



Guide to Drafting Bylaws for a Pennsylvania Nonprofit Corporation

Introduction

Nonprofit bylaws are a legal document and a guideline for the processes that govern your organization's actions. While you are not required to file your bylaws with the state when incorporating your nonprofit organization in Pennsylvania, the IRS requires a filing of bylaws with applications for 501(c)(3) tax-exempt status (Form 1023). This guide will focus on key issues that your organization should consider when drafting bylaws, including certain requirements under Pennsylvania law.

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Key Issues and Provisions

1. Name and Purposes

- The first issue that your bylaws should address is the name of your organization. The name should match the name as included in your Articles of Incorporation. The availability of your organization's name can be checked via phone, mailing a written request to the Pennsylvania Department of State, or checking the online database for charities and businesses. Within the name portion of your bylaws, you may also want to state that your nonprofit is governed by the Pennsylvania Nonprofit Corporation Law of 1988, as amended, and create some defined terms, such "the Corporation," to refer to your organization throughout the bylaws.
- Additionally, you may write a short (1-2) sentence statement of purpose that states what your organization strives to do. This statement of purpose should align with the purpose as set out in your Articles of Incorporation. A nonprofit corporation may be formed for any lawful purpose or purposes in Pennsylvania; however, to qualify for 501(c)(3) tax-exempt status, the organization must be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. If the statement of purpose will be longer than 1-2 sentences, then create another section of the bylaws specifically for a statement of purpose.

2. Offices

- Next, you will want to include the location and address of your principal office, as well as other offices that the organization will operate. This section should include the processes by which the location of the offices may be moved and the process by which that change of location will be recorded by the organization.

3. General Provisions Relating to the Board of Directors

- The Board of Directors (the "Board") manages the business and affairs of a nonprofit. Directors carry certain duties under Pennsylvania law, in addition to those outlined in an organization's bylaws. In your bylaws, you should specify:
 - the powers of the Board;
 - any qualifications required to become a director;
 - the number of directors, or a minimum and maximum number, depending on the structure of your organization (Pennsylvania law requires that nonprofits have at least one director, and if neither the bylaws nor the articles of incorporation specifies a number, then the default is three directors. 15 Pa. C.S.A. § 5723.);

- the processes by which directors are nominated, elected, and removed; and
- any term limits.
- This section (or another section, if you choose to separate them) should also address board member compensation and indemnification from liability, if your organization chooses to provide these. Pennsylvania law gives your organization the ability to provide indemnification if the individual acted in good faith, acted in a manner that they reasonably believed to be in the best interest of the nonprofit, and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful. 15 Pa. C.S.A. § 5741.

4. Meetings and Voting Practices of the Board

- The bylaws should address the means by which the Board can take action on behalf of the corporation. This occurs primarily through meetings of the Board.
- You should establish the process by which meetings are held, including the location, as well as the processes by which special meetings can be called. You should establish a process by which the agenda and purpose of the meetings are communicated to members and standardize that method of giving notice. Under Pennsylvania law, meetings do not need to be held at a physical location, but a location, whether physical or virtual, should be specified. 15 Pa. C.S.A. § 5704(a). Members with voting rights are entitled to 10 days' notice of meetings that will have votes on entity transactions, amendments, sale of assets, or dissolution, and five (5) days' notice for votes not related to these issues. 15 Pa. C.S.A. § 5704. The Board should typically meet a minimum of once a year, and best practices suggest four times a year.
- Finally, you should state what percentage of directors qualifies as a quorum and create a basic practice by which meetings are run, including in the case of a loss of quorum, voting procedures, and the standards for adjournment.

5. Officers of the Board

- The bylaws should provide for the officer positions on the Board, as well as state the term length, duties, compensation, and responsibilities of the officers. Examples of common officers of the Board are the President, Secretary, and Treasurer. The bylaws can provide for additional officers to be named as needed. Additionally, this section should provide for removal of officers, vacancies in office, and the resignation of officers.
- Note that officers of the Board are directors and separate from officers who are employees of the nonprofit and serve as leaders within the organization.

6. Committees of the Board

- Through your bylaws, you can create standing committees of the Board, comprised of directors, that are organized to perform, assist with, or provide recommendations on certain tasks of the Board. The Board may establish and abolish standing and special committees (each, a "Committee"), which may

include an Executive Committee, a Finance Committee, and a Governance/Nominating Committee (each of which shall be comprised of directors only) and may include any other committees the Board deems advisable. The Board shall appoint the chair of each such Committee and may appoint and remove members of such committees as it deems advisable. Absent Board action, the chair of a Committee shall be entitled to recommend any members of such committee, subject to Board approval. Any such approval, appointment or removal, shall be in writing and the scope and authority of such Committee shall be detailed by the Board in such writing. Committee members for all Committees other than the Executive Committee, Finance Committee and Governance/Nominating Committee may include, but are not required to be, directors and officers of the Corporation..

- Your bylaws may provide for additional committees, or the creation in the future of additional committees. Some of these committees might be committees of the corporation, which do not need to consist solely of directors and which serve in a more limited, advisory capacity. Some examples might be a Special Event or Gala Committee or a Fundraising Committee.

7. Members

- At the time of incorporation, your organization will need to decide whether to have members as part of its governance structure, in addition to a Board of Directors. In organizations with a membership structure, members serve as similar function that shareholders do in for-profit corporations in that they elect the Board of Directors and vote on other major decisions.
- If you choose to have members your bylaws should address the number and type classes of members, qualifications of membership, the number and time of meetings of members, dues, rights of membership, rules relating to voting by members, transferability of membership voting rights, and termination of membership. Additionally, if you will have special classes of membership, such as honorary members, then you should create the processes by which these individuals join the organization.

8. Amendments

- The bylaws should outline the method by which the bylaws can be amended, including the type of meeting that is required to be called for their amendment and the voting requirements in order to pass an amendment.

9. Other Provisions

- If you choose, you can create other provisions that help to govern the processes utilized by your organization. Examples may include: Contract Making, Loans Processes, Check/Draft Processes, Deposit Processes, and Severability of Company Actions. These are not required, but they will help to standardize the processes of the nonprofit and may help with running the organization.

Conclusion

Once your organizations' bylaws are drafted, they should be adopted by the Board. If you are a newly forming nonprofit, this action is usually taken at the organizational meeting.

The writing of bylaws will help your nonprofit by providing clear guidance on how it should be operated, whether you are a new organization just getting started or a group that has been in existence for many years. If you need help with drafting or amending your bylaws, contact Philadelphia VIP's LawWorks Program for legal assistance.

Useful Links

- Philadelphia Laws on Incorporation
<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/15/15.HTM>
- For additional help, if your organization qualifies, you can contact:
<https://www.phillyvip.org>