-83. Appellant filed its’ Motion for Partial Summary Judgment on September 14, 2012, CP 84-110, and its Motion to Amend the Complaint on the same day. CP 324-346. A hearing was held on November 1, 2012; the trial court entered two orders: an Order Granting Defendants’ Motion for Summary Judgment, CP 467-468, and an Order Denying Plaintiff’s Motion for Partial Summary Judgment regarding Governance. CP 464-465. Judgment was issued on November 15, 2012. Attachment A. The trial court did not address, much less rule on the Motion to Amend.

V. SUMMARY OF ARGUMENT

In an effort to remedy the long-term neglect of the Mukai property and the dysfunction and self-dealing of the corporate board, in the spring of 2012 over seventy new members convened a “special meeting” as specifically authorized by Bylaw section 2.5.

Pursuant to section 2.7 of the Bylaws, these members notified all the other members and the respondents of the planned June 4, 2012 special meeting. One member contacted respondent DeFrang, then secretary of the corporation, about the special meeting and offered to give him the membership roster; he declined to accept the roster, which was a necessary means for him to play any role in supporting notice. At the meeting on June 4, 2012, the members voted 69-0 pursuant to section 2.3 of the Bylaws to remove the respondent board members, and voted to elect a new board of eleven members by a vote of 68 to 0.

On cross motions for summary judgment regarding these votes, the trial court ruled in favor of the ousted board, saying that “plaintiff had not given written proper notice of the special meeting to the secretary as required by the Bylaws of the plaintiff nonprofit corporation.” In so ruling, the trial court relied on a part of the relevant notice Bylaw, section 2.7, which requires the corporate secretary to provide notice if members calling a special meeting request it. However, the same Bylaw section independently provides that “persons authorized to call the meeting” can give notice directly. Since Bylaw section 2.5 specifically authorizes at least 10% of the members to call a special meeting, Bylaw section

2.7 allows such members to give notice themselves if they so choose. The independent right of members to give notice of a special meeting is also preserved in the members notice provision of RCW 24.03.080(1), in a passage that does not allow modification by Bylaws.

There is good reason for the statute to preserve this independent notice right. If members, unhappy with an existing board, can only give notice through the corporate secretary, the secretary need only delay the notice long enough for the existing board to take other actions to defeat the challenge posed by the special meeting process. In this instance, the ousted board did exactly this; on June 13, 2012, they purported to eliminate the Bylaw provision giving members voting rights. CP 61-69. However, because the members, through the special meeting, had already removed the old board, their action must be deemed moot.

Because the special meeting was appropriately called, noticed, and held, the trial court's grant of summary judgment in favor of the ousted board must be reversed and partial summary judgment entered in favor of the appellant and its' new board. The Superior Court erred in its construction of Bylaw section 2.7 which authorizes either the secretary **or** the members to provide notice of

a meeting to the other members.

III. ARGUMENT

A. Standard of Review.

This Court reviews a summary judgment order de novo. *Ski Acres, Inc. v. Kittitas County*, 228 Wn.2d 852, 854, 827 P.2d 1000 (1992). Thus, this Court applies the same summary judgment standard that the Superior Court was required to use. *Id.* A court may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. CR 56(c); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

B. The Superior Court Erred in Holding that the Members Improperly Gave Notice of the Special Meeting.

1. Bylaw Section 2.7 Allows Either the Secretary or Members to Notify Members at Large of an Upcoming Special Meeting.

The judgment dismissing this case expressly granted respondents' motion for summary judgment, stating:

The Court found that the plaintiff had not given proper written notice of the special meeting to the secretary as required by the Bylaws of the plaintiff nonprofit corporation.

Attachment A, page 2. The Superior Court's holding, allowing

governance to remain with the respondents, rests upon a misreading of Bylaw section 2.7. Preliminarily, it is important to recognize that there is a fundamental difference between a nonprofit corporation with a self-perpetuating board and a membership-based nonprofit corporation. The Washington Nonprofit Corporation Act, RCW 24.03.010, et. seq., contains numerous provisions specifically setting forth how membership-based nonprofits shall conduct their affairs. The Articles of Incorporation or Bylaws must state if the corporation will have members and the rights of the members. RCW 24.03.065. Provisions for members' meetings are set forth in RCW 24.03.075, and for notice of such meetings at RCW 24.03.080. An annual members meeting must be held. RCW 24.03.075.

Island Landmarks' Bylaw section 2.4 provides for the election of the board of directors at the annual meeting¹¹. The Bylaws further provide for the removal of directors, including all directors, at a special meeting of the corporation. Specifically, section 3.18 of the Bylaws allows members to call for, and remove directors, for any purpose. It states:

¹¹ The ousted board did not hold annual members meetings, because there were no members. CP 647.

Removal. At a meeting of members called expressly for that purpose, one or more Directors (including the entire Board) may be removed from office, with or without cause, by two-thirds (2/3) of the votes cast by members then entitled to vote on the election of Directors represented in person or by proxy at a meeting of members at which a quorum is present.”
CP 47.

These are just two of thirteen Bylaws contained in the Island Landmarks Bylaws Article 2 which govern “membership” and outline various rights and responsibilities of the members. All of the Bylaws in Article 2 must be read in conjunction with each other, and Bylaw section 2.7 must be read so it is consistent with the others in the Article 2 “membership” section. As Island Landmarks is a membership organization, the rights ceded to the membership must be clearly recognized.

The language of Bylaw section 2.7 is particularly at issue here; it states in full:

Notice of Meetings

Written notice of any annual or any **special meeting** of the members stating the place day, and hour of the meeting—and in case of a special meeting, the purpose or purposes for which the meeting is called **shall be given by the secretary or persons authorized to call the meeting** to each member of record entitled to vote at the meeting. Such notice shall be given not less than ten (10) nor more than fifty (50) days prior to the date of the meeting. At any time, upon the written request of not more than ten percent (10%) of the members entitled to vote at the meeting, it shall be the

duty of the Secretary to give notice of a special meeting of members to be held at such date, time and place as the secretary may fix, not less than ten nor more than thirty-five days after receipt of such written request, and if the Secretary shall neglect or refuse to issue such notice, the person or persons making the request may do so and may fix the date, time (sic) and place for such meeting. If such notice is mailed, it shall be deemed delivered when deposited in the official government mail properly addressed to the member at his or her address as it appears on the records of the corporation with postage thereon prepaid. [emphasis supplied]

A plain reading of Bylaw section 2.7 allows “the secretary or persons authorized to call the meeting” to provide written notice of a special meeting. Accordingly, there are two separate and distinct ways that members can receive notice of a meeting—either from the secretary or from “persons authorized to call a meeting.” The members of the appellant contend they were “persons authorized to call a meeting” by the language of preceding Bylaw section 2.5 which covers “Special Meetings” and authorizes not less than 10% of the members to call a special membership meeting for any purpose. If 10% of the members decide to call a special meeting, then under Bylaw section 2.7, these members are “persons authorized to call the meeting” who can lawfully provide notice of the meeting to all members.

As stated above, in the spring of 2012, eleven new corporate

members called for a special meeting to be held on June 4, 2012. At that juncture, there were over 70 members; the eleven members met the required “10%” threshold set out in Bylaw section 2.5. CP 44. Accordingly, because they were authorized by Bylaw section 2.5 to call the meeting, members were in turn authorized under Bylaw section 2.7 to notify fellow members of the meeting.

The language of Bylaw article 2.7 on “Notice of Meetings” is harmonious with RCW 24.03.080 which deals with “Notice of members’ meetings” and contains language similar to that of the Bylaw, explicitly allowing “persons calling the meeting” to send notice to “each member entitled to vote at such meeting.”

Specifically, this statute provides:

“(1) **Notice**, in the form of a record, in a tangible medium, or in an electronic transmission, stating the place, day, and hour of the annual meeting and, in the case of **a special meeting**, the purpose or purposes for which the meeting is called, **shall be delivered** not less than ten, nor more than fifty days before the date of the meeting, **by** or at the direction of the president, or the secretary, or the officers **or persons calling the meeting, to each member entitled to vote...**
[emphasis supplied]

The plain language of this statute allows notice of a special meeting to be delivered by “persons calling the meeting” so is harmonious with the language and intent of Bylaw section 2.7. With respect to

the governance of a non-profit corporation, the laws of the state, whether constitutional or statutory, enter into and become a part of the articles of incorporation. *Howe v. Washington Land Yacht Harbor, Inc.*, 77 Wash. 2d 73, 84, 459 P. 2d 798, 805 (1969). The Nonprofit Act applies to all nonprofits in the state, and sets forth provisions that regulate the activities of nonprofit corporations. RCW 24.03.010.

As Bylaws are the internal law of a corporation, they have the effect of a statute. *State ex. rel. Lee v. Goldsmith Dredging Co.*, 150 Wash 366, 368, 273 P. 196 (1928). Principles of statutory construction then apply to the language of Bylaws; it is established that "each word of a statute is to be accorded meaning". *State ex. Rel. Schillberg v. Barnett*, 79 Wash. 2d 578, 584, 488 P. 2d 255 (1971). Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *State v. J.P.*, 149 Wash. 2d 444, 450, 69 P.3rd 618 (2003). To this end, a court must accord meaning, if possible, to every word in a statute." *In re Recall of Pearsall-Stipek*, 141 Wash. 2d 756, 767, 10 P.3rd 1034 (2000)(quoting *Davis v. Dep't of Licensing*, 137 Wash. 2d 957, 963, 977 P.2d 554 (1999)). Applying rules of statutory construction to Bylaw section 2.7, the

plain language allows “persons authorized to call the meeting” to provide written notice of a special meeting.

As “persons calling the meeting,” Ellen Kritzman and her fellow members of appellant Island Landmarks prepared a “Notice of Special Meeting” that informed members of the date of the meeting, June 4, 2012; the venue of the meeting--the Vashon-Maury Island Land trust; the time of the meeting, 7:00 p.m.; and the purpose of the meeting—removal of the corporate officers and election of the new officers. CP 318. Ms. Kritzman mailed the Notice of Special Meeting to all of the members, as well as the respondents, on May 24, 2012—eleven days prior to the June 4, 2012 special meeting. CP 306, 315.

Section 2.7 of the Bylaws also requires that the meeting notice explicitly state the purpose of the “special meeting.” Here, the Notice of Special Meeting plainly stated that “removal” of the respondent directors was at issue, as permitted by section 3.18 of the Bylaws. CP 318. In sum, the members properly notified all the members at large of the special meeting.

2. Bylaw Section 2.7 Does Not Require Members to Request the Secretary, In Writing, to Provide Notice of a Special Meeting to the Members.

The Superior Court judgment was based on the trial court’s

ruling that the appellant members failed to give “proper written notice of the special meeting to the secretary as required by the Bylaws of the plaintiff nonprofit corporation.” The Court relied exclusively on the second half of Bylaw section 2.7 which provides in pertinent part:

At any time, upon the written request of not more than ten percent (10%) of the members entitled to vote at the meeting, it shall be the duty of the Secretary to give notice of a special meeting of members to be held at such date, time and place as the secretary may fix, not less than ten nor more than thirty-five days after receipt of such written request, and if the Secretary shall neglect or refuse to issue such notice, the person or persons making the request may do so and may fix the date, tome (sic) and place for such meeting ...

The Court’s holding that **only** the corporate secretary can provide notice of a special meeting to the members is a misreading of Bylaw section 2.7 for several reasons.

First, the trial court’s interpretation would conflict with the special allowance in RCW 24.03.080(1) for special meetings to be noticed by “persons calling the meeting.” This statute provides:

(1) Notice, in the form of a record, in a tangible medium, or in an electronic transmission, stating the place, day, and hour of the annual meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, by or at the direction of the president,

or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. Notice of regular meetings other than annual shall be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to the next succeeding regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the Bylaws.

A careful reading of the two sentences in subsection (1) demonstrates that the provision there for notice of a special meeting is not subject to restriction in a nonprofit corporation's Bylaws. The second sentence, concerning notice for regular meetings contains the provision "or by such other notice as may be prescribed in the Bylaws." The allowance in sentence two for deviations from the statute in the Bylaws appears frequently in the Nonprofit Act, but when it does, it is clearly by design. It is specifically absent from the first sentence.

Second, this second part of the Bylaw must be read in concert with the first half of Bylaw section 2.7, which explicitly allows members themselves to notify other members of the special meeting, as outlined above. The trial court's reading creates a conflict which need not exist at all.

Third, the plain language of the second part of the Bylaw, in speaking of members "requesting" notice provides an optional

alternative to the first part—it allows members to delegate the notification duty to the secretary, should they so desire.

Significantly, Bylaw section 2.7 does not absolutely require the members to invoke the assistance of the secretary in this regard. If this were the intent of the language, then it would expressly state that the secretary must, in every case, notify members of a special meeting. It does not state this but instead is drafted so that the duties of the secretary are premised on a percentage of the members—not more than 10%—submitting a written request to the secretary to set up the date, time and venue of the meeting and then to mail the notice to all the members. This language must be given effect. *In re Recall of Pearsall-Stipek, id.* Here, the members' actions to send out notice of the special meeting, rather than delegating this to the secretary, was authorized by a plain reading of the Bylaw.

Fourth if this portion of Bylaw section 2.7 required the the secretary exclusively to “fix the date, time and place for the meeting”, this would conflict with Bylaw section 2.6 which covers “Place of Meetings” and provides pertinent part: “All meetings of members shall be held...at such place ... designated ... by the members entitled to call a meeting of members ...” CP 44. As

Bylaw section 2.6 allows members to set the place of a special meeting, this underscores Bylaw section 2.7's allowance of members to convene a special meeting; set the date, time and place; and to notify members of said meeting. The assistance of the secretary is optional but not mandatory.

The only fair reading of these Bylaw sections together is that the members are entitled to call a special meeting and are authorized to give notice themselves if they so choose. While Bylaw section 2.7 allows the members to call a meeting and to ask the secretary to provide the notice, this is optional.

None of the members, let alone 10%, wanted or needed respondent DeFrang's assistance, and for good reason, as the ousted board's subsequent action showed. Upon learning of the vote to remove them, the ousted board purported to strip members' voting rights out of the Bylaws. CP 61-69. If notice can only be given through the corporate secretary, an existing board would always have ample opportunity to take such self-serving, self-perpetuating actions, entirely inconsistent with its accountability to its members under the existing Bylaws. It is undoubtedly for such reasons that the wording of RCW 24.03.080 does not make allowance for Bylaws to restrict notice for special meetings any

narrower than the category of “persons calling the meeting.”

Notably, not one member, including the respondents, has complained that he or she was deprived of notice of the special meeting. The clear intent and purpose of this Bylaw is to insure that all members receive notice of important membership meetings, and that is what happened here.

For all these reasons, the notice by the members calling the special meeting was entirely lawful. The Superior Court’s interpretation of Bylaw section 2.7, that “it shall be the duty of the secretary to give notice” RP, p. 31, ignores the plain language of Bylaw section 2.7 and RCW 24.03.080, all of the Bylaws of Article 2 read as a whole, and operative case law.

3. The Respondent Secretary Here Rejected Any Role in the Special Meeting Process.

For the reasons stated above, Bylaw section 2.7 can only be read consistent with its own language and state law to provide two avenues for notice to be given when members call a special meeting of the Island landmarks corporation. But even if only the second provision existed, and the Secretary had the exclusive obligation to provide notice, it is undisputed that secretary Ken DeFrang received notice of the special meeting, was invited to

participate in the process, and declined to do so. CP 306.

Member Ellen Kritzman on May 24, 2012 mailed Mr. DeFrang the Notice of the Special Meeting. Then on May 26, 2012, she telephoned him to inquire as to whether he received the notice; he indicated that he had received the notice. *Id.* During that same conversation, Ms. Kritzman asked if he wanted originals of the membership, but he declined acceptance of the membership forms, stating that he “would let it go” with regard to receiving the membership forms, so he wasn’t “obligated to report this to Matthews”. *Id.* In a subsequent conversation, Mr. DeFrang reported to her that “he probably would not attend the meeting because neither Ms. Matthews nor Mr. Happy wanted him to go.” CP 306.

Respondent Ken DeFrang, and his wife, worked for respondents Matthews and Happy as paid caretakers of both the Mukai property and the privately owned Fruit Barrelling Plant for years. CP 303-304. Because both the DeFrangs were employed by respondents Matthews and Happy, it is not surprising that Ken DeFrang declined to accept the membership forms because of a fear of having to report them to Matthews and Happy. Mr. DeFrang’s rejection of a role in the special meeting process

undoubtedly reflected his compromised role on the board. The ousted board cannot seek to perpetuate itself on faulty notice grounds when it was that board's member and corporate secretary who refused to take the members' addresses which were the only means by which the secretary could give notice. *East Lake Water Association v. Rogers*, 52 Wn. App. 425, 430, 761 P. 2d 627 (1988) (corporate secretary could not challenge fee assessment on ground of ineffective notice that he refused to give). The corporate secretary's refusal to take the addresses must be taken at the very least as a ratification of the notice provided directly by the members.

4. At a Minimum, There is a Controverted Factual Dispute Regarding the Significance of Secretary DeFrang's Refusal to Accept the Membership Roster that Must Prevent Summary Judgment for Respondents.

As stated above, the new board contends its members tried to work with Secretary DeFrang concerning the special meeting but he declined to get involved because of his relationship with Matthews and Happy. The Superior Court judge failed to make a finding about this fact and expressed confusion about this fact in the following exchange:

THE COURT: And I think it is fair and reasonable as argued by the defendants that the

persons who are authorized are those board members, presumably number one; and/or according to second sentence, 10 percent of members entitled to vote. But they first have to make a written request of the secretary.

MS. GREINER: But it doesn't say they have to make a written request.

THE COURT: It says, upon written request of not more than 10 persons entitled to vote, it shall be the duty of the secretary—

MS. GREINER: Yes.

THE COURT: to give notice. So that's the crux it seems to me. If he [the Secretary] said no, if this language that quote from Ms. Kritzman is true and uncontroverted he would let it go, which I really don't know what that means.

MS. GREINER: It means he declines. She says he declines.

THE COURT: *I don't know what that means, would let it go. I just don't know what that means. It's not at all clear what he would let it go. That—you don't know if he's not going to the meeting. It's too ambiguous.*

MS. GREINER: Well, what she says is he declines, stating he would let it go with regard to receiving membership forms.

THE COURT; Her interpretation is a decline but that's self-serving.

MS. GREINER: Well, but there's no—there are no facts that contradict that.

RP 32, lines 3-25; 33, lines 1-6. (emphasis added.)

This exchange reveals the Court's confusion regarding the import of Mr. DeFrang's statement that he would not accept the membership roster. While the statement in Ms. Kritzman's declaration is not refuted by Mr. DeFrang, the Court expressed confusion as to its significance. At the least, then, there is a factual dispute: did Mr. DeFrang decline to cooperate with the members regarding the special meeting? Once a disputed material fact surfaces, then a case is no longer appropriate for resolution by summary judgment.

Summary judgment is proper if reasonable minds could reach only one conclusion from the evidence presented. *Townsend v. Walla Walla School Dist.*, 147 Wash App. 620, 196 P.3rd 748 (2008). The court must deny a summary judgment motion if the evidence and inferences create any question of material fact. *Hugh v. Ballard*, 108 Wn. App. 272, 278, 31 P. 3rd 6 (2001). A "material fact" is one upon which the outcome of the litigation depends in whole or in part. *Morris v. McNicol*, 83 Wn. 2d 491, 494, 519 P.2d 7 (1974). Any doubts regarding the existence of a genuine issue of material fact should be resolved in favor of having the case go to trial. See *Ventures Northwest Ltd. Partnership v. State*, 81 Wn. App. 353, 361, 914 P.2d 1180 (1996). The Court's admitted

confusion about the offer of the original membership forms to Secretary DeFrang raises a factual dispute that must at a minimum bar the ousted board's motion for summary judgment. On this record, summary judgment for the respondents is not appropriate.

C. The Superior Court Erred in Denying the Appellant's Motion for Partial Summary Judgment on Governance as the Appellant's Members Scrupulously Followed the Letter and Intent of the Corporate Bylaws in Removal of the Respondent Board Members

1. Over seventy members joined Island Landmarks in the spring of 2012, all with voting rights.

While Island Landmarks was established in 1995 as a membership organization, the ousted absentee board had allowed the membership to lapse. CP 647. This was in total disregard of a founding tenet of the corporation—Article 4 of the Articles of Incorporation which concerns “members” and provides that the Bylaws “shall” set out the rights and privileges of the members. CP 38. As shown above, the Bylaws in turn have an entire section on “membership” in Article 2 with thirteen separate provisions, all related to membership rights and privileges as directed in the Articles of Incorporation. CP 43-45.

It is noteworthy that the Island Landmarks Bylaws have no subjective restriction on membership; joinder is entirely by self-

selection and all qualifications are explicitly stated in Bylaw section

2.2:

Membership shall be open and unlimited to all persons who have an interest in promoting historic preservation of architecture, landscape, and heritage of Vashon and Maury Islands situated in King County, Washington. In order to qualify for membership, a member shall pay annual membership dues which shall initially be \$25.00. Annual dues may be established and changed from time to time by a majority vote of the membership of the Board. Members may have such other qualifications as the Board may prescribe by amendment to these Bylaws.”

CP 43. Bylaw section 2.2 is consistent with state law: RCW

24.03.065.¹² Relying on this Bylaw, over 70 individuals joined Island Landmarks by pledging to “promote historic preservation” on Vashon, and paying \$25.00 by check for the membership dues.

The dues payments were all deposited into Island Landmarks’ corporate account, CP 306, solely controlled then by the corporate treasurer Mary Matthews, who lives in Texas. CP 302.

A key right of members is the right to vote. Bylaw section 2.2 expressly bestows upon members the right to vote on matters of interest to the corporation. RCW 24.03.085(1) speaks to “Voting” and provides that each member “shall be entitled to one vote on

¹² This statute, on “Members,” provides that a corporation may have members; if it does have members, the qualification and rights of the members must be set forth in the articles of incorporation or the bylaws.

each matter submitted to a vote of the members.” Accordingly, the seventy-plus individuals who became Island Landmarks’ members in the spring of 2012 had voting rights that they were entitled to exercise—regarding any matter submitted to their vote including the election or removal of board members.¹³

2. Island Landmarks’ members properly convened a special meeting in June of 2012.

As previously described, section 2.5 of the corporate Bylaws gives members the right to convene a “special meeting.” This Bylaw explicitly provides:

Special Meetings. The President, any two (2) members of the Board, **or not less than ten percent of the members entitled to vote at such meeting,** may call special meetings of the members for any purpose. [emphasis supplied]

CP 44. This Bylaw explicitly states that 10% of the members who are entitled to vote can call the meeting “for any purpose.” In the case at hand, there is no question that the 10% requirement was met, and that the purpose and location were clearly stated. CP 44. Nor is there any question that the call for the meeting met the requirements of RCW 24.03.075 providing that that “meetings of members” may be held at such place as stated in or fixed in

¹³ Respondent Happy’s letter of June 13, 2012 implicitly recognizes this as he claims that on June 13, 2012 the bylaws were amended to deny members a vote. CP 70-72.

accordance with the Bylaws. Here, the Island Landmarks new members met the requirements of Bylaw section 2.5.

- 3. The Island Landmarks' members properly voted to remove the respondent board members, 69 to 0, and voted unanimously to elect a new 11 person board of accomplished community members.**

The new members, after receiving proper notice of the special meeting, convened on June 4, 2012. By the meeting, there were 77 dues paying members—all eligible to vote pursuant to Article 2.3.1 of the Bylaws. CP 306. After discussion, a motion was made to remove the respondents as board members which was approved 69 to 0. Clearly, the 2/3 majority vote required for removal by Article 3.18 of the Bylaws was met. A second motion followed to elect a new board of 11 island-based directors; this vote was unanimous as well with 68 members voting to elect the new board and 0 opposed. Not one of the respondents attended the meeting. CP 306-307.

In sum, members of Island Landmarks legally convened a June 4, 2012 special meeting of the membership; notified all the other members and the respondents of the special meeting date, time, venue and purpose; held the meeting at the appointed date and time; unanimously removed the respondents as board

members; and elected a new responsible board committed to revitalizing the organization and the Mukai property. The members of appellant scrupulously followed the letter and the spirit of the Bylaws and operative state law in their actions, every single step of the way. As such, Appellant's Motion for Partial Summary Judgment Regarding Governance should have been granted by the trial court.

D. Because the Superior Court Did Not Rule on Appellant's Motion To Amend the Complaint to Assert a Claim Under RCW 24.03.1031 For Removal of Directors, It Was Improper to Dismiss the Case.

On September 14, 2012, appellant filed a Motion to Amend the Complaint to Assert a Claim Under RCW 24.03.1031 for Removal of Directors, CP 324-331, as well as a proposed amended complaint reflecting the additional cause of action. CP 332-346. This motion relied expressly on facts included in appellant's original complaint, the amended complaint, and its Motion for Partial Summary Judgment Regarding Governance. These facts included the ousted board's failure to account for \$150,000 of public funding, Matthews and Happy's personal use of the property, and their attempt to sell Island Landmarks' sole asset—the Mukai house and garden—with their own property in a private sale.

Civil Rule 15(a) permits a party to amend a pleading by leave of court, and leave shall be freely given when justice so requires. The purposes of Rule 15 are to “facilitate a proper decision on the merits” and to provide each party with adequate notice of the basis of the claims or defenses asserted against him. *Pierce County Sheriff v. Civil Serv. Comm’n*, 98 Wash.2d 690, 695, 658 P.2d 648 (1983). Leave to amend should be freely given “except where prejudice to the opposing party would result.” *Caruso v. Local Union 690 of Int’l Bhd. of Teamsters*, 100 Wash. 2d 343, 670 P. 2d 240 (1983). The factors a court may consider in determining prejudice include delay and unfair surprise. *Caruso, supra*; see also *Tagliani v. Colwell*, 10 Wash. App. 227, 233, 517 P.2d 207 (1973). The fact that a motion to amend the pleadings may delay the timing or or the progress of the litigation is not dispositive. *Caruso* at 349-350. Regarding “unfair surprise”, amendments that assert a new legal theory based upon the same circumstances set forth in the original pleadings are more likely to be granted. *Herron v. Tribune Publishing Co.*, 108 Wn. 2d 162, 736 P.2d 249 (1987). Where an amendment would have done no more than state an alternative theory for recovery, and if the underlying facts or circumstances relied upon by a plaintiff are a proper subject

of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Caruso* at 350-351.

Here, the motion to amend was filed two months after appellant filed its initial complaint so delay was not an issue. The motion also relied on the very same corpus of facts; unfair surprise cannot be argued. Moreover, the motion provided additional relief beyond the appellant’s motion for partial summary judgment as it asserted additional grounds for possible future injunctive relief with respect to assets and an accounting.

But even more fundamentally, the Superior Court erred in refusing to even consider appellant’s motion. Whether to grant or deny an opportunity to amend is within the discretion of the trial court “but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion...” *Tagliani v. Colwell*, 10 Wash. App. 227, 233, 517 P. 2d 207(1973).

Appellant was denied the opportunity to proceed with its judicial removal claim, an alternative claim to its assertion that the new board retained governance of the corporation as they were duly elected by the voting members. The amendment would have precluded dismissal even if the trial court’s decision on notice had been correct.

IV. CONCLUSION

The appellant members lawfully removed the respondents from their long standing dysfunctional exclusive control over Island Landmarks and the Mukai house and garden, in order to restore the corporation to its true purpose. Appellant respectfully requests this Court to vacate the Superior Court dismissal of this case, and deny respondents' motion for summary judgment as the Superior Court erred in holding that only the respondent secretary can notify members of a special meeting.

Appellant further asks this Court to grant its motion for partial summary judgment on the basis that the members duly removed the former board and duly elected a new board of Island Landmarks.

Appellant finally asks this Court to grant its motion to amend the complaint under RCW 24.03.1031 for removal of the directors.

Respectfully submitted this 4th day of March, 2013.



M. Lynn Greiner, WSBA No. 13341
Attorney for Appellant,
Island Landmarks



Daniel J. Chasan, WSBA No. 25904
Attorney for Appellant,
Island Landmarks

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 4th day of March, 2013, I caused the foregoing APPELLANT'S OPENING BRIEF to be served via the methods listed below on the following:

VIA EMAIL AND U.S. MAIL

Mr. Robert M. Krinsky
Law Offices of Robert M. Krinsky
P.O. Box 13559
Burton, WA 98013-3559

bobtune@centurytel.net

Executed this 4th day of March, 2013, at Seattle, Washington.



M. Lynn Greiner, WSBA No. 13341

FILED DIV I
COURT OF APPEALS
STATE OF WASHINGTON
2013 MAR -4 PM 4:44

EXHIBIT A

The Honorable Monica Benton
HEARING DATE: NOVEMBER 16, 2012
WITHOUT ORAL ARGUMENT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

| | |
|---|--------------------------------------|
| ISLAND LANDMARKS, a Washington Nonprofit corporation, Plaintiff, vs. MARY MATTHEWS, et.al., Defendants | No. 12-2-20765-8 SEA JUDGMENT |
|---|--------------------------------------|

1. JUDGMENT SUMMARY

1. Mary Matthews, J. Nelson Happy, Owen Ryan, Ken De Frang and Ellen De Frang.
2. Judgment Debtor: Island Landmarks, a Washington nonprofit corporation.
3. Principal Judgment Amount: None
4. Interest to Date of Judgment: None
5. Statutory Attorney Fees: \$200.00
6. Costs: None
7. Statutory Attorney Fees shall bear interest at the statutory rate.
8. Attorney for defendants/judgment creditor: Robert M. Krinsky WSBA #6206.

JUDGMENT - 1

LAW OFFICES OF
Robert M. Krinsky
P. O. Box 13559
Burton, WA 98013-3559
(206) 463-2712

COPY

1 9. Attorneys for plaintiff/Judgment debtor: Rex Stratton WSBA #1913 and Lynn Greiner
2 WSBA# 13341.

3 10. Total Judgment: \$200.00.

4 2. END OF JUDGMENT SUMMARY/FINDINGS

5 THIS MATTER came on regularly for hearing/presentation before the undersigned Judge
6 of the above-entitled Court upon Defendants' Notice of Presentation for Entry of Judgment and
7 Order of Dismissal. On November 4, 2012 the Court entered its ORDER GRANTING
8 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT and entered its ORDER DENYING
9 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT. In accordance with CR
10 56 the Court found that there were no material facts that were controverted. The Court found that
11 the plaintiff had not given proper written notice of the special meeting to the secretary as
12 required by the bylaws of the plaintiff nonprofit corporation. The Court found/finds that this
13 case has been fully adjudicated on said motions and orders and that the defendants are entitled to
14 an order of dismissal with prejudice. In accordance with CR 54 and CR 58, there being no just
15 reason to delay entry of judgment, now therefore, the Court enters the following Judgment and
16 Decree:
17

18 3. JUDGMENT

19 It is hereby:

20 ORDERED, ADJUDGED and DECREED that the defendants are awarded judgment of
21 dismissal plus statutory attorney's fees/costs pursuant to the Cost Bill submitted herein against
22 the Plaintiff in the amount of \$200.00.
23
24

25 JUDGMENT - 2

26 LAW OFFICES OF
Robert M. Krinsky
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(206) 463-2712

APPENDIX

RCW 24.03.010
Applicability.

The provisions of this chapter relating to domestic corporations shall apply to:

- (1) All corporations organized hereunder; and
- (2) All not for profit corporations heretofore organized under any act hereby repealed, for a purpose or purposes for which a corporation might be organized under this chapter; and
- (3) Any corporation to which this chapter does not otherwise apply, which is authorized to elect, and does elect, in accordance with the provisions of this chapter, as now or hereafter amended, to have the provisions of this chapter apply to it.

The provisions of this chapter relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter.

[1971 ex.s. c 53 § 1; 1967 c 235 § 3.]

Notes:

Repealer -- Savings -- 1967 c 235: See RCW 24.03.920, 24.03.905.

RCW 24.03.065

Members — Member committees.

(1) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of the class or classes, the manner of election or appointment and the qualifications and rights of the members of each class must be set forth in the articles of incorporation or the bylaws. Unless otherwise specified in the articles of incorporation or the bylaws, an individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of a corporation. If the corporation has no members, that fact must be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

(2) A corporation may have one or more member committees. The creation, makeup, authority, and operating procedures of any member committee or committees must be addressed in the corporation's articles of incorporation or bylaws.

[2004 c 98 § 1; 1986 c 240 § 12; 1967 c 235 § 14.]

RCW 24.03.075

Meetings of members and committees of members.

Meetings of members and committees of members may be held at such place, either within or without this state, as stated in or fixed in accordance with the bylaws. In the absence of any such provision, all meetings must be held at the registered office of the corporation in this state.

An annual meeting of the members must be held at the time stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time does not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by other officers or persons or number or proportion of members as provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting.

Except as otherwise restricted by the articles of incorporation or the bylaws, members and any committee of members of the corporation may participate in a meeting by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes presence in person at a meeting.

[2004 c 98 § 2; 1986 c 240 § 14; 1967 c 235 § 16.]

RCW 24.03.080
Notice of members' meetings.

(1) Notice, in the form of a record, in a tangible medium, or in an electronic transmission, stating the place, day, and hour of the annual meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. Notice of regular meetings other than annual shall be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to the next succeeding regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws.

(2) If notice is provided in a tangible medium, it may be transmitted by: Mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the corporation, with postage thereon prepaid. Other forms of notice in a tangible medium described in this subsection are effective when received.

(3) If notice is provided in an electronic transmission, it must satisfy the requirements of RCW 24.03.009.

[2004 c 265 § 10; 1969 ex.s. c 115 § 1; 1967 c 235 § 17.]

Notes:

Waiver of notice: RCW 24.03.460.

RCW 24.03.085
Voting.

(1) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(2) A member may vote in person or, if so authorized by the articles of incorporation or the bylaws, may vote by mail, by electronic transmission, or by proxy in the form of a record executed by the member or a duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

(3) If specifically permitted by the articles of incorporation or bylaws, whenever proposals or directors or officers are to be elected by members, the vote may be taken by mail or by electronic transmission if the name of each candidate and the text of each proposal to be voted upon are set forth in a record accompanying or contained in the notice of meeting. If the bylaws provide, an election may be conducted by electronic transmission if the corporation has designated an address, location, or system to which the ballot may be electronically transmitted and the ballot is electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record. Members voting by mail or electronic transmission are present for all purposes of quorum, count of votes, and percentages of total voting power present.

(4) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his [or her] vote and to give one candidate a number of votes equal to his [or her] vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

[2004 c 265 § 11; 1969 ex.s. c 115 § 2; 1967 c 235 § 18.]

Notes:

Greater voting requirements: RCW 24.03.455.

RCW 24.03.1031
Judicial removal of directors.

(1) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced by the corporation if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

[1999 c 32 § 1.]