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Educational Article

Thoughts on Bylaws: Individual Amendments, Bylaws Revisions, and Best Practices on Amending Bylaws

Jim Slaughter

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Thoughts on Bylaws: Individual Amendments, Bylaws Revisions, and Best Practices on Amending Bylaws

There are usually three main governing documents that most nonprofit corporations have today—corporate articles, bylaws, and board policy. The corporate articles (or “articles of incorporation” or “corporate charter”) are a legal document filed with the state and should have only statutory requirements, such as name of organization, address, service agent, etc. That said, older articles sometimes have additional provisions, including ones touching on governance, such as who can serve as a director, board size, date of annual meeting, etc. If you are considering bylaws changes, make certain to get a copy of any corporate articles to make certain there are no provisions of concern or that conflict. Board policy tends to deal with issues the Board has control over, and often the Bylaws direct or make reference to Board policy concerning disciplinary procedures, election procedure, etc. That leaves the bylaws, which tends to be the highest governing document that members regularly consult.

If your parliamentary authority is Robert’s Rules of Order Newly Revised, the latest 12th Edition ([released in 2020—see this article](#)) provides that:

In general, the constitution or the bylaws—or both—of a society are the documents that contain its own basic rules relating principally to itself as an organization, rather than to the parliamentary procedure that it follows. In the ordinary case, it is now the recommended practice that all of a society’s rules of this kind be combined into a single instrument, usually called the ‘bylaws,’ although in some societies called the ‘constitution’—or the ‘constitution and bylaws,’ even when it is only one document. The term bylaws, as used in this book, . . .

(2) defines the primary characteristics of the organization—in such a way that the bylaws serve as the fundamental instrument establishing an unincorporated society, or conform to the corporate charter if there is one;

(3) prescribes how the society functions; and

(4) includes all rules that the society considers so important that they (a) cannot be changed without previous notice to the members and the vote of a specified large majority (such as a two-thirds vote), and (b) cannot be suspended (with the exception of clauses that provide for their own suspension under specified conditions

RONR (12th ed.) 2:8.

I’ve been involved in many amendments to and revisions of governing documents. There is no “one size fits all” solution as organization are different as to purpose, membership, governance, politics, and personality. No one set of bylaws will fit all organizations. Good bylaws, like clothes, should fit the organization they are meant to serve. Without knowing the specifics of an

organization and its needs, it's difficult to say one process is "best" for reviewing and amending the bylaws. That said, organizations I have worked with that have been most successful with bylaws changes have been very orderly in their process. This requires more effort in planning, but assures that maximum involvement has been achieved and that no significant aspect has been overlooked. While an organization's elected leaders and staff must make the final decision as to the best method, I recommend the following general process:

Initial Determination of Goals. There are different reasons for bylaws changes: to correct typos and layout; to clear up inconsistencies; to create a better bylaws structure; or to make structural changes to the organization. Only after the purpose behind the process is determined can a final timetable be completed (because structural changes to the organization or combining documents require far more effort than simply improving wording). Typically, simple word changes can be completed within a few months with minimal membership involvement. A substantial modification or revision to bylaws usually takes a minimum of nine months and should involve significant membership involvement.

Initial Determination of Method of Amendment. Governing documents tend to be amended in one of two ways: individual amendments or a "revision." The method of approach will make a significant difference as to how the entire process is handled. (As discussed below, individual amendments are much more restrictive and make it more difficult to create a single, unified document.)

Individual amendments are the method most often used by organizations to make changes to the governing documents—a proposal is made to amend a specific section (or several sections) with different wording. The amendment is then presented, discussed, and voted upon.

In contrast, a "revision" is used when changes are so extensive and general that they are scattered throughout the document (or documents). Unlike an isolated amendment, a revision is a substitution of a new document. Notice of such revision is notice that a new document will be submitted for consideration that will be open to amendment as fully as if the organization was adopting bylaws for the first time. A single vote is finally taken on the document as a whole (which also means that all changes fail if the final revision vote is not adopted). The advantage of a revision is that it permits conflicting language to be resolved and permits the creation of a single, unified document. While revisions are typically used to make substantive changes, I've seen revisions devoted to grammatical and structural changes, with no substantive alterations. On a few occasions (and not for the faint of heart) I've seen organizations consider multiple revisions at the same meeting: a revision consisting of grammatical changes was adopted unanimously with little discussion, a second revision of more substantive changes was discussed and adopted, and a few controversial amendments were debated and voted on individually.

Member/Stakeholder Input. Members or stakeholders should be given notice (possibly through emails, the association website, or a publication or mailing) that the organization is considering changes to the governing documents and that members can make suggestions for improving the governing documents. Centers of influence, such as the officers, Board of Directors and committees should be directly approached regarding the bylaws process and specifically asked for input.

Initial Read-Through by Committee or Board. If more than cosmetic changes are to be considered, either a committee or the Board or a subcommittee should read the bylaws and consider structural changes to be made (e.g., combining sections, deleting provisions that don't need to be in the bylaws, moving provisions to the policies, etc.) Some group (again, either the entire committee or a subcommittee) must eventually read the document as a whole and determine that the structure is an appropriate one. Some conference calls or virtual meetings may be necessary to resolve certain issues.

Structural Review by Attorney and Parliamentarian. Although the attorney and parliamentarian should be consulted at various times throughout the process, a specific review should be made by these individuals to ensure that the proposed structure does not violate state nonprofit statutes or general principles of bylaws construction. (Nonprofit statutes are amended from time to time and some organizations find that previously proper documents violate the nonprofit statutes—often as

to issues regarding the number of officers, method of electing officers, notice of meetings, how meetings are held (in person or virtual), and electronic voting.)

Wordsmithing. Once a structure for the bylaws is determined, individuals or subcommittees should be made responsible for making certain that each section makes sense and cannot be taken out of context. According to RONR, “Each sentence should be written so as to be impossible to quote out of context; that is, either its complete meaning should be clear without reference to sentences preceding or following, or it should be worded so as to compel the reader to refer to adjoining sentences—as by beginning, ‘Any member so elected . . .’” RONR (12th ed.) 56:11. Some organizations appoint a “technical subcommittee” with a purpose of ensuring that all technical aspects of the process have been considered—word selection, section layouts, pagination, etc. The entire document at some point should be reviewed and initially approved as to structure and wording.

Submission to Members. The entire draft bylaws should be made available to members (possibly by e-mail or on the organization’s Web site to avoid major costs) for review and comments. The committee chair should forward comments (possibly by e-mail) for consideration and decision. Some conference calls or virtual meetings may be necessary to discuss certain issues. Persons forwarding proposals should receive prompt replies as to recommendations. Public Hearing. If possible, open hearings or a “town hall” type gathering should be held at some regularly scheduled meeting (typically a membership meeting) to allow questions and discussion on the proposed document. If not held at a meeting, such an event could occur virtually.

Final Draft Document. At some point, the document(s) must be considered completed and forwarded to all members. The goal at this point is to have received comments from every available source and to have addressed all issues raised by members. No one should be able to suggest that the amendment process was closed or selective.

Adoption of Amendment/Revision by Board and Membership. Most often the final document should be adopted by both the governing body and the membership, but specifics on the process would be governed by the Bylaws themselves.

Review of Policies. Any current policies should be reviewed generally during the early bylaws process to determine if any policies should actually be in the governing documents. However, review and revision of the policies can be done later, in that these policies do not usually follow the cumbersome process of bylaws amendments and may only need to be approved by the board. There are several options for addressing policy modifications, depending on the committee’s willingness to take on several tasks at once and available resources:

1. Have the committee or subcommittee review policies for change during the process described above,
2. Have the committee or subcommittee review policies for change beginning near the end of the process described above (the committee will find itself in a lull about the time the final document is completed and sent to members for comment), or
3. Have the committee or subcommittee review policies for change following the process described above.

In my opinion, the second option is the most logical, in that the process and language of the governing documents will be fresh in everyone’s minds. By the time the process is concluded, some members may have difficulty in getting started on another project.

My role has ranged from getting thoughts on what was needed and then drafting the entire revision (which was then adopted unanimously) to being engaged at certain points in the process to just consulting. That also can vary considerably depending on the proposed changes and the organization.

The goal of any bylaws amendment or revision is to create a document that is clear,

understandable to members, and not in need of regular interpretation. Some organizations seem to exist in large part to regularly consider bylaws amendments, which is unfortunate. The hope of a good bylaws revision process is to create a document that allows the organization to get back to the purpose (or purposes) for which it was created, and not to be constantly revisiting bylaws language.

Jim Slaughter is an attorney, Certified Professional Parliamentarian, Professional Registered Parliamentarian, and past President of the American College of Parliamentary Lawyers. He is author of two books on association meeting procedure, *The Complete Idiot's Guide to Parliamentary Procedure Fast-Track* and *Notes and Comments on Robert's Rules*, Fourth Edition, and two upcoming books, *Notes and Comments on Robert's Rules*, Fifth Edition (2022) and *Robert's Rules of Order: Fast-Track—The Brief and Easy Guide to Parliamentary Procedure* (2022). For charts and articles on meeting procedure, visit www.jimslaughter.com.

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Mailing Address: 514 Daniels St., PMB #352, Raleigh NC 27605

Phone: 919.848.8255 | Fax: 919.848.8525



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