

**What is a professional practice statement?**

Professional Practice Statements developed by the Association Forum are provided as a management tool for associations and individual association professionals, developed by experts in the industry, and recommended as a means to achieve excellence in managing associations and other nonprofit organizations.

**BACKGROUND**

This professional practice statement is intended to help nonprofit governing bodies and association professionals understand the framework within which bylaws should be developed and amended. The primary focus is on membership organizations (professional societies, trade groups and the like).

Simply put, bylaws are the fundamental rules by which an organization governs itself. Bylaws can be considered the organization’s contract with its members. They state, interpret or implement the general governance policies of the organization. They determine:

- The structure of the organization,
- The rights of the participants in the structure, and
- The framework within which those rights are exercised.

Bylaws should reflect the culture, mission and strategic direction of the organization. They should strike the appropriate balance between flexibility and specificity. They should be flexible enough to allow the association to achieve its mission without frequent amendment, but specific enough to provide structure and direction to the board and members for achieving the mission. Bylaws must be aligned with the organization’s articles of incorporation and compliant with the law of the state in which the organization is incorporated.

Bylaws are distinct from other governing documents. The hierarchy of governing documents is described below:

**Articles of Incorporation:** An organization’s articles of incorporation can be thought of as the organization’s contract with the state. The information included should reflect the minimum required by state law. The articles generally identify the organization’s name, legal purpose and the disposition of its assets upon dissolution.

**Bylaws:** Bylaws provide detail about the organization’s governance strategy and philosophy, its standards of conduct, and processes for decision-making and carrying out policy<sup>1</sup>. The bylaws will necessarily be more specific than the articles, but may not violate what is outlined in the articles of incorporation or conflict with the law of the state of incorporation. Bylaws should not overly restrict the organization’s operations. Moreover, the association’s practices must match its bylaws. If they do not, either the bylaws or the organization’s practices must be amended to be consistent with each other.

**Policies and Procedures:** Further levels of specificity should be contained in a policy and procedure manual detailing the rules governing the association’s operations. Membership processes, administrative rules, financial policies, parliamentary procedures and the like generally should be outlined in policies rather than incorporated in the bylaws. Policy (“broad institutional issues that guide board and management action”<sup>2</sup> that is established by the governing body) can be differentiated from the administration of policy (“which refers to specific management procedures and to the people who implement the policies.”<sup>2</sup>) Some policies and procedures include provisions that may require updating more frequently compared to bylaws.<sup>10</sup>

**PROFESSIONAL PRACTICES FOR THE GOVERNING BODY AND THE ASSOCIATION  
 PROFESSIONAL**

Bylaws should:

- Specify how the organization will operate so that any actions of the organization comply with the bylaws, the articles of incorporation, and state law.<sup>5</sup>
- Be tailored to the specific needs and expectations of the organization.

- Be easy to understand and reasonable to implement.
- Be clearly and concisely written and avoid unnecessary legal “jargon.”
- Be available to all members as well as periodically distributed to the membership.<sup>7</sup>
- Be given to new leadership and staff, as well as periodically provided to established leadership and staff to introduce and maintain awareness of roles and responsibilities.<sup>4</sup>
- Describe, in general, the rights and duties of the organization’s members, addressing such issues as criteria and application for membership; voting rights; references to codes of ethics governing members; meeting notice; electronic meetings, voting, and communications; a quorum and any applicable meeting provisions that comply with state law and are practical for the organization; and the substantive circumstances and procedural due process governing termination of membership.
- Describe, in general, the basic rules for the composition and responsibilities of the board of directors and officers, including the number of board members and officers; qualifications and method for election, removal and filling vacancies; terms; meeting requirements (notice, quorum, voting, telephone or electronic); compensation of board members and/or reimbursement of expenses.<sup>3</sup>
- Consider and define the nature and relationship of affiliated organizations (chapters, foundations, etc.), if any.
- Allow for the Board to identify, define, and establish the method of creating any standing committees and any advisory, ad hoc or task forces, either in the bylaws themselves, or in a governing policy document, by giving the Board authority to create and/or sunset committees.<sup>12,13</sup>
- Set procedure for the manner in which the bylaws may be amended.
- Include other provisions such as conflicts of interest<sup>5,6</sup>, non-discrimination, waiver of notice, indemnification<sup>11</sup> and dissolution.
- Establish the role and reference applicable policy related to the Chief Executive Officer.<sup>14</sup>
- Be written in a way that is welcoming and inclusive of all.
- Use an outline format to make it easier to search and cite the bylaws.

## DEVELOPING AND AMENDING BYLAWS

The board of directors and key staff should be the primary driver in developing and amending the association’s bylaws. A standing bylaw committee is not necessary or desirable, as it may encourage too frequent or unnecessary changes to the bylaws. If properly constructed, frequent amendments will not be necessary.

Nevertheless, bylaws should be reviewed regularly to ensure that they are in compliance with state law and the articles of incorporation, and reflect the association’s actual practices. Recommendations for frequency of review varies between from 1-5 years or in response to changes in nonprofit law. It is also recommended that amendments to the bylaws be made only when it is deemed necessary.<sup>7</sup>

Should the organization determine that amendments are warranted, it should:

- Ensure that the development/review of the amendment process is forward-looking and results in a document that allows the organization to advance its mission, etc., rather than attempting to correct past challenges.
- Review the bylaws in a comprehensive manner so that any changes to the bylaws are consistent with all sections of the document and with other governance documents. In some cases, particularly when multiple amendments or complex revisions to the bylaws are being considered, it may be appropriate to rewrite the bylaws in their entirety.

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- State amendments broadly and concisely. Ensure that amended bylaws are consistent with the IRS, state laws, and other regulatory and governance documents, and that internal documents are updated to reflect changes made to the bylaws.<sup>6,8,9,16</sup>
- Ensure that related bylaw amendments are considered and voted on together.
- Seek legal counsel to ensure the document is in compliance with legal requirements.<sup>7</sup>
- Seek technical and expert assistance to ensure the document is consistent with the profession, industry, and/or cause for which the organization exists.

Model bylaws can be helpful as a resource for developing and amending bylaws. However, organizations should not simply adopt model bylaws but should look critically at such samples and tailor them to meet their specific needs and objectives, using the standards presented in this Statement.

Under the laws of some states, including Illinois, the board of directors has the power to amend the bylaws of the organization unless otherwise provided in the articles of incorporation or the bylaws. While the recent trend is for directors to amend bylaws, depending on the background and culture of the association (e.g., trade association, professional society), there may be different views as to who should amend the bylaws. If member approval is required for amendment, board approval also should be required.

## BYLAWS TRENDS

The association community has identified a number of trends that may have an impact on an organization's bylaws and may warrant an organization reviewing its bylaws and policies.

**Parliamentary Rules:** Many bylaws include provisions specifying rules related to parliamentary procedure. State law does not require bylaws to have these provisions and many organizations do not conduct meetings in strict compliance with such procedures. As a result, nonprofit organizations are eliminating these provisions from their bylaws, referencing in policy documents more flexible parliamentary rules or limiting parliamentary rules to specific governance meetings (such as an annual meeting of association members).

**Superfluous Governance Documents:** Many associations are limiting their governance documents to articles of incorporation, bylaws and policies, incorporating elements of other redundant or superfluous governance documents where appropriate. Constitutions, standing rules and other such documents are being eliminated.

**Undertaking Actions Not Included in the Articles of Incorporation and/or Bylaws:** In the past, organizations strived to include all possible actions and activities in the corporate documents to ensure that these could legitimately be undertaken. In today's practice, it is more common to approach what is permitted as that not proscribed by the Articles and/or Bylaws and which is substantially beneficial to the organization<sup>9</sup>.

**Transparency:** Although the bylaws are not required to be public documents, by making them publicly accessible transparency and accountability can be enhanced and individuals will be more likely to utilize them<sup>6,15</sup>.

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