

Writing comprehensive and legally compliant non- profit bylaws

Part I: Circulating bylaws checklist

Clear communication guidelines

It's crucial to align your expectations on communication channels and meeting frequency for developing bylaws. It will help you focus your efforts and kickstart bylaws drafting. Consider the following:

- ▶ Powerful board management software with meeting calendars and task workflows
- ▶ High meeting frequency for brainstorming, iterating checklist items, and drafting
- ▶ Clear meeting time frames, deadlines, and communication norms

Brainstorming sessions

Brainstorming is an essential component of the bylaws development process. Use the bylaws checklist to generate ideas, test different perspectives, and align stakeholder expectations. It is the basis of your bylaws template.

- ▶ Define goals for each brainstorming session, such as duties of board directors, committee formation, or succession planning.
- ▶ Bring background documentation such as articles of incorporation or mission and value statements.
- ▶ Research regulatory requirements for your organization and consider federal nonprofit laws.

- ▶ Reiterate your bylaws checklist to consider discussed ideas and perspectives.

Checklist

- Name and purpose
- Election, roles, and terms of board members and officers
- Membership issues (responsibilities, member eligibility, due, rights)
- Meeting guidelines (frequency, quorum)
- Board structure (maximum number of board members, standing committees, if any)
- Compensation and indemnification of board members
- Conflict of interest policies
- Possible amendment of bylaws
- Dissolution clause for the organization

Part II: Writing Bylaws

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1. ARTICLE I. NAME OF ORGANIZATION
2. ARTICLE II. CORPORATE PURPOSE
3. ARTICLE III. MEMBERSHIP
4. ARTICLE IV. MEETINGS OF MEMBERS
5. ARTICLE V. BOARD OF DIRECTORS
6. ARTICLE VI. OFFICERS
7. ARTICLE VII. COMMITTEES
8. ARTICLE VIII. CORPORATE STAFF
9. ARTICLE IX. CONFLICT OF INTEREST AND COMPENSATION
10. ARTICLE X. INDEMNIFICATION
10. ARTICLE X. INDEMNIFICATION
11. ARTICLE XI. BOOKS AND RECORDS
12. ARTICLE XII. AMENDMENTS

ARTICLE I. NAME OF ORGANIZATION

- ▶ **Official name.** Write your organization's name as registered with the state. It must be the legal name of your organization. Maintain consistency across your bylaws, legal documents, and filings.
- ▶ **Assumed name.** You can also clarify the informal name of your organization for references across your bylaws. It can be your abbreviation or a short name.

Example:

Bylaws of the Association for Behavioral and Cognitive Therapies

“The name of this organization shall be Association for Behavioral and Cognitive Therapies, Inc., also referred to herein as ABCT and the Association.”

ARTICLE II. CORPORATE PURPOSE

- ▶ **Definition.** Make a concise, one-sentence statement describing what your organization does and why.
- ▶ **Consistency.** Maintain consistency with foundation documents while defining your organization's definition and mission statements. If you have a definition and mission defined in foundation filings, use these definitions in your bylaws.

Restrictions

Your organization may explicitly state its activity restrictions to ensure it remains compliant with the tax-exempt status. While optional, the following restriction statements may help you clarify the purpose and goals of your organization:

- ▶ **No political support.** No organization's activities shall support any political candidate or campaign.
- ▶ **Tax-exempt compliance.** The organization shall not participate in activities that disqualify it from its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future federal tax code).
- ▶ **Prohibition of private benefit.** Members of the organization shall not benefit from its net earnings except from reasonable compensation for delivered services.

ARTICLE III. MEMBERSHIP

- ▶ **Eligibility.** Define who can become a member of your organization. If you don't have any specific eligibility requirements, clarifying this statement in your bylaws may be useful.
- ▶ **Membership fee.** If you collect membership payments, state this in your bylaws. Outline membership time frames (monthly, annual) and state the eligible board members to define membership fees.
- ▶ **Rights and privileges.** Outline the voting rights of your members in annual and other applicable meetings.

- ▶ **Termination and renewal.** Outline membership termination and renewal conditions, such as triggering actions and procedures. Make references to corresponding sections of the bylaws and related documents.

ARTICLE IV. MEETINGS OF MEMBERS

- ▶ **Meeting types.** List the types of meetings (regular, annual, special) conducted by your organization.
- ▶ **Electronic participation.** Consider videoconferencing and other forms of electronic participation (board portals) acceptable in your organization.
- ▶ **Rules of Order.** Clarify the use of Robert's Rules of Order for voting procedures, meeting minutes, and meeting agendas.

ARTICLE V. BOARD OF DIRECTORS

- ▶ **Board succession planning.** Consider using succession and leadership transition plans for board directors. While such plans are usually separate extensive documents, you must state the applicability of such plans in your bylaws.
- ▶ **Compensation.** Federal law doesn't prohibit nonprofits from compensating their directors. However, consider ethical aspects as directors are unpaid volunteers in most nonprofits.

ARTICLE VI. OFFICERS

- ▶ **Eligibility.** Describe who can become officers. Consider educational backgrounds, experiences, and specific qualifications.
- ▶ **Honorary title.** Describe obligations and privileges (if any) associated with honorary titles awarded to significant contributors.
- ▶ **Succession planning.** Outline succession plans relevant to officers and align them with election and removal procedures.

ARTICLE VII. COMMITTEES

- ▶ **Committee register.** Outline the types of committees in your organization, such as standing and ad hoc committees. Define each type for better clarity. It's advisable to enumerate and describe standing committees in your bylaws.
- ▶ **Committee formation and dissolution.** Describe who has the authority to establish and dissolve committees and outline the establishment & dissolution procedures. A committee can be established (or dissolved) by a majority vote.
- ▶ **Committee membership terms.** Outline service terms, appointment procedures, and reappointment limits for committee members.
- ▶ **Fiscal responsibilities.** Describe financial reporting responsibilities and procedures for committees. You can avoid enumerating applicable committees for better flexibility.

ARTICLE VIII. CORPORATE STAFF

- ▶ **Definition and scope.** Define what staff your organization has and state their roles and responsibilities. If your organization needs directors other than a chief executive officer, describe them in detail.
- ▶ **Recruitment and termination.** Outline recruitment and termination procedures and eligibility criteria (if applicable).
- ▶ **Confidentiality.** Include NDA requirements for corporate staff with access to sensitive information.

ARTICLE IX. CONFLICT OF INTEREST AND COMPENSATION

- ▶ **Reasonable compensation.** Benchmark reasonable compensation limits in comparable organizations. Define reasonable compensation as a term applicable to all board members and staff in your organization.
- ▶ **Excess benefit transactions.** State that your organization prohibits excess benefit transactions to signify compliance with Section 4958 of the Internal Revenue Code. Follow a safe harbor rule to avoid sanctions.
- ▶ **Review and approval.** Describe compensation review and approval conditions and procedures. The safe harbor rule requires a board of directors to approve payments in advance.
- ▶ **Disclosure.** Add provisions on how and when your organization discloses compensation.

Fiscal provisions

It may be beneficial to establish fiscal governance rules. Consider the following aspects:

- ▶ **Budget approval.** Describe how and when your organization approves budgets. For this, you need to specify the fiscal year period for your organization (such as Oct 1st – Sept 30th). Example: The board of directors approves the budget 14 days before the fiscal year.
- ▶ **Internal controls.** Nonprofits have separate policies and procedures for internal controls. However, your bylaws may contain a statement about the use of internal controls.
- ▶ **Investment policies.** It's necessary for organizations that make investments or plan to make investments. Clarify that you make investment decisions according to your investment policies and approve such decisions by the majority vote.

ARTICLE X. INDEMNIFICATION

- ▶ **Additional rights.** You can clarify that indemnification rights are non-exclusive by these bylaws, and the indemnified persons can use additional sources of protection. It ensures extra liability protection and legal flexibility.

Example: *“The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of disinterested directors, or*

otherwise, both as to action in their official capacity and as to action in another capacity while holding such office.”

- ▶ **Exceptions.** The IRS poses limitations to indemnification policies, such as the prohibition of excess benefit transactions and private benefits. You may include exceptions to indemnifications for enhanced compliance.

Example: *“Notwithstanding any other provisions of these bylaws, the corporation shall not indemnify any person:*

(a) *For any act or omission that is finally adjudged to be intentional misconduct, gross negligence, or a knowing violation of the law;*

(b) *In connection with any proceeding initiated by the indemnified person unless the initiation of such proceeding was authorized by the Board of Directors;*

(c) *For any liability arising out of any transaction in which the indemnified person personally benefits to the detriment of the corporation or its members;*

(d) *To the extent such indemnification would constitute an excess benefit transaction under Section 4958 of the Internal Revenue Code or any other applicable law;*

(e) *For any act or omission occurring prior to the date when the person becomes eligible for indemnification under these bylaws.”*

ARTICLE XI. BOOKS AND RECORDS

- ▶ **Access rights.** Determine who can access books and records. Eligible members of the organization may access books and records for a reasonable purpose and upon written demand.

- ▶ **Retention period.** Specify retention periods for books and records and consider that organizations must keep some records permanently.
- ▶ **Destruction policies.** Clarify the record destruction procedures that leave no trace of sensitive information.

Record	Example	Retention period
Permanent records	<ul style="list-style-type: none"> • Application for recognition of tax-exempt status • Determination letter recognizing tax-exempt status • Articles of incorporation • Bylaws • Amendments to bylaws • Board meeting minutes 	Indefinite
Employment tax records	<ul style="list-style-type: none"> • Employee identification information • Payroll records • Tax withholding records • Employment tax returns • Deposit records • Benefit and compensation records • Independent contractor records 	A minimum of four years after filing the Q4 tax return for that year
Employment tax records	<ul style="list-style-type: none"> • Contracts and agreements • Operational records • Insurance records • Grant records 	Until they are no longer needed for tax purposes (but may be required by respective parties)

ARTICLE XII. AMENDMENTS

- ▶ **Proposal.** Decide who can propose amendments. It can be board members, officers, or committee members.
- ▶ **Submission.** State that amendments must be submitted for review to the eligible board member (Secretary, Chair, Vice President) with supporting documentation. Describe amendment notice requirements for such reviews.
- ▶ **Approval.** Amendments to bylaws require a two-thirds majority vote.
- ▶ **Effective date.** Amendments become effective immediately upon approval.

Key takeaways

- ▶ **Governance structuring.** Include clear provisions about forming governance bodies of your organization and executing policies and procedures.
- ▶ **Clarity and consistency.** Ensure clarity and alignment with existing legal documents while drafting your bylaws.
- ▶ **Compliance.** Include tax-exempt compliance provisions while ensuring legal flexibility.

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