

## **BYLAWS**

An organization incorporated under the Illinois General Not for Profit Corporation Act of 1986 should have bylaws. Organizations that are not corporations may have bylaws and choose to have them because they establish guidance and clarity for the decision-makers.

Bylaws contain the rules and procedures governing how the board of directors operates. They cover the individual's relationship as a Director, officer or member to the organization. They establish who has the power to make certain decisions and they set forth the process that must be followed in making those decisions. Well-drafted bylaws dictate how disputes are resolved. They do not address issues of the day-to-day activities of the organization.

You will find many different samples of bylaws in books, on the Internet and from other not for profit organizations. To operate smoothly and efficiently an organization's bylaws should meet the specific needs of that organization and be in compliance with the state law governing the organization.

Start with a simple set of bylaws, review them every few years and amend them as the organization grows. Discuss the following issues with the directors on your board and work together to decide how your board will address each issue. These decisions will guide the drafting of a set of bylaws for your organization's needs whether you draft them yourself or consult an attorney.

### **ISSUES ADDRESSED BEFORE DRAFTING BYLAWS**

#### **DIRECTORS**

1. How many directors will be on the board?

The Illinois statute requires a minimum of three. There may be a range of directors but the largest number may not exceed the smaller by more than five; for example the bylaws may provide that there can be a range of three to eight directors to be determined at each annual board meeting but there cannot be a range of three to fifteen directors.

2. How will the directors be elected?

In a non-member organization, the directors nominate and elect subsequent directors, this is a self-perpetuating board. In a member organization, the members may elect the directors at the annual meeting. You need to determine, before drafting bylaws, whether the organization will be a member or nonmember organization. See below for information about membership organizations.

3. What will the directors term limits be?

The term is the amount of time the directors will serve on the board. There is no statutory guidance for term limits but many organizations find that a one year term is too short and that greater than three years may be too long. The bylaws may provide that a director may serve for more than one term. Many organizations favor electing directors with staggered terms. With staggered terms all the directors are elected at the same time but the initial board will have directors serving for different time periods. For example, in year one (2007), A and B are elected to serve until 2008 and C, D, & E are elected to serve until 2009. Thereafter all

directors serve 2 year terms. In 2008, A and B are replaced with F & G who will serve until 2010 (a two year term). In 2009, C, D, and E are replaced by directors who will serve until 2011 (also a two year term). The staggered terms enable the board to have some experienced directors at all times.

4. If there are restrictions on who can be a director, what are they?

Some organizations want to make sure there are a specific number of directors from a particular community or another organization. These restrictions are established in the bylaws. Youth organizations often want youth representation on the board. Directors have legal responsibilities to the organization and because minors are not legally responsible under the law they should not be on a board of directors. You can have minors sit on an advisory committee of the board. The legal age of majority in Illinois is eighteen.

5. When can a director be removed?

Directors may be removed by the people who elected them, with or without cause.

## MEETINGS

1. How often will the directors meet?

The statute only requires that there be one meeting a year but a board that only meets once a year will not be an effective board. The board often meets more frequently when it is getting started. Many boards meet on a monthly, bimonthly or quarterly basis.

2. How many directors will be required to call a special meeting?

Special Meetings are called when a board decision must be addressed and there is no meeting scheduled in a timely basis. The bylaws should explain who may call the special meeting. By statute, special meetings may be called by the president or the full board of directors. The bylaws should establish a specific number of the directors, less than the full board, who may also call a special meeting. You don't want this number to be too high because frequently the purpose of a special meeting is to address something that has arisen that must be dealt with quickly. If you need your full board to call the special meeting, it may take too long to coordinate the meeting quickly.

3. How many days and what type of advance notice is required?

Notice may be by regular mail, fax, electronic mail, telephonic notice

4. The quorum is ?

To transact business there must be a quorum at the board meeting. A quorum is the number of directors required in the bylaws to make enforceable decisions. If the directors at a meeting are less than the quorum, the board cannot make binding decisions. A quorum is usually a majority of the directors. However, the law requires only that a quorum consist of at least 1/3 of the directors then in office

## Officers

The officers on the board are usually called the President, Vice-President, Secretary and Treasurer but you may call them by any other titles. They have specific responsibilities that are defined in the bylaws. One person may serve in two officer positions at the same time. The same person should not be the President and Vice President or the President and Secretary. If you are uncertain about the difference between a director, an officer and an employee, please visit <http://www.clccrul.org/templates/UserFiles/Documents/boardcomposition.pdf>

1. What are the titles of the board officers?

2. Who will elect the officers?

Generally officers are elected by the directors at the annual Board meeting. See below for information about elections in a membership organization.

3. What are the terms for the officer positions?

There is no statutory guidance for term limits but many organizations find that a one year term is too short and that greater than three years may be too long.

4. Under what circumstances can an officer are removed?

Officers may be removed by the people who elected them.

## MISCELLANEOUS

1. The fiscal year is \_\_\_\_\_.

The fiscal year is the twelve- month accounting period for the organization. It may be the calendar year, running from January 1 until December 31, or October 1 until September 30, or any other twelve- month period. The due dates for filing annual reports with the IRS and the Illinois Attorney General are based upon the last day of the fiscal year.

## **QUESTIONS FOR MEMBERSHIP ORGANIZATIONS**

### THE DIFFERENCE BETWEEN MEMBERS AND DIRECTORS

The Board of Directors is responsible for the management of the organization. The Board makes the major decisions about how the organization will operate. The people on the board are the directors and the officers. Sometimes the directors are called members but this does not mean the organization is a membership organization.

In a membership organization, the members have special rights and privileges that are established in the bylaws. In a membership organization the members may have voting rights and may elect the board of directors. In an organization without members new directors are elected or appointed by existing directors. It is important to understand the difference.

A nonprofit organization may decide to be a membership organization because members help provide a source of funding through membership dues or the members ability to raise funds for the organization and reflect a broad base of support for the organization. Members may be part of the decision-making process of the group and have voting rights or have special privileges but no voting rights, such as museum or theater memberships. If members have voting rights, the control of the organization lies within its membership. Decision making is prolonged because a majority of the members must come to agreement.

Block clubs and groups that work to assist a particular industry or profession are frequently member organizations. Other examples of member organizations are museums and chambers of commerce. Nonprofit corporations that provide direct services to a large segment of the population tend not to be member organizations.

If the organization is going to be a membership organization before drafting bylaws it should make decisions about the following issues.

1. Will members pay dues?
  - a. How will the amount of dues be determined?
  - b. How often will dues be paid? Annually, Quarterly, Semi- Annually
  - c. Will members be removed for failure to pay dues?
  
2. Will members nominate and elect the directors?
  
  
3. How many members will be required to be present to transact business?

The statute allows a minimum of 10% of the members. Note that this allows a small minority of the members of the organization to make decisions. It is recommended that a majority of the members must act.

4. What are the requirements/qualifications for membership?

Suggestions include: anyone who asks to join; anyone who asks to join and is voted in; or anyone who has a special relationship with your organization, representatives of specific organizations, etc.

5. Will there be more than one class of members?

If your organization is made up of members representing very different interests, you may want to establish special classes of members with different rights, including voting and nonvoting members. However, since this requires more record-keeping and makes organizational matters more difficult, you must decide if this procedure is worth the time and effort. Unless the by-laws state differently, each member is entitled to one vote on each matter submitted to a vote of members.

6. How often should the members meet?

A members meeting must meet at least annually. The bylaws may provide for greater frequency, however if the bylaws call for more meetings, the meetings must be held.

7. Will members be allowed to call a special meeting?

How many members must there be to call a special meeting?

8. Will members be removed for cause?

9. Will members be able to vote by proxy?