

BYLAW BASICS

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DISCLAIMER

- The Attorney General is prohibited from giving private legal advice.
- This presentation is intended be used as a guide and does not constitute legal advice.
- If the organization has specific legal questions, we recommend contacting a private attorney for further information.

What are bylaws?

- Bylaws are considered a legal document second in importance only to the organization's Articles of Incorporation or Constitution
- Bylaws dictates how the organization is governed.
- Failure by a board to follow the stipulations outlined in the bylaws can have severe consequences that may result in litigation

Keep your bylaws current

- Consider establishing a bylaw committee to review the bylaws no less than every two years
- If changes need to be made make sure the board follows the proper procedure for amending the bylaws
- Always include the **date** of the latest amendment at the end of the document

Standard bylaw provisions including N.H. specific requirements

- Name (**make sure you renew your charter with the Secretary of State in 2015**)
- Mission or Purpose
- Board of Directors
 - **REMEMBER, RSA 292:6-a: all nonprofit corporations to have a board of directors composed of at least **five independent directors not related by blood or marriage**. This law is designed to promote diversity on boards and to prevent conflicts of interest.**

Standard bylaw provisions (cont)

- Board role and size (**at least five**)
- Terms (**important to discuss whether or not there should be term limits**)
- Meetings (**when and where including annual meeting**)
- Means of participation in meetings (**Skype? Speaker phone? Virtual meetings?**)
- Notice of Meetings (**snail mail only? Or can notice be given electronically?**)

Standard bylaw provisions (cont)

- Election of board members – **how and when? Do board members serve until their successors are appointed or elected?**
- **Quorum? What number of directors/members constitutes a quorum?**
- **Duties of Officers**
 - President
 - Vice-President
 - Secretary
 - Treasurer

Standard bylaw provisions (cont)

- Vacancies – what is the procedure for filling a vacant officer or director position? And by whom?
- Resignation, termination, or absence – consider whether or not to have the ability to remove officers and/or directors for cause. What are the reasons? How is removal accomplished? Due process considerations.

Standard bylaw provisions (cont)

- Special meetings – called by whom and for what purpose?
- Committee structure – are there standing committees (audit, nomination, executive)? How are members to the committees selected and by whom?
- Process for amending bylaws must be included

Other Provisions

- Whistleblower Policy
- Document maintenance and destruction policy
- Specific powers that directors can only exercise upon supermajority votes of the directors – purchase or sale of real estate, hiring and firing decisions, etc.
- Qualifications of board members – are background checks required?

Membership organizations: N.H.

- If the entity is a membership organization, the law dictates certain requirements:
- **RSA 292:6-b Articles of Agreement for membership organizations must contain:**
- **II-a. The provisions for establishing *criteria and procedures for membership and participation in the corporation.***

Membership organizations (continued)

- **I. A voluntary corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a voluntary corporation has no members.**

Membership organizations (continued)

- **III. Members are of one class unless the articles establish, or authorize the **bylaws** to establish, more than one class.**
- **Members shall have no voting rights, except as specifically provided in the articles or **bylaws**.**
- **The articles or **bylaws** may fix the term of membership.**

Membership organizations (continued)

- **IV. Notwithstanding any provision of the articles or **bylaws** to the contrary, each individual board member and each member of a voluntary corporation entitled to vote shall be entitled to no more than one vote.**

Why is this important?

- If membership criteria and voting rights are not clearly defined in the **bylaws** it can lead to confusion.
- More importantly, if there is a group of disgruntled members who discover membership criteria is vague they may have the ability to take over the organization by recruiting new voting members.

Conflict of Interest requirement

- RSA 7:19-a requires nonprofit organizations to adopt a conflict of interest policy and to affirm the policy on an annual basis.

Conflict of Interest bylaw provisions

- RSA 7:19-a I (c) “the following shall not be considered as pecuniary benefit transactions:
 - (2) A benefit provided to a director, officer, or trustee or member of the immediate family thereof if:
 - (A) The benefits are provided or paid as part of programs, benefits, or payments to members of the general public; and
 - (B) The charitable trust has adopted written eligibility criteria for such benefit **in accordance with its bylaws** or applicable laws; and
 - (C) The director, trustee, or family member meets all of the eligibility criteria for receiving such benefit;

Conflict of Interest bylaw provisions

- II. A pecuniary benefit transaction shall be prohibited unless it is in the best interest of the charitable trust and unless all of the following conditions are met:
 - (b) The transaction receives affirmative votes from at least a 2/3 majority of all the disinterested members of the governing board of the charitable trust, which majority shall also equal or exceed any quorum requirement **specified in the bylaws of the charitable trust**

Robert's Rules of Order

- *“We have said it before and we will say it again: Most organizations should avoid Robert's Rule of Order like the plague. There is nothing wrong with Robert's Rules of Order when adopted by the right organization for the right reasons. The right organization is a parliamentary or legislative body, not your typical nonprofit charity.”*
 - Jack Siegel A Desktop Guide for Nonprofit Directors, Officers, and Advisers, Avoiding Trouble while Doing Good

Used with permission from Jack Siegel

Should we adopt Robert's Rules in our bylaws?

- There is no law mandating that nonprofits must make decisions using Robert's Rules but organizations often make the decision to use the Rules.
- If you decide to adopt Robert's Rules of Order it is important to understand what that means – perhaps appoint a Parliamentarian

Warning!

- A New Hampshire charity adopted Robert's Rules of Order in its bylaws
- The board voted to remove its President from office
- Robert's Rules are very specific on the process for removing an officer
- The President was removed sued the board based on its alleged failure to follow the provisions of Robert's Rules of Order

Robert's Rules of Order simplified

- **Determine who has the authority under the bylaws to vote on a particular matter and whether or not a quorum is present.**
 - The Board?
 - Board members emeritus?
 - Membership?

Opening the Meeting

- **Call to order:**
- 3:00 p.m.
- Rap the gavel once. *The meeting will come to order*

Approval or Correction of Minutes

- The secretary's draft of the minutes of the last meeting should be sent to board members and a copy placed in the meeting packets.
- Are there any corrections to the minutes as distributed?
- Take corrections until there are no more.

Minutes

- If there are no (further) corrections, the minutes stand approved as distributed (corrected).
- The next order of business is officer reports.

Officers' Reports

- **President's Report**
- **Treasurer's Report**
- **Treasurer handles questions**
 - No action is required on the treasurer's report. It will be filed for audit.

Staff and Committee Reports

- **Executive Director's Report**
- **Reports of Standing Committees**
- **Membership Committee Chairman's Report**
- **Finance Committee Chairman's Report**

Voting on Committee Recommendations

- Ask Secretary to read the first recommendation. Someone then should “move the adoption of the recommendation just read.”
- State the motion
- *It is moved to adopt the recommendation just read. Is there debate?”*

Voting (continued)

- Are you ready for the motion?
- *Those in favor say "Aye"*
- *Those opposed say "No"*
- *The motion passes (fails) and the recommendation is (not) adopted.*

Robert's Rules

- **Motions:** Before a matter to be decided by the Board may be discussed, a motion must be made and seconded regarding the subject matter. If a motion is defeated or withdrawn by the maker another motion may be made and sometimes a motion is defeated for purposes of replacing it with a “better” one.

Robert's Rules

- **Amendments:** Motions may be amended by a majority of the board during the discussion phase. Any board member may amend a motion by stating “I move to amend the motion to read. . .”
- Each amendment should be voted on, yea or nay, before a second amendment is offered.

Robert's Rules

- **Limiting Discussion:** The Board may vote to limit discussion on any motion or amendment. Examples of limiting discussion include time limits and/or permitting board members to speak to the motion once but not twice without permission of the Chair.

Robert's Rules

- **Tabling Motions:** If the Board does not have enough information to make an informed decision on a motion a vote to “table” may be made. The motion can be voted “off the table” and discussed at the discretion of the Board.

Old Business? New Business?

- *Is there any old business?*
- *Is there new business?*
- Vote and debate if necessary

- *Is there any further business to come before the meeting?*

The Meeting Ends

- **Adjourn**
- *There being no further business to come before the board, the meeting is adjourned.*

Tips

- Make sure the **bylaws** are tightly worded and not open to conflicting interpretations
- Review the **bylaws** on a periodic basis and eliminate or amend any outdated or obsolete provisions
- Make sure all new board members receive a copy of the **bylaws** and encourage the members to read them.

Board Meetings and Minutes: Does not have to be a verbatim transcript

Charities must maintain minutes of all Board meetings to document:

Who was present.

Existence of quorum.

Issues discussed.

Votes taken/decisions made.

Board Meetings and Minutes (cont'd)

Executive Session - Purpose:

The Board may decide to discuss certain issues that are confidential and sensitive in nature in “Executive Session.” This can be a healthy tool for encouraging Board discussion.

Typical topics include legal issues, CEO performance review/compensation, or lay-offs. The session may or may not include the CEO.

Board Meetings and Minutes (cont'd)

Executive Session (cont'd)

All Board members are entitled to be present, and to have access to the minutes from Executive Session meetings.

Board Meetings and Minutes

(cont'd)

Executive Committee

The bylaws may assign certain rights and duties to the Executive Committee.

The Executive Committee reports its activities to the full board

The full Board may then ratify the Committee's decisions at next Board meeting.

Board Minutes (cont'd)

Summary:

- Board deliberations and votes must be documented and retained.
- Every Board member has the right to review all minutes, including Executive Session and Executive Committee meeting minutes.
- Board meeting minutes are not public documents.

Resources for Nonprofits

- www.nhnonprofits.org – Nonprofit checklist, workshop announcements, employment opportunities, etc.
- www.nonprofitrisk.org/about/about.htm - Nonprofit Risk Management website
- www.boardsource.org – a national organization dedicated to building effective nonprofit Boards
- www.guidestar.org – scanned images of all 990s and 990PFs filed with the IRS

Contacting the Attorney General

- **Terry Knowles:**
- **terry.knowles@doj.nh.gov**
- **Attorney General's Charitable Trusts Unit website:**

<http://www.doj.nh.gov/site-map/charities.htm>

(Where you will find our Guidebook for NH Charities, FAQ's, Forms, Publications, and other helpful information.)

- **Phone: 603-271-3591**