



ABCs of CAA Bylaws

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What Are Bylaws and Why Are They Important?

- Basic governance structure and rules of procedure for board
 - Must be drafted to meet specific needs of organization
- Set ground rules for procedural disputes
 - Must conform to federal and state law
- IRS and funding sources review them
- Failure to follow bylaws can cause problems



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Federal Law, State Law, Articles, Bylaws: Which Takes Precedence?

- Federal law
- State law
- Articles of incorporation (nonprofit CAA)
- Delegation of powers (public CAA)
- Bylaws
- Board resolutions
- Board policies
- Parliamentary procedures
- Contract/grant terms and conditions



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Articles of Incorporation

- Filing with secretary of state creates nonprofit corporation
- Must include legal name
- Must include statement of purpose(s)
 - Unless otherwise required, be fairly general as to charitable purpose
 - 501(c)(3)s need to include specific purposes language
 - Charitable purposes and fact that purposes limited to those described in section 501(c)(3)
 - No substantial part of activities is influencing legislation

Articles of Incorporation

- Other required 501(c)(3) language:
 - No part of earnings inures to benefit of private shareholders or individuals
 - No participation in political campaign activity
 - Upon dissolution, distribution of assets only to 501(c)(3) or to federal, state or local gov't, for public purpose
 - Leave dissolution language out of bylaws

Bylaws

- Name, purposes
 - Nonprofit CAAs: don't include in bylaws, simply refer to articles
- Board powers and duties
 - Nonprofit CAA boards usually have broad powers under state nonprofit corp. law
 - Public CAA tripartite board's powers depend on authority delegated to it by local gov't

Board Powers and Duties

- Nonprofit bylaws usually just include a general statement of board's authority
 - For example: "The governing body of the corporation shall be the board of directors, which shall have supervision, control and direction over the affairs of the corporation."
 - Check state nonprofit corp. law
 - Even if not stated in bylaws, board has authority provided in state law, unless bylaws specifically remove that authority
- Bylaws for public CAA boards need to be more specific
- May also want to include language in keeping with CSBG and/or Head Start Acts

Number of Board Members

- Does state nonprofit or CSBG law specify minimum or maximum number?
 - Bylaws must specify number of board members
 - Usually can specify range
 - Check state nonprofit and CSBG law
- How many is right number?
- Unless bylaws specify otherwise, *ex officio* board members hold all rights of board members, including voting

Tripartite Boards – Governing Law

- Federal CSBG Act (42 U.S.C. § 9910) and some state CSBG laws outline tripartite board requirements
 - If state CSBG law or policy is inconsistent with federal CSBG Act, federal CSBG Act governs
- OCS Information Memorandum (IM) 82
 - Guidance only, not binding
 - Available at <http://www.capl原因.org/resources/CSBGMemoranda.html>

Tripartite Board Sectors

- 1/3 public officials or their representatives
- At least 1/3 low-income representatives
- Balance from major groups or interests in community served

Tripartite Board Selection

- Board members are to be chosen by grantee
 - Must use democratic selection process for low-income board members
 - Public CAA – tripartite board can make recommendations to governing officials

Public Sector

- Under federal law, no longer required to include or be chosen by “chief elected officials”
 - For nonprofit CAAs, best to specify in bylaws that CAA itself elects public official board members – but not specify which ones
 - For public CAAs, since governing officials of city/county usually have final say on decisions affecting CAA, consider including other public officials on tripartite board

Public Sector

- CSBG Act says “holding office at time of selection”
 - OCS IM 82 recommends that public officials serve only while they are in office
- Good idea to have specific terms rather than permitting public officials to stay on board as long as they are in public office

Public Sector

- If elected officials not available, may include appointed officials
- Public officials may designate representatives
- For nonprofit CAAs
 - Generally, if public official designates representative to serve in his/her place, that person (and not public official) is board member
 - Public official or representative must serve CAA's interests

Low-Income Sector – Nonprofit CAAs

- Must be democratically selected to assure representative of low-income people in service area
- If chosen to represent a particular neighborhood, must live there

Low-Income Sector – Public CAAs

- Must be representative of low-income individuals and families in service area
- Must live in service area
- Must be able to participate actively in development, planning, implementation and evaluation of CSBG programs

Low-Income Sector Board Members

- Should represent current low-income residents, but don't need to be low-income themselves
 - Best practice: should have at least some (if not all) low-income board members who are low-income themselves

Democratic Selection

- Bylaws may, but do not need to (unless required by state CSBG office), describe democratic selection procedure
 - If not described in bylaws, selection procedure should be described in a separate document referred to in the bylaws and approved by the board

Democratic Selection

- Possible democratic selection techniques include:
 - Election by ballot or at community meeting
 - Elected by or designated from elected leaders of low-income groups (e.g. Head Start Policy Council, neighborhood ass'n, public housing tenants' ass'n, community health center)
- Should not be chosen simply by CAA board or nominating committee
- Should not be staff of another low-income service provider picked by CAA board or nominating committee or by executive director of other organization board, etc.

Private Sector

- Officials or members of business, industry, labor, religious, welfare, education, law enforcement, or other major groups and interests in community served
 - May include both public and private sector groups and interests

Private Sector

- Board may choose representatives from organizations or individuals
 - If choosing reps from organizations, board has more flexibility if organizations not specified in bylaws

Head Start Board Composition Rules

- Governing body must include:
 - At least one member with financial expertise
 - At least one member who is a licensed attorney familiar with issues that come before the board
 - At least one member with early childhood education expertise

Head Start Rules

- If people with such expertise aren't available to serve on board, non-board members with those qualifications may work directly with board on those issues instead

Head Start Rules

- Other board members should:
 - Reflect community and include current or former Head Start parents
 - Be selected for their expertise in education, business administration, or community affairs
- Exception to board composition rules for members of a governing body when those members oversee a public entity and are selected to their positions with the public entity by public election or political appointment

Head Start Rules

- No financial conflict of interest
 - Board members may not have financial conflict of interest with grantee or delegate agency and may not receive compensation for serving on board or for providing services to grantee
 - Exception for individual who holds position as a result of public election or political appointment, and that position carries with it a concurrent appointment to serve as a member of a Head Start agency governing body (but HS grantee must disclose conflict to HHS)

Head Start Rules

- Board members and immediate family members may not be employed by grantee or delegate agency
- Board must operate independently of grantee staff
- See Office of Head Start Policy Clarifications OHS-PC-E-027 and OHS-PC-E-029 available at <http://eclkc.ohs.acf.hhs.gov/hslc> ("Regulations and Policies" drop down menu, under "Policy Clarifications" and then under "Program Governance")

Alternates

- Nonprofit CAAs – many state nonprofit corp. laws do not permit alternates who can vote when primary board member can't attend
- Public CAAs can permit alternates to vote when primary board member can't attend
- Even if state law permits alternates to vote, best practice – no voting by alternates; instead:
 - Permit alternates to attend meetings and report to primary board member
 - Fill vacancies
 - Permit attendance of board members by telephone if state nonprofit and open meetings laws (if applicable) permit

Petitions for Board Representation

- Federal CSBG Act: Establish procedures for low-income individuals, community organization, religious organization or representative of low-income organization to petition for representation
- Good idea to include language on petition procedures in bylaws

Board Selection Procedure

- Create governance committee to oversee selection process
- Nonprofit CAAs: recruit board members with financial expertise, fundraising capabilities, etc.
- Require applications
- Be sure board meets CSBG Act tripartite board requirements and, if applicable, Head Start requirements
- Board members elected by full board (for nonprofit CAAs) or governing officials (for public CAAs) once chosen through appropriate selection process

Board Members' Terms

- Federal CSBG Act does not address CAA board members' terms
 - Check state nonprofit corp. and CSBG law
- Specify board members' terms in bylaws
 - May provide for staggered terms
 - Good idea to have a mix of new and experienced board members
 - Terms can be different lengths for different sectors

Term Limits

- Federal CSBG Act does not address term limits for CAA board members
 - Check state nonprofit corp. and CSBG law
 - Even if state law doesn't require term limits, CAA may decide to impose them
 - Some CAAs permit board members who have reached their term limits to re-join the board after a break (e.g., 1 year)

Removal

- Specify whether removal can be without cause, or whether it must be for cause
 - If for cause, define or give example(s) of what cause is in bylaws
 - But use "including, but not limited to"
 - Provide notice and opportunity to be heard
 - Require removal for nonattendance at specified number of meetings
- Specify vote needed to remove

Board Vacancies

- Vacancies can cause problems, so fill them quickly
- Specify in bylaws how vacancies in each sector will be filled
 - Board elects replacement board members once chosen through appropriate process
- Specify term length of replacement board member and how partial term counts towards term limits, if any

Board Meetings

- Specify minimum frequency
- Specify procedures for annual, regular, special meetings
- Notice to board members
 - Specify form of notice and time periods
 - Specify whether electronic notice can be used (check state law)
 - Permit board members to waive notice (but under open meetings laws, public can't waive notice)
- Meeting minutes

Board Meetings

- If public CAA, state open meetings law applies
- If private nonprofit CAA, determine whether open meetings law applies
 - Each state law has different language and interpretation

Board Meetings

- If open meetings law applies, board may not be able to follow certain practices that other nonprofit boards can:
 - Written consent in lieu of meeting
 - Participation by phone/teleconference meetings
- If open meetings law applies, specify in notice and comply with notice and other rules

Quorum Requirements

- Check state law
- Most state nonprofit corp. laws don't allow nonprofits to set quorums less than 1/3 of voting board members
 - Most nonprofits use majority of board members in office as quorum
 - Default if no bylaw provision– majority
- State specifically needed fraction of voting board members then in office

Voting Requirements

- Usually act by affirmative vote of majority at meeting at which quorum is present
 - State nonprofit corp. laws sometimes require super-majority (2/3) in certain cases (e.g., amending articles or bylaws, dissolution)
- CAA can choose to require supermajority

Voting Requirements

- Nonprofit CAAs – check state nonprofit corp. law
- Best practice for nonprofits even if state law permits:
 - No voting by alternates
 - No voting by public official if s/he designated representative
 - No proxy voting
 - No votes by email
 - No votes by phone or email polling
- Generally, public CAAs can permit this kind of voting but should specify procedures in bylaws
- Usually no secret ballots for public CAAs and nonprofit CAAs covered by open meetings law

Committees – Authority

- What authority do committees have?
 - Many state nonprofit corp. laws prohibit boards from delegating certain powers to committees (e.g., adopting, amending or repealing bylaws)
 - Clearly indicate either in bylaws or resolution adopted by board whether committee is advisory (i.e. makes recommendations) or has authority to make decisions

Committees – Authority

- Don't say: "subject to ratification by board"
- But all committee recommendations and decisions should be timely reported to full board
- Use committee charters to set out responsibilities
- Committees can appoint subcommittees, unless board provides otherwise in bylaws or resolution creating committee
- Committee meeting minutes

Committees – Who Appoints, Who's on Them?

- Who has authority to create committees and appoint members?
- Who can be on committees?
 - Just board members as voting members?
 - Require that committees reflect tripartite board structure?

Committees – Function

- Be sure committees reflect CAA's current needs and are relevant to its current operations
- Standing committees specified in bylaws, e.g.:
 - Executive
 - Governance – instead of nominating
 - Finance and/or audit
 - Personnel – include EEO functions
- Ad hoc committees created by board resolution

Officers

- Bylaws should specify officers and their duties
 - Nonprofit CAAs: check state nonprofit corp. law as to number and specific officers required
 - State whether one person can hold more than one office
 - Require officers to be board members?
 - Note that board may appoint additional officers not specified in bylaws
- Usually board elects officers by majority vote and they serve for one-year terms
 - Require term limits?

Officers

- Include removal and resignation procedures
- Specify how vacancies filled
- Permit officers to delegate duties to employees or agents in certain cases
- Specify whether officers required to be bonded
- Board can also appoint other agents, employees and define their duties

ED/Board Relationship

- Bylaws should generally specify relationship between board and executive director
- Board:
 - Appoints and employs executive director
 - Evaluates ED and sets his/her compensation on an annual basis
 - If necessary, can remove ED

ED/Board Relationship

- Subject to board's direction and control, ED:
 - Manages day-to-day affairs
 - Implements goals and policies established by the board
 - Reports on and advises the board and its committees re: affairs and activities of the corporation
 - Is empowered to hire, supervise and terminate other employees in accordance with board-approved personnel policies

Compensation

- Bylaws should state that board members will not be compensated for services as board members
- Bylaws should state that board members may be reimbursed for reasonable and documented expenses incurred in course of performing services as board members

Conflict of Interest Policy

- Bylaws should require board to adopt and implement separate conflict of interest policy
- Review and update periodically

Signing Checks and Contracts

- Bylaws should include language on who can sign contracts and checks etc.
 - Can specify certain officers to sign in bylaws and let board authorize, by resolution, other officers, employees and agents to sign, or
 - Can leave it general and let board authorize, by resolution, specific people to sign

Indemnification

- Definition – one party agrees to pay obligations of another party under certain circumstances
- Specify in articles or bylaws who, when and how organization will indemnify
 - Encourages individuals to serve on board
 - Clarifies when CAA will and will not indemnify
- Keep indemnification provision up-to-date with current state law
- Cover indemnification with insurance

Bylaws Amendments

- Bylaws more easily amended than articles
 - Don't need to file bylaws amendments with state, but need to notify IRS on Form 990
 - In some cases, lower number of board members required to approve than articles

Bylaws Amendments

- Amendments take time
 - Board appoints committee to review and recommend changes
 - Committee works with attorney to ensure proposed changes are legal and consistent with articles of incorporation and policies
 - Adequate notice
 - Comply with amendment process required by state law and bylaws

Bylaws Amendments

- Specify procedures for amending (check state law)
 - Specify notice required – decide whether to include special notice requirements if state law doesn't require them:
 - Longer notice period
 - Notice must state that purpose of meeting is to consider proposed amendment and contain copy or summary of amendment
 - Specify vote required

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Minneapolis Marriott City Center
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