

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If only it were that easy to realize that your organization's bylaws are outdated.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 corporation has a lot of leeway to create – and refine – a document that really works for it.

Take a Fresh Look at Your Organization's Bylaws

Many California nonprofit public benefit corporations – those are the ones who usually have tax-exempt, section 501(c)(3) status – roll along indefinitely without reviewing and updating this critical document. Some organizations are still working under the same one created decades ago.

This is a mistake. Laws change. Organizational missions evolve. A structure that worked initially may now be a significant obstacle to progress.

Take a fresh look with assistance of counsel experienced in nonprofits. You (probably) won't hurt anyone's feelings. Chances are – especially in the case of older, established nonprofits – the lawyer who initially drafted the bylaws is long gone.

Besides, the original bylaws were likely an unfortunate mishmash, anyway. Too often, the process of creating bylaws is like the proverbial, ugly sausage-making process. You don't want to know too much about it. But you should.

All too often, bylaws are created from samples in formbooks or borrowed from other organizations entirely unlike yours. Some of these documents are from earlier periods or different states with different laws. The internet has actually made this 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 cobble together a real mess.

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, those sweaters with the big shoulder pads? They're outdated, too. Toss them (by donating to a local thrift store, of course).