

Using Bylaws to Improve Effectiveness and Achieve Results

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Agenda

- Corporate Governance Documents
- Common Provisions in Bylaws
- Non-Profit Bylaws Best Practices
- Dos and Don'ts of Bylaws
- National Requirements for Chapter Bylaws
- Special Challenges for Membership Based Non-profits



Corporate Governance Documents



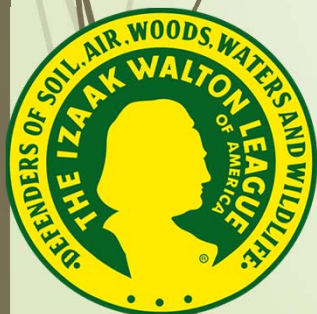
Essential Corporate Records

- Articles of Incorporation (with amendments, if any)
- By-laws (with amendments, if any)
- Minutes of board and membership meetings
- Tax returns
- Financial records
- Documentation of Chapter / Division Activities



What are Bylaws?

- ▶ Articles of Organization and Bylaws are the main governing documents for a nonprofit organization.
- ▶ Bylaws are a nonprofit's operating manual.
- ▶ Bylaws supplement the rules defined by the state corporations code and will guide how your nonprofit will be run.
- ▶ Bylaws are used to guide the board's actions and decisions.



What are Bylaws?

- ▶ Nonprofit bylaws raise the level of accountability, transparency, and effectiveness to foster excellence in service and inspire trust.
- ▶ Bylaws are helpful in preventing or resolving conflicts and disagreements.
 - ▶ Can protect the organization from potential problems by outlining rules around authority levels, rights, and expectations.
- ▶ If the Board of Directors fails to follow the bylaws, it can be held liable for breaching their duty to the nonprofit organization.



COMMON PROVISIONS IN BYLAWS



Name and Purpose

- ▶ You can state the name in the title, such as “Bylaws of XYZ Corporation”.
- ▶ Since the purpose is stated in the Articles of Incorporation, it’s not necessary to restate it in the bylaws.
- ▶ If you do include a purpose section in your bylaws, it should repeat exactly what’s written in the Articles of Incorporation.



Election, Roles and Terms of Board Members and Officers

- ▶ Bylaws should summarize the board members' duties to act in good faith, in the best interests of the organization.
- ▶ Most nonprofits include a president, vice president, secretary, and treasurer.
- ▶ Describe the qualifications and duties, as well as details on election and termination (resignation and removal).
 - ▶ For example, you might specify that resignation from the board must be in writing and that a board member may be removed by a 75% vote of the remaining directors if sufficient cause exists for removal.
- ▶ Include a provision specifying term limits.
 - ▶ For example, a term could be three years, with term limits of two consecutive terms.



Membership Issues

- ▶ If not in Articles, list categories of membership.
- ▶ List criteria for membership eligibility, rights of members, voting rights and termination of membership.
 - ▶ Some details — such as membership dues determination, which may change frequently in the future — are better specified in board policies than in the bylaws.
- ▶ Include sections that cover meeting frequency and when the annual meeting should be held.
- ▶ There might be a section on how to handle special meetings and notices of meetings.



Meeting Guidelines

- Identify frequency and quorum.
- A quorum is the minimum number of board members who must be present for official decisions to be made.
 - For example, if an organization currently has thirty members, and the bylaws state that one-third of the members constitute a quorum, then official decisions can only be made at meetings where ten or more members are present.
- *Note: Many states specify the minimum required for a quorum, so make sure you check the rules and regulations in your state.*



Board Structure

- ▶ Would include size, makeup, and standing committees, if any
- ▶ Specify the minimum and the maximum number of board members (e.g. a minimum of three and a maximum of twenty board members).
 - ▶ Some states specify a minimum, and some specify a formula for a minimum and maximum.
- ▶ Name the standing committees, such as the finance committee or an executive committee.
- ▶ You may also choose to give the board the ability to create committees and task forces instead of naming specific committees in the bylaws.



Compensation / Indemnification of Board Members

- ▶ Indemnification is a statement that limits the personal liability of board members.
 - ▶ In some cases, nonprofits are required to indemnify directors and officers, that is, protect and defend them from loss or harm resulting from risk. In other cases, they are prohibited from doing so.
- ▶ Outline compensation arrangements for directors, officers, and employees.
 - ▶ Use the [IRS Form 1023](#) to understand the language you may use for the approval of compensation arrangements.



Tax Provisions

- ▶ Restate the most significant provisions applicable to tax-exempt status.
- ▶ Including these helps assure the IRS that your corporation is eligible for tax exemption.



Conflict of Interest Policy

- ▶ Include a provision for handling conflicts of interest.
 - ▶ Use the language recommended by the IRS.
For guidance, check IRS **Form 1023**.
- ▶ You can include the conflict of interest policy in your nonprofit bylaws. Otherwise, simply state in the bylaws that the conflict of interest policy is to be developed as a separate document.



Amendment of Bylaws

- ▶ To avoid cumbersome procedures, make your bylaws not too difficult to amend.
- ▶ Consider allowing an amendment to pass by a majority vote at a regularly scheduled board meeting.



Dissolution of the Organization

- Usually, nonprofits must have a dissolution clause unless otherwise specified by law.
- When dissolution clauses are required by law, they generally must specify that the organization's assets will be distributed for tax-exempt purposes.



BEST PRACTICES FOR NONPROFIT BYLAWS

(The Dos and Don'ts)



Get Help

- ▶ Remember that bylaws are legal documents. This means that there are legal requirements for what should be included.
- ▶ Requirements vary depending on the state in which your nonprofit operates.
 - ▶ For example, some state laws require membership, board selection, and other issues to be stated in the articles of incorporation.
- ▶ Get assistance in drafting or amending your bylaws from a qualified professional experienced in nonprofit matters.
 - ▶ Not every attorney understands nonprofit issues.
 - ▶ Better to involve from beginning; save time and avoid need to start over
- ▶ Even when you get help, it's still the board's (and/or members') to provide input throughout the process and to vote to adopt the final product.



Stick to the Basics

- ▶ Your bylaws should deal with only the highest level of governing issues.
- ▶ Keep in Mind -- You may do anything permitted by law which is not prohibited by your Articles of Organization, bylaws, or other organizing documents and which in your good faith judgment is helpful to the organization.
- ▶ Don't make your bylaws more complicated than they need to be.



Make Them Public

- ▶ Although bylaws are not considered public documents, making them public and easily available increases the organization accountability and transparency — ensuring the trust of donors, supporters, and beneficiaries.



Don't Include Info that Changes Frequently

- ▶ Bylaws should include only fundamental rules governing the nonprofit.
- ▶ Information that is likely to change frequently (e.g. staff job descriptions, fundraising or marketing guidelines, charters, etc.) should not be included.
 - ▶ These are better suited for procedures manuals or policy manuals.
- ▶ Don't be too specific.
 - ▶ For example, it is better to say that board meetings will be held monthly, rather than to specify they are to be held the first Thursday of each month at 7:30 p.m.



Tailor Them

- ▶ Bylaws are like skeletons. They determine how the entity should “move” and operate, but “the muscles and organs” will vary – since every nonprofit has its own unique needs.
- ▶ Good bylaws match the organization’s mission, particular goals for governance, operational needs, and more.
- ▶ Bylaws should also take into consideration the culture of the organization, the number of people involved in managing the organization, and the expectations and attitudes of the members and directors.



Know the Difference Between “Shall” and “May”

- ▶ When writing your nonprofit bylaws, the difference between the words “shall” and “may” is crucial.
- ▶ Use the word “shall” when it’s something board members are required to do.
- ▶ Use “may” when the task is optional.



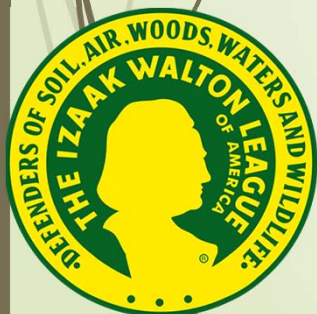
Don't Be Too Ambitious

- ▶ Only include provisions that are realistic.
 - ▶ For example, don't require a 2/3 approval of every member eligible to vote if, in practice, you haven't even been able to get 2/3 of members to attend a meeting.
- ▶ Furthermore, if the Board is not going to carefully adhere to specific provisions (e.g. deadlines), it's far better to omit them.



Review Them Regularly

- ▶ Make sure your bylaws are reviewed approximately every two years.
- ▶ All board members should re-familiarize themselves with the provisions.
 - ▶ This will go a long way toward preventing costly errors.
- ▶ New board members should be provided with a copy immediately upon installation.
- ▶ Bylaws should accurately reflect how the organization works and remain relevant.
 - ▶ *Note: If you made major structural or authority changes, you need to report them in your next Form 990.*



Know What is in Your Bylaws

- ▶ As a board member, you have a duty to understand what each and every provision means.
 - ▶ If there are provisions you do not understand, ask another board member or consult a professional.
- ▶ Follow the provisions religiously.
 - ▶ You not only have a duty to understand your bylaws, you are legally accountable for following them. This is not optional.
 - ▶ A court of law will side with your bylaws in any dispute brought by another board member, an employee, volunteer or recipient of services who may have a grievance.



Keep Your Bylaws Relevant

- ▶ Times and circumstances change...and your governing document should reflect those changes.
- ▶ If your bylaws need to be amended to reflect current realities, do it.
- ▶ Make sure the changes make long-term sense and follow the amendment procedures as outlined.



Address All Foreseeable Scenarios

- ▶ Take the time to carefully walk through all of the “what-if” scenarios to avoid holes in the bylaws.
- ▶ For example, bylaws will contain a provision about removing a board member but leave out any provision covering how that position gets filled upon removal.



Don't Treat as a Policy or Procedural Manual

- ▶ Create a separate policy manual for management purposes.
- ▶ Want to keep bylaws flexible.
- ▶ Includes items such as membership criteria, membership dues determinations, and the operation of committees.
- ▶ Bylaws should be a relatively concise and easy-to-navigate document.



National Bylaw Requirements for Chapter Bylaws



Required Provisions

- ▶ Section 5.2 of National Bylaws defines required provisions for chapter bylaws:
 - ▶ Assets upon revocation of charter or dissolution, shall be disposed of in accordance with Section 16 of National bylaws.
 - ▶ If there is a conflict between Chapter and National bylaws, national bylaws govern.
 - ▶ The Chapter's objects and powers shall be the same or substantially similar to those of the League.



Required Provisions

- ▶ No transfer of assets of a chapter to any other entity, in excess of 10% of the chapter's total assets, shall be effective or valid unless approved in advance by a 2/3 vote of the Executive Board and by a 2/3 vote of the chapter's membership present at a meeting
- ▶ Chapter must provide all members notice of a meeting twice in writing – at least 30 days, but not more than 60 days in advance and again at least 10 days, but not more than 30 days in advance of the meeting.



Required Provisions

- It shall be mandatory to affiliate with, abide by the rules and regulations of, and pay such annual dues as that division's bylaws specify. (Section 5.5)
- It shall be the duty of local chapters to develop local programs consistent with the objectives of the national organization, and assist and promote the work of the state divisions and the national organization. (Section 5.6)
- Must elect officers to begin their term of office no later than September 1, following election. (Section 5.7)



SPECIAL CHALLENGES FOR MEMBERSHIP NON-PROFITS



Members Have Legal Rights

- Defined by the nonprofit's governing documents and by state nonprofit laws.
- Allowed to make major decisions, such as electing directors to the board, dissolution of the nonprofit or the sale of its major assets and amending the organization's bylaws and articles of incorporation.
- Authority to make important operational decisions is usually granted to the nonprofit board.
 - However, the organization and its board of directors are accountable to the members and are required to act in their best interests.



Pay Attention to Approval Process

- Amendments to bylaws will almost always require member approval.
- May also require board of directors approval.
- Many times, written notice of the proposed amendments will be required to be given a certain number of days in advance of the meeting.
- It is important to note the required timeline at the beginning of the process so that your chapter/division does not go through the entire bylaw review process only to realize that it will be another year before the required chapter membership approval can be obtained due to failure to adhere to the minimum notice period.



Issues Seen With Chapters

- Dealing with Difficult / Problem Members
- Use of Affidavit

