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Nonprofit Bylaws – The Dos and Don'ts
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Bring up the subject of a nonprofit's bylaws and you are sure to get an interesting response. For many nonprofits, their bylaws are just some forgotten document, full of legalese, gathering dust in a file cabinet somewhere. No one on the current board of directors knows who prepared them nor what any of the provisions mean. They certainly are not referring back to them for any reason. For a nonprofit that actively uses its bylaws, the bylaws can be an interesting glimpse into the organization's governing psyche. Are they control freaks...or just the opposite?

One fact is sure: a nonprofit's bylaws are considered a legal document that dictates how the organization must be governed. Failure by a board to follow the stipulations outlined in the bylaws can have devastating consequences to the organization...and potentially even to the board members themselves. Since bylaws are such a big deal, it stands to reason that what they contain and how they are used should be taken extremely seriously. But what about that? Let's take a look at some Dos and Don'ts regarding nonprofit bylaws.

DO: Get assistance in drafting or amending your bylaws from an expert experienced in nonprofit matters. This could be an attorney or a professional services firm like Foundation Group. Two words of caution here: 1) Don't assume your attorney understands nonprofit issues. We have helped fix countless attorney-prepared bylaws and 2) Bylaws are a legal document, so using a non-attorney professional means you are getting self-help assistance. It is still the board's responsibility to have input into the provisions and to vote to adopt the final product.

DO: Stick to the basics. It is good practice to think of your bylaws much like the US Constitution. Like the Constitution, your bylaws should deal with only the highest level of governing issues such as: Organizational purpose, board structure, officer position descriptions and responsibilities, terms of board service, officer/board member succession and removal, official meeting requirements, membership provisions, voting rights, conflict-of-interest policy and any other non-negotiables that your governing body deems necessary. One critical element often erroneously omitted is the provision for amending the bylaws in the future.

DO: Know what is in your bylaws. As a board member, you have a duty to understand what each and every provision means. If there are provisions you do not understand, ask another board member or consult a professional.

DO: Follow the provisions religiously. You not only have a duty to understand your bylaws, you are legally accountable for following them. This is not optional. A court of law will side with your bylaws in any dispute brought by another board member, an employee, volunteer or recipient of services who may have a grievance.

DO: Keep your bylaws relevant. Times and circumstances change...and your governing document should reflect those changes. If your bylaws need to be amended to reflect current realities, do it.

Make sure the changes make long-term sense (see below) and follow the amendment procedures as outlined.

DON'T: Treat your bylaws as a policy and procedure manual. We have seen bylaws that contain everything from employee vacation rules to the organization's anti-smoking policy. These are totally inappropriate for bylaws. Create a separate policy manual for management purposes. Again, think Constitution vs. US Code (laws).

DON'T: Include provisions that tie the hands of future boards. I currently sit on the board of an HOA with absurd provisions that negatively affect all homeowners. However, amending them requires a 2/3 approval of every member eligible to vote (about 200 households). We cannot get 2/3 of the members to vote, much less get super-majority approval. Think long and hard about the downstream consequences to all provisions.

DON'T: Fail to review the bylaws. At least annually, all board members should re-familiarize themselves with the provisions. This will go a long way toward preventing costly errors. New board members should be provided with a copy immediately upon installation.

Proper use of an organization's bylaws not only provides the necessary structure to effective governance, it eliminates the willy-nilly guesswork so common among ineffective nonprofits. Good governance establishes a foundation for good work.

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