

Guide for Developing Bylaws

The very mention of bylaws in a board meeting is usually met with dread. It typically means either that a conflict has risen to the point where the bylaws must be consulted, or it means that someone is pointing out an area of noncompliance that has gone unnoticed for years. This Checklist points out the necessary elements in bylaws.

Because regulations about nonprofit bylaws are done individually by state (rather than the federal government) there is quite a bit of variation. For example, in Ohio and New York, nonprofit boards must have a minimum of three members, but in California the minimum is one. It's important to obtain the applicable state laws and make sure that the bylaws are in compliance. In addition, some cities have further regulations for nonprofits. Ask your city attorney's office for guidance. For example, some states and cities have different rules for nonprofit organizations for which the board automatically includes an elected official or government employee as a result of that individual's election or employment.

Three overall guiding principles for nonprofit bylaws:

A. Don't put too much in the bylaws. If you specify a board committee in the bylaws, for instance, and there hasn't been such a committee in a few years, someone could claim that you are in violation of your own bylaws. Or, along the same lines, if the bylaws state that meetings will be held on the third Wednesday of each month, you can't change to Thursdays without a change in the bylaws.

B. Remember that if trouble erupts -- such as internal conflict or attacks from others -- the bylaws will become very important. So make sure they are reviewed approximately every three years. Because board officer terms make it hard for the board to keep track of bylaw revisions, have this duty included as a responsibility of the executive director.

C. Immediately attach (by staple if necessary) any changes made to the bylaws to the copy kept by the executive director. Too often everyone forgets about changes to the bylaws.

Here is a checklist to ensure the most important provisions are included in your bylaws.

1. **Indemnification.** A statement that limits the personal liability of board members.
2. Whether the organization has **members** (such as members of a neighborhood or professional association) and, if so, what their rights are. For example, in a true membership organization, members have the right to elect officers. Even if you don't have members with legally enforceable membership rights such as voting rights, you can still have people called "members," but the distinction should be clarified in the bylaws.
3. **Minimum and maximum number of board members.** Example: minimum of five and a maximum of fifteen board members. Some states specify a minimum, and some specify a formula for a minimum and maximum, so check your state's law.
4. The number required for a **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 fifteen members, and the bylaws state that one-third of the members constitutes a quorum, then official decisions can only be made at board meetings where five or more members are present. Note: Many states specify the minimum required for a quorum; for example, in California a quorum may be as low as one-fifth of the board.

5. **Terms and term limits.** Example: two years, with term limits of three consecutive terms (making a total of six years); after a year off, a board member may be permitted to return. Similarly, terms can be staggered so that, for instance, one-third of the board is up for reelection each year.

6. Titles of **officers**, how the officers are appointed, and their terms. Example: appointed by majority vote at a regular meeting of the board; an officer term is for one year with a maximum of two consecutive officer terms.

7. Procedure for **removing a board member** or officer. Example: by majority vote at a regularly scheduled meeting where the item was placed on the written agenda distributed at least two weeks ahead.

8. **Conflict of interest policy.** Alternatively, many bylaws simply state that there will be a conflict of interest policy but keep its exact wording out of the bylaws.

9. **Minimum number of board meetings per year.** Example: four, with one in each quarter.

10. How a special or **emergency board meeting** may be called.

11. **How a committee may be created** or dissolved.

12. **What committees exist**, how members are appointed, and powers, if any. It may be easiest not to specify committees in the bylaws at all; instead, permit the board to create and dissolve standing and temporary committees as it sees fit. As a result, the bylaws need not be changed each time a committee is created or changed.

13. **Conference calls and electronic meetings.** Example: votes by e-mail or web forum are prohibited. Meetings may be held by conference call if all members can simultaneously hear one another. As Internet usage grows, some boards are adding sections to the bylaws that describe how to hold a board meeting on the Internet, or whether and how decisions can be made by e-mail.

Each board member should be given a copy of the articles of incorporation, the IRS and state determination letters, and the bylaws. Some organizations also post their bylaws on a password-protected section of their website.

Every few years, review the bylaws. Occasionally, individuals are invited to join boards without much scrutiny and are later found to be disruptive and destructive. Too often the board looks to the bylaws to see how to remove such a person, only to discover that the bylaws were written twenty years ago (and seldom looked at since) and have no such provision. Appropriate changes to the bylaws should be recorded in the board minutes, added to copies of the bylaws, and, in some cases, reviewed by an attorney experienced in nonprofit law.