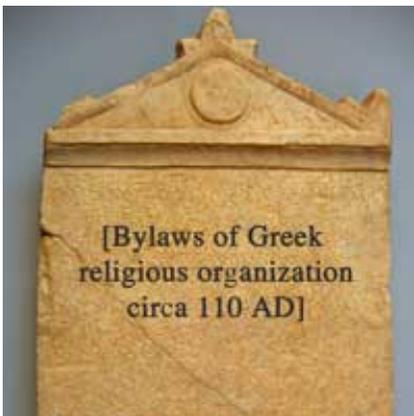


Bylaws Checklist (/content/bylaws-checklist)

By Jan Masaoka Board Café (/category/topic/board-cafe)

39 Comments (/content/bylaws-checklist/#comments)



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.

14. **How the bylaws can be changed.** Example: by majority vote at a regularly scheduled board meeting.

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.

Also in *Blue Avocado*:

- Can Nonprofit Boards Vote by Email? (<http://www.blueavocado.org/content/can-nonprofit-boards-vote-email>) by Gene Takagi & Emily Nicole Chan
- Boards Should Only Have Three Committees! (<http://www.blueavocado.org/content/boards-should-only-have-three-committees>) by David Lapiana
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- Sarbanes-Oxley and Nonprofits: Bogeyman in the Boardroom? (<http://www.blueavocado.org/content/sarbanes-oxley-and-nonprofits-bogeyman-boardroom>) by Jan Masaoka

Comments (39)

Anonymous

Based on my experience, bylaws should also specify:

- how, when, and by whom board members are elected/appointed (for both regular periodic terms as well as to fill vacancies created by resignation, removal, etc.);
 - the procedure for resigning from the board or from an office;
 - that failure to fulfill minimum board obligations may be accepted by the board as a de facto or implicit resignation.
- reply (/comment/reply/533/2651)

Jun 02, 2010

Anonymous

My strongest recommendation about Bylaws is that you engage a PROFESSIONALLY CREDENTIALLED parliamentarian to assist you with any bylaws issues -- including a review. These individuals are professionally trained and credentialed and are the true EXPERTS in their field. Not using a professional parliamentarian can be costly in the long run -- particularly if you are taken to court and the court wants an expert witness.

reply (/comment/reply/533/2653)

Jun 02, 2010

Dick Swenson, j_swenson@msn.com

Two comments: First, I want to recommend two books. (1) "Managing the Nonprofit Organization" by Peter Drucker, and (2) "Managing a Nonprofit in the Twenty-First Century" by Thomas Wolf. These are the only 2 books that I know about focussing directly on nonprofit organizations and management. Second. I wish someone would write coherently about the names of the Board officers. In most states, corporations have a President, Secretary, and Treasurer with restrictions on these. Boards have Chairs, Secretaries, and Committee Chairs. They do not have Presidents or Treasurers. In my experience, these

titles are seldom used properly and the difference between Board officers and corporation officers is ill-understood. Finally, there is the management-speak officers, the "Cs", i.e., CEO, COO, CFO, etc. This should be sorted out.
reply (/comment/reply/533/2660)

Jun 03, 2010

Anonymous

Thanks for the book recommendations.

Re: board officer titles. I've been on nonprofit boards at local, regional and state level almost continually for 25+ years as well as working for nonprofits for over 20 years, and have seen only one board that didn't have someone titled "Treasurer". I agree that the President/Chair is confusing, but one of my nonprofits has a President and two board officers and no Chair, so it's a case of different strokes.

The bylaws for the nonprofit I currently work for (and was a previous board member for) specify that the position is Treasurer/CFO. This is to comply with the state requirement that the board have a Treasurer.

The board does have a Finance Committee but it is not specified that the Treasurer chairs the committee.

reply (/comment/reply/533/2661)

Jun 03, 2010

AHoyle83

Peter Drucker is great and I also recommend Peter Brinckerhoff for nonprofit management! As a fundraiser, one item that should definitely be conveyed to board members is their requirement for donating to the organization. Kim Klein states, " Each board member gives money and most of the board members help raise money," (2000, p. 28). If the board is expected to donate, the board members should know this upfront. This stipulation may determine whether or not a member will be as dedicated to your organization.
reply (/comment/reply/533/2662)

Jun 03, 2010

Anonymous

A critical procedural recommendation -- ALWAYS put the date of latest revision at the end of the by-laws document.

When another revision is made don't remove the prior date, add the new one so you end up with: "7/04; 11/08; 3/10."

That way if various Board members are referring to contradictory language from the "official" by-laws it is clearer to see which language comes from the most recent and therefore, current edition of by-laws.

I once tried to mediate a Board ruckus regarding how to elect officers. The knot finally unravelled when I realized everyone was reading from different versions of the by-laws. Problem was, none of the versions were dated so no one would concede which was the valid version. Avoid this scenario at all costs!

reply (/comment/reply/533/2681)

Jun 08, 2010

Anonymous

I also like to put a very brief summary of the changes that were made with each revision at the bottom. For example:

"Revised 4-20-10 -- changed number of board members (Article III) and latest acceptable meeting date for annual meeting (Article V)."

That provides a "history" to the document.

reply (/comment/reply/533/2721)

Jun 20, 2010

Anonymous

I always thought that one of the reasons for the existence of bylaws was to serve as a "roadmap" for the agency. Therefore, you would want to be more specific, so you had a document to refer to, in case of questions.

Seems to me that other important provisions would be Duties of Board Members, Compensation, Agency Fiscal Year, and how to enact Amendments to the Bylaws.

reply (/comment/reply/533/2685)

Jun 09, 2010

Andy Andersen

Another book on non profit management is "The Board Member's Book" by Brian O'Connell. It is available through the Foundation Center. It deals with the role of board members, the relationship with staff, and fund raising. As to

bylaws, a good place to look is Nolo Press which has put out many books on "do your own" law. It has books on forming and operating a non profit plus a lot of other information. Andy Anderson Listen for Life Foundation
reply (/comment/reply/533/2700)

Jun 14, 2010

◀ **Anonymous**

how do you find the by laws by state?
reply (/comment/reply/533/2701)

Jun 14, 2010

◀ **Jan Masaoka**

Every state has an office in charge of charitable organizations, but these offices have different names in different states. Call the State Attorney General of your state and ask which office is the right one to consult regarding bylaw requirements for nonprofit, tax-exempt organizations. Good luck!
reply (/comment/reply/533/2702)

Jun 14, 2010

◀ **Anonymous**

Small nonprofit organizations that I am familiar with do not know what are in their own by-laws. The by-laws may have been written as an original requirement, but no one on the current Board knows what they are and if they need to do anything about them. There are wonderful suggestions here for books and contacting agencies, however if no one from the Board wants to learn anything new, they will just continue in the state of confusion that they are in.
reply (/comment/reply/533/2722)

Jun 21, 2010

◀ **Jan Masaoka**

It's even true for larger organizations. I know one \$7.5 million organization that does not have a copy of its by-laws. It's possible to get a copy of the by-laws that were last filed with the organization's state, but often they have been substantially

updated since then but no one has a copy. This particular organization was founded in 1968 and the document they have says "1972 DRAFT."
reply (/comment/reply/533/2723)

Jun 21, 2010

Anonymous

What are the reasons or examples for a special 'emergency' meeting and the process necessary to call for such a meeting?
reply (/comment/reply/533/2872)

Jul 19, 2010

Anonymous

Do by-laws have to be approved by external agencies (ie state/federal level)? Or is this a purely internal operation?
reply (/comment/reply/533/4088)

Feb 21, 2011

Jan Masaoka

I don't know about all states, but in California the bylaws have to be approved only at the time of incorporation as a nonprofit corporation. Subsequent amendments and changes do not need government approval.
reply (/comment/reply/533/4089)

Feb 21, 2011

Anonymous

I'm curious whether anyone has any thoughts about the relationship between by-laws and certification of incorporation. I'm volunteering within a tiny group with some particularly ancient by-laws, which defer to the certification of incorporation for rules about things like number of trustees, how they should be elected, and the like. I would think that these might be more logical in the by-laws than in the certification of incorporation, but it seems to be how things stand at present.

Were we to change them, I'm assuming that the certification of incorporation is the binding document and that it would not be possible to have the by-laws override provisions in the certificate of incorporation. Am I wrong to assume that? If so, it would certainly be much easier to change the by-laws than it would to change the certification of corporation itself.

I'd appreciate any suggestions!
reply (/comment/reply/533/4135)

Feb 23, 2011

Anonymous

All of this is STUPID. Who the heck has time to fuss around with all this crap when you're trying to save people and animals. Who ever made these rules ought to try managing the rules and the work the non-profit is trying to do. Once again... the rich keep getting richer while the poor slaves of the world drown in the paperwork.

reply (/comment/reply/533/4562)

Mar 25, 2011

Anonymous

I agree, but unfortunately we live in a world where people are sue happy, question everything due to mistrust, and won't submit out of love for the organization to the authority placed over them as in yester years so I'm finding with my new non-profit org that you have to be very careful about everything you say and do, the laws, and make sure your attorney is specific and knows their stuff. It stinks but its the present day reality. It creates a lot of fear in us who want to better our communities and raise awreness to the needs.I own a preschool so know i speak from experience.

reply (/comment/reply/533/9582)

Oct 27, 2011

Anonymous

Actually, regardless of what good you're trying to do in the world, going off half-cocked is why so many non-profits function so spectacularly badly. This is also one reason there are plenty of non-profits/NGOs duplicating the efforts of other non-profits/NGOs - and not getting more done in a real sense.

Actually writing down your process can be a great way to save time down the line. As long as you don't drag on and on with doing the task. Oh, and yes, I have worked for several non-profits and been on several boards. Sometimes, I just want to quit all of it because not enough people take time to get organized before going off on a manic martyr mission to "save the world." Having a big heart isn't the same as being good at it.

reply (/comment/reply/533/61859)

Sep 29, 2014

Anonymous

Hello.

I'm a member of a nonprofit organization incorporated in the DC. The Board put to stakeholders' vote an amendment to the bylaws to change the stakeholders categories. The bylaws require that 3/5 of affirmative votes be obtained from the stakeholders *present* in the meeting where the vote took place.

The vote was announced via the association's listserv, three days were allowed for voting, and the ballots (affirmative, negative or abstention) were cast via email to a specific address assigned by the Board.

Now, what stakeholders should be considered "present" in a vote organized in such manner? All recipients/participants in the listserv or only those who actually voted?

Any suggestions or case law on the matter will be most welcome.

reply (/comment/reply/533/4606)

Mar 31, 2011

Anonymous

I would say that those who replied electronically attended electronically. Others did not attend to the matter.

reply (/comment/reply/533/21762)

Sep 22, 2012

Anonymous

I would like to know if there is a agency or department I can have a concern i have addressed? I just left a board at a non- profit employer, this board is repeating the same bylaw violations year after year, their president and others keep voting themselves back into their positions with no regards to their own bylaws, while other board members become frustrated and resign their positions due to this and other matters such as staff interfearence, financial discrepancies and just outright bullying. Any assistance is welcomed as lower ranked board members love this organisation but need to see changes at the top for the benifit of this organisation.
reply (/comment/reply/533/9142)

Sep 13, 2011

Jan Masaoka

In the United States, each state has a designated "charity official" to whom such complaints can be made. This official has a different title in different states, although they are often located in the state attorney general's office. You can find a list of the officials on the website of the National Association of State Charity Officials at www.nasconet.org (<http://www.nasconet.org>). Hope this helps!
reply (/comment/reply/533/9143)

Sep 13, 2011

Anonymous

Are there free sites to answer questions on non profits? I'm not having any luck with what I'm finding. I need to know what percentage of a public charity's funds must come from donors, grants, etc. to remain public? We have been told we need to change from public to private because our investment income was too much this year. But what if that changes next year?
reply (/comment/reply/533/9198)

Sep 19, 2011

Anonymous

This has been helpful. Our company has "combined" and we have a committee to revamp the By-Laws. Any help is appreciated.
reply (/comment/reply/533/9213)

Sep 20, 2011

Anonymous

If a board is breaking their own bylaws and year after year , twenty years to be exact! they keep voting in the same president, vice and chair, is there a public or legal means to put an end to this? I have recently resigned from a board where i witnessed this and was told "to shut up, and keep it to myself", we can not keep a full board more than six months, once a new member catches wind of these ongoing they resign, only to leave the same three people to run this board for the last twenty years
reply (/comment/reply/533/9292)

Sep 25, 2011

Jan Masaoka

Every state has an office to which official complaints about nonprofits can be filed. The states have different names for these offices, but you can look for "State Charity Official," for instance. In many states they are part of the state attorney general's office.

reply (/comment/reply/533/22499)

Mar 24, 2013

Anonymous

So if you have a nonprofit with unpaid board members, do officers have to be members of the board? Treasurer is a lot of work, can't there be a CFO paid staff member who is the treasure but not a board member? How can a volunteer do all that is required of the treasurer? And can staff be on the board? california i think say yes as long as the majority of the board is Unpaid thanks!!

reply (/comment/reply/533/9932)

Nov 26, 2011

Anonymous

Question: In Nevada the statutes say the board must have a president, treasurer and secretary, but doesn't say if they must be natural persons - separate individuals - or if one person can hold all positions. This is regarding a very small non-profit where this has been an issue. Any input would be helpful. I'm thinking if it doesn't say it can be on person then it cannot. What do you think?

reply (/comment/reply/533/21763)

Sep 22, 2012

◀ **Susan Sanow, Blue Avocado Project Manager**

Gee, we're not up on the latest of Nevada law. I'd recommend talking to a more local lawyer in your state. Here's some general guidance from a past Blue Avocado article: <http://www.blueavocado.org/content/bylaws-checklist> (<http://www.blueavocado.org/content/bylaws-checklist>)
reply (/comment/reply/533/21766)

Sep 24, 2012

◀ **Anonymous**

Can you tell me if a quorum is determined by the number of Board members there should be on a Board or by the number of Board members currently serving? Our Board has several vacancies so we only have 11 members rather than the 15 we should have.
reply (/comment/reply/533/22133)

Jan 13, 2013

◀ **Susan Sanow. Blue Avocado Project Manager**

You'll need to check your organization's own bylaws to see if the definition of quorum is addressed. If it is not addressed, you need to define it and place it as a board motion for now and add it to your bylaws the next time there is a bylaw review. Some states' nonprofit code defines a quorum, so check it out for your state.
reply (/comment/reply/533/22134)

Jan 13, 2013

◀ **Anonymous**

Thank you for your response. Our Bylaws do not define a quorum and from what I gather from the Arizona statutes, our bylaws dictate what a quorum is to be. Given that no definition is given in our bylaws and until we can amend them, would we consider a quorum to be determined by the number of members we actually have or by the number there should be?
reply (/comment/reply/533/22138)

Jan 15, 2013

◀ **Susan Sanow, Blue Avocado Project Manager**

I would check with a attorney who specializes in nonprofit law to make sure the quorum question is NOT covered.

Otherwise, make a few suggestions for a quorum rule at a board meeting and have the board vote on it.

reply (/comment/reply/533/22141)

Jan 16, 2013

◀ **Anonymous**

Are board meetings allowed to be closed or are there any requirements that a public session be part of the regular meetings?

reply (/comment/reply/533/22497)

Mar 24, 2013

◀ **Jan Masaoka**

In almost all instances, nonprofit board meetings are not required to be open to the public. Remember: the nonprofit sector is actually part of the PRIVATE sector.

There are a few exceptions. For instance, if you receive \$250,000 or more in contracts with the City of San Francisco, you have to make two board meetings per year open to the public. To be triple sure you might want to check with local or state authorities. But the default rule is: not required to be open to public.

reply (/comment/reply/533/22498)

Mar 24, 2013

◀ **Anonymous**

We only have six members and currently no operating rules for our nonprofit.

We are still in our

first year. We know that someday we'll have to deal with bylaws, nonprofit status and a board

of directors. My questions are: With a group this small can members do dual duties such as

Sec/Treasure? How long can we continue to operate with a Executive Director in the position of

Chair of Board,President/vice-president etc?. Any major decisions go before the membership and they determine what the course of action will be.
reply (/comment/reply/533/26603)

Oct 05, 2013

Anonymous

Our small non-profit has no Directors, just what is called the Executive Committee which has a Pres., VP, International VP, Treasurer & Secretary. By-laws have wording regarding the Directors and it was stated that we needed that in bylaws for the future as it was easier to put it all in now, rather than later. Problem is that there are no clear rules regarding what the EC can or cannot do, like assign a member if there is a vacancy on the EC. Just says that EC members are elected members that can assign committee chairs etc. Current EC is trying to fill VP spot with a close friend.....
reply (/comment/reply/533/26628)

Oct 12, 2013

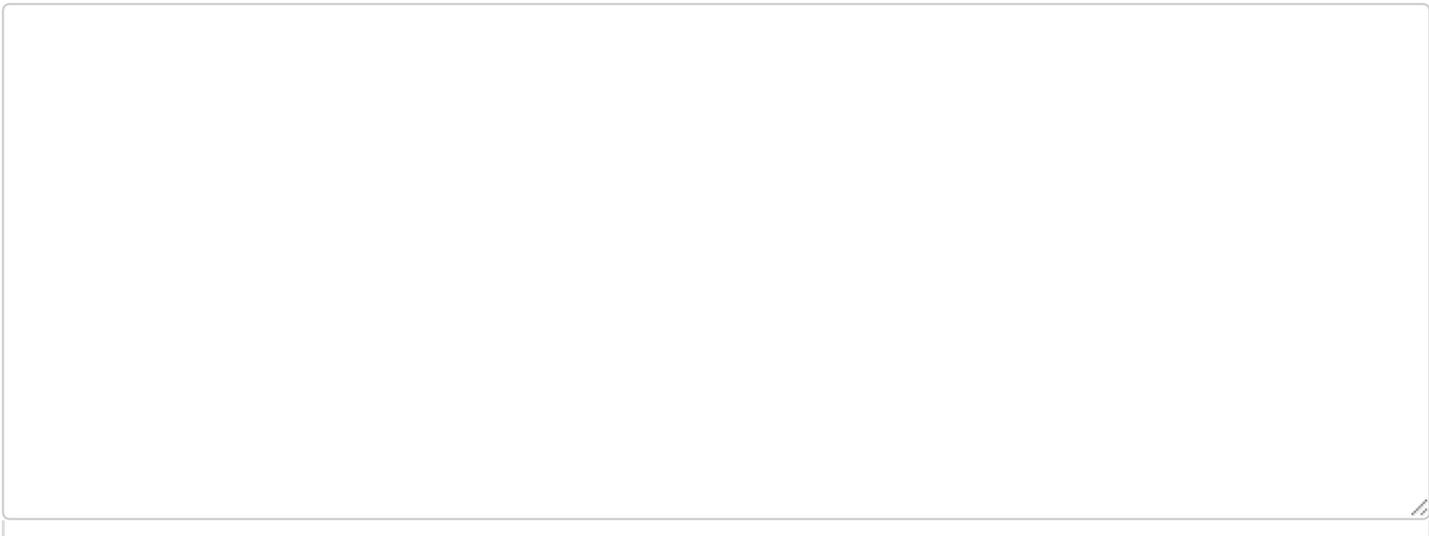
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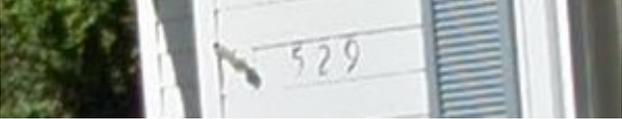
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Santa Cruz, CA 95060

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