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BETTER
BYLAWS

CREATING EFFECTIVE RULES
FOR YOUR NONPROFIT BOARD

SECOND EDITION

BoardSource®

Library of Congress Cataloging-in-Publication Data

Tesdahl, D. Benson, 1932-

Better bylaws : creating effective rules for your nonprofit board / D. Benson Tesdahl. -- 2nd ed.

p. cm.

Rev. ed. of: The nonprofit board's guide to bylaws.

ISBN 1-58686-118-2

1. Nonprofit organizations--Law and legislation--United States. 2. Corporate governance--Law and legislation--United States. 3. Nonprofit organizations--United States--By-laws. 4. Directors of corporations--United States--Handbooks, manuals, etc. I. Tesdahl, D. Benson, 1932- The nonprofit board's guide to bylaws II. Title.

KF1388.5.T47 2010

346.73'064--dc22

2010014956

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First Printing, May 2010

ISBN 1-58686-118-2

Published by BoardSource

1828 L Street, NW, Suite 900

Washington, DC 20036

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BoardSource®

Empowering Boards. Inspiring Leadership.

BoardSource envisions a world where every social sector organization has the leadership it needs to fulfill its mission and advance the public good. Our mission is to inspire and support excellence in nonprofit governance and board and staff leadership.

Established in 1988, BoardSource's work is grounded in the fundamental belief that boards are critical to organizational success. With decades of hands-on experience working with and supporting nonprofit boards, BoardSource is the recognized leader in nonprofit governance and leadership, and a go-to resource for nonprofit board and executive leaders. BoardSource supports a broad and diverse cross-section of social sector organizations with

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- research and benchmarking of board composition, practices, and performance
- membership and board support programs
- customized diagnostics and performance assessment tools
- a comprehensive library of topic papers, publications, and downloadable infographics, tools, templates and more
- live and virtual education and training
- governance consultants who work directly with nonprofit leaders to design specialized solutions to meet an organization's needs
- a biennial conference that brings together approximately 800 board leaders for two days of learning and sharing

A note to our global readers:

The need for effective board leadership and governance knows no geographic boundaries, and BoardSource is committed to strong social sector board leadership and governance around the globe. While BoardSource uses United States laws and policies as the legal framework for our resources and recommendations, most of our resources do not focus on legal matters but rather on good governance practices, making them relevant to organizations working outside of the United States. We do suggest, however, that you refer to applicable laws in your country regarding financial reporting and other legal and transparency issues.

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The CD-ROM in the back of this book provides bylaws templates and policies appropriate for most nonprofit organizations. There are three bylaws templates: one for organizations with self-perpetuating boards of directors, one for organizations with formal voting memberships, and one for charitable subsidiaries or “supporting organizations” controlled by parent entities. There are three sample policies: a conflict-of-interest policy, a whistleblower protection policy, and a record retention and document destruction policy. In addition, there is an example of articles of incorporation, although it should not be used without consulting state law and the advice of legal counsel. The material on the CD-ROM may be downloaded and customized.

INTRODUCTION

Bylaws are significant written rules by which an organization is governed. With minor exceptions, they largely follow a similar structure in all nonprofit organizations, since the mission of the organization does not ordinarily affect the structure of the governance document. Thus, the overview and principles offered in this book will be applicable largely to most nonprofit boards.

Although boards formalize their governance rules in bylaws, these helpful rules are frequently neglected and sometimes even ignored in the rush to get business done quickly. For many reasons, however, nonprofit organizations should pay more careful attention to bylaws. Take, for example, the question of the size of the board. An unnecessarily large and unwieldy board of directors can impair an organization's ability to make decisions and meet new challenges, while an entrenched group of long-time directors might prevent a nonprofit from adapting to change. Bylaws are the tools with which organizations address the questions surrounding directors on the board, specifying their number and any term limits.

During governing controversies, bylaws have particular importance. These disputes may have many forms: a board member who is voted out of office seeks reinstatement, a dissident group within the organization attempts to gain control of the board, or a faction mounts a legal challenge to a board decision. In these difficult situations, carefully crafted bylaws and adherence to them can help ensure the fairness of board decisions and provide protection against legal challenges.

The laws of a few states require that membership categories, board selection, and other issues be stated in the articles of incorporation. In most states, however, details about governance are put solely in the bylaws where they can be amended without the need to file such amendments with the state. In either case,

bylaws expand on the articles of incorporation as necessary and typically perform at least three important functions:

- First, they determine how an organization is structured. Specifically, they tell the board how the governance of the entity is intended to be structured and cover lines of authority within the organization, but they do not cover the structure of the professional staff. For example, most bylaws specify whether an organization has membership categories, define the duties of officers and directors, and identify standing board committees. An important function of bylaws (if this matter is not covered in the articles) is to specify how directors are selected.
- Second, bylaws — along with state law — determine the rights of participants in the structure, such as the rights of members to be notified of meetings and to vote, the rights of directors or officers whom others want to remove from office, and the rights of directors and officers to indemnification for costs incurred in performing their duties.
- Third, bylaws determine many procedures by which rights can be exercised. For example, bylaws may require a certain form of notice for meetings, or they may specify whether board meetings can be held by telephone or elections conducted by mail.

The choice among alternative operational bylaws can directly affect how organizations resolve issues. One challenge frequently facing organizations with very large boards of directors, for example, is the desire to have faster and more efficient decision making. These organizations may require a reduction in the number of directors, establishment of an executive committee, creation or improved operation of standing committees, modification of day-to-day operations, or a combination of these alternatives. A number of bylaws and procedures may be relevant to achieve these ends.

This book provides a basic definition of bylaws and an overview of the issues and areas bylaws should address. For experienced board and staff members, this material may be familiar; for others, it will be new. Throughout the book, examples are used

to illustrate the relationship between state law and bylaws. (All examples in this book use hypothetical organizations and people, none of which are intended to reflect any real-life organization or person with similar names.) Findings from a survey by BoardSource's *Nonprofit Governance Index 2007* provide empirical data about how nonprofits handle certain issues and may help boards choose among alternative bylaws provisions.

A word of caution: While sample bylaws provisions are provided electronically on the included CD-ROM, this book is not intended to be used as a “do-it-yourself” guide to drafting bylaws. Bylaws can draw on someone else's example, but they need to be tailored to an organization's specific contexts. Moreover, there are legal requirements that differ from one jurisdiction to another. Because nonprofit organizations and state laws vary widely, it is advisable to consult an attorney who is knowledgeable about nonprofit corporate law before adopting or revising bylaws.