

Introduction

Bylaws are significant written rules by which an organization is governed. With minor exceptions, they are largely the same for all organizations since the mission of the organization does not ordinarily affect the structure of the governance document. Thus, the overview and principles offered in this book will be largely applicable to all non-profit boards.

Although boards formalize their rules in bylaws, because of their often-cumbersome wording and structure they are frequently neglected and sometimes even ignored. For many reasons, however, nonprofit organizations should pay more careful attention to bylaws. Take, for example, the question of the size of the board. An unnecessarily large and unwieldy board of directors can impair an organization's ability to make decisions and meet new challenges, while an entrenched group of long-time board members might prevent a nonprofit from adapting to change. Bylaws are the tool with which organizations address the question of board membership, specifying their number and term limits.

During governing controversies that focus on the organization's mission, bylaws take on particular importance. These disputes can take many forms: a board member who is voted out of office seeks reinstatement, a dissident group within the organization attempts to gain control of the

board, or a faction mounts a legal challenge to a board decision. In these difficult situations, carefully crafted bylaws and adherence to them can help ensure the fairness of board decisions and provide protection against legal challenges.

The laws of some states require membership, board selection, and other issues to be stated in the articles of incorporation. Bylaws expand on the articles as necessary and typically perform at least three important functions:

- First, they determine how an organization is structured. For example, most bylaws specify whether an organization has members, define the duties of officers and board members, and identify standing board committees. An important function of bylaws (if this matter is not covered in the articles) is to specify how board members are selected.
- Second, bylaws — along with state law — determine the rights of participants in the structure, such as the rights of members to be notified of meetings, the rights of board members or officers whom others want to remove from office, and the rights of board members to indemnification.
- Third, bylaws determine many procedures by which rights can be exercised. For example, bylaws may require a certain form of notice for meetings, or they may specify whether board meetings can be held by telephone or elections conducted by mail.

The choice among alternative operational bylaws can directly affect how organizations resolve issues. One challenge frequently facing organizations with a very large board of directors, for example, is the desire to operate more efficiently. This may require a reduction in the number of board members, establishment of an executive committee, creation or improved operation of standing committees, modification of day-to-day operations, or a combination of these alternatives. A number of bylaws and procedures may be relevant to achieve these ends.

This book provides a basic definition of bylaws and an overview of the issues and areas bylaws should address. For experienced board and staff members, this material may be familiar; for others, it will be new. Throughout the book, examples are used to illustrate the relationship between state law and bylaws. Findings from a survey by BoardSource (see Suggested Resources, The Nonprofit Governance Index) provide empirical data about how nonprofits handle certain issues and may help boards choose among alternative bylaws provisions.

A word of caution in advance: while some sample bylaws provisions are provided, this book is not intended to be used as a 'do-it-yourself' guide to drafting bylaws. Good bylaws can draw on someone else's example but they need to be custom-tailored to specific contexts. Moreover, there are legal requirements that differ in different jurisdictions. Because nonprofit organizations and state laws vary widely, it is important to consult an attorney who is knowledgeable about nonprofit corporate law before adopting or revising bylaws.