

Bylaws are Sometimes Like a Decades-Old Hairstyle

06.11.14 | Linda J. Rosenthal, JD



Big hair, long bangs, and enough hairspray to withstand a Category 4 hurricane: The style was new and fresh in the '80s. Everyone was doing it. It worked. It seemed like a good idea at the time. But walk around today with a hairdo like that and people will snigger and stare.

If only it were that easy to realize that your organization's bylaws are outdated.

Bylaws aren't Forever

The bylaws – a corporation's second most important document after the articles of incorporation – is a lengthy blueprint of how it will operate. Typical provisions include how to elect or select directors and officers, conduct board meetings and take votes, establish committees, and indemnify directors and personnel.

An amendment clause is standard. It's there for a reason. Bylaws aren't– or shouldn't be – forever.

Aside from certain provisions that are mandatory under state law, a nonprofit has considerable leeway to create – and refine – a document that really works for it.

Take a Fresh Look

Many California nonprofit public benefit corporations – [the classification roughly equivalent to federal 501(c)(3) status] – roll along indefinitely without reviewing and updating the bylaws. Many organizations are still working under the original document adopted in the earliest days, even if those days were decades ago.

That's a mistake. Laws change. Organizational missions evolve. A small nonprofit may grow significantly. A corporation's first bylaws may become a significant obstacle to progress and

flexibility later on.

What's the answer? Take a fresh look right now. Proceed with assistance of counsel experienced in nonprofits. Repeat this process at regular intervals.

Sweep away qualms based on misplaced nostalgia or worries about hurting anyone's feelings.

In the case of old and now well-established organizations, the founders likely relied on trusted (and long gone) business or personal counsel. And, more often than not, the first bylaws were not a custom creation. They were probably lifted from a dusty form book of one-size-fits-all legal documents. Or they were copied from one or more other organizations, themselves formed in much earlier years or in other jurisdictions.

For newer organizations, the internet has actually made this drafting process worse; there are many more samples available at the click of a mouse, especially from do-it-yourself sites. The organizations themselves or their lawyers generally cobble together a real mess. It's like the – proverbial – ugly sausage-making process. You don't want to know too much about it. But you should.

Make Sure You Comply with Current Laws

The most important reason to periodically review and revise your bylaws is to include clauses newly required under state and federal law, or eliminate ones that now violate rules. Nonprofits are increasingly under a microscope – attracting attention from government, donors, and the general public – to make sure they are operating responsibly and legally.

Here's an example: [Effective January 1, 2010](#), the California legislature made over 15 changes to, and clarifications, of the nonprofit corporation statute.

For instance, nonprofits sometimes give honorary titles to key supporters or professionals – (titles like “honorary directors,” “directors emeritus,” “advisory directors”) – or make them non-voting directors who have the same powers and duties as other directors other than the vote. These positions are often mentioned in the bylaws. The new law clarifies that this is not allowed.

It's now clear, as well, that proxy voting by directors is not permitted. If that's allowed under your bylaws (or you do it anyway), adopt a new clause.

Changes to nonprofit law hardly garner front-page newspaper headlines. So you should maintain a relationship with an attorney specializing in nonprofits who can alert you to new developments in the law that are likely to affect you.

Amend the Bylaws so Your Organization Runs Efficiently

Ask some key questions. Has your mission developed beyond its original scope? Do your officer job descriptions and election procedures conform to your current, actual practice? Is your board of directors the best size for what you do and how you operate today? Are there clauses that seem to have been inserted in your bylaws for no apparent reason and that make no sense?

Conclusion

Your organization needs and deserves a set of bylaws that is fully updated according to current law, works *for* and not *against* your purposes, and – to the extent allowed by law – takes advantage of modern technology.

And, by the way, that favorite '80's sweater with the big shoulder pads that's tucked away in the back of your closet: Toss it, too. It's never coming back in style. Even your local thrift shop doesn't want it.

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