

Nonprofit Bylaws – The Dos and Don'ts

Understand the dos and don'ts of drafting and amending, and of important clauses

Carefully crafted bylaws and adherence to them can help ensure the fairness of your board decisions and provide protection against legal challenges. Isn't it time to give your bylaws the attention they demand?

Drafting and Amending Bylaws

✗ Don't worry about drafting perfect bylaws the first time around. Start with very basic bylaws that cover major issues surrounding meetings and elections, and then slowly amend those bylaws over time.

✓ Note carefully when and how bylaws can be amended.

✓ Do review the bylaws periodically and ensure timely amendments when necessary.

✗ Don't feel obligated to make your bylaws public. Federal law does not require it.

- ✔ Have an attorney verify that the bylaws are in compliance with state statutes.

Bylaw Terminology

- ✘ Don't use the term "ex officio" without specifying whether or not these members have a vote.
- ✘ Don't forget that certain terms may have different definitions in state law — and that state law always takes precedence. For example, nonprofits often have varying definitions of "membership." However, under state law, a "member" is typically defined as a person (or entity) who pays dues or has more than a nominal connection with the organization and, in return, receives certain membership rights (often the right to elect or remove officers).

Important Clauses

- ✔ Include a clause granting the board the ability to form committees and task forces as the need arises rather than naming all committees and their descriptions in the bylaws.
- ✔ If your board has an executive committee (not all boards should) and gives it the power to act on behalf of the board, the bylaws should define the limits of this authority.
- ✘ When addressing the size of the board, don't specify an exact number. A range allows for the most flexibility — e.g., "no fewer than five and no more than 15 members."
- ✔ Address virtual voting in the bylaws. Keep in mind, most state laws do not allow for email voting, but often voting via telephone or video conference is permitted.
- ✘ Don't include a full conflict-of-interest policy in the bylaws. Instead, reference a standalone conflict-of-interest policy housed in a separate document that can be quickly amended by the board.
- ✔ Consider including a clause allowing board members to be removed both with and without cause. If your board does not want to provide for the removal of directors without cause, a common alternative is to simply have short terms of office, which will allow underperforming board members to quickly roll off the board.