

The
PURPOSE
of
BY-LAWS
and
POLICIES & PROCEDURES

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I N T R O D U C T I O N

Origin

A bylaw (sometimes also spelled by-law or byelaw) was originally the Viking town law in the Danelaw. Contrary to popular etymology the element "by" has nothing to do with the preposition "by". It is the Old Norse word for larger settlement as in Whitby and Derby (compare with the modern Danish-Norwegian word "by" meaning town, or the modern Swedish word "by", meaning village). To this day, the word bylaw most commonly refers to a city or municipal law or ordinance, passed under the authority of a charter or provincial/state law specifying what things may be regulated by the municipality.

The main difference between a bylaw and a "law" passed by a federal, state or provincial body, is that a bylaw is a regulation passed by a non-sovereign body, which derives its authority from another governing body. A municipal government gets its power to pass laws through a charter or a law of the state/provincial or federal government which specifies what things the city may regulate through bylaws. Similarly, a business or corporate body also gets its ability to pass By-Laws relevant to its operation from some law or act passed by some public body for the purpose of regulating corporate activities.

By-Laws and Policies & Procedures

To compliment the outer boundaries, members must have direction and guidelines for what is accepted behavior within the particular organization. If the boundaries of an organization are defined, but the function is not, problems like conflict of interest, misdirection of focus, or lack of productive activity will occur. This scenario is similar to having a parking lot with no painted lines. Everyone understands that it is used for parking cars, but which direction, what pattern, and how the cars exit can lead to confusion (if not serious accidents). The parking lot lines direct drivers how to park orderly, where to park, determine the driving pattern within the area, and explain how to exit orderly when leaving the area.

So how do organizations define their boundaries and operations or, to extend the metaphor, paint their parking lines? Two documents can address these components:

1. By-Laws, and
2. Policies and Procedures (PAP) also called Standard Operating Procedures (SOP).

The By-Laws define the boundaries of the organization, whereas, the Policies and Procedures define the day-to-day activities within the boundaries.

While these two documents are different in many ways, they have some commonalities. Both documents must be written and approved by the organization. The general membership ratifies the By-Laws, whereas, the governing officers endorse the Policies and Procedures. As written documents, continuity is maintained for the duration and leadership succession of the organization. When it has written documents and there is common knowledge of the procedures, the organization will be protected from itself.

Often, people use these titles (By-Laws and PAP) interchangeably, but each document has a distinctly different function. Another way to view these two documents is: the By-Laws are the governing rules, the Policies set the organizational goals, and Procedures define the steps required to achieve the goals.

BY - LAWS

Definition

Webster's Ninth New Collegiate Dictionary says: "By-Laws are the rules adopted by an organization chiefly for the government of its members and the regulation of its affairs."

By-Laws govern all non-profit organizations. They are the rules agreed upon for the internal operation of the organization, such as the time and place of the annual of meetings, the number of directors required to constitute a quorum for the conduct of business, the two-way relationship of "rights" (what is received) and "responsibilities" (what is given) of members, how to amend By-Laws, how officers are elected, etc.

Scope and Content

A common mnemonic device for remembering the typical articles in By-Laws is NOMOMECPA, pronounced "No mommy, see pa!" It stands for **N**ame, **O**bject, **M**embers, **O**fficers, **M**eetings, **E**xecutive board, **C**ommittees, **P**arliamentary authority, **A**menendment.

By-Laws are the formal governing rules of the organization. They are contained in a single, formal written document that answers the questions of: who?, what?, where?, when?, why?, and how? of an organization. These questions define the boundaries of the organization. Without defining its boundaries, an organization can operate far beyond the original intention. This does not mean that an organization cannot expand its scope. Outlining the scope and boundaries gives the organization an arena in which to operate that can be expanded or reduced as the needs of the organization change. This arena limits people from going in different directions with different agendas.

By-Laws usually start by identifying the "who" and "what" of the organization. The other four components, "where", "when", "why", and "how" provide the structure for the group.

• Who:

By-Laws tell "who" the organization is: its formal name as indicated by a national affiliation, state mandate, or articles of incorporation. In By-Laws, the "who" is often phrased as "This organization shall be known as" or "shall be called" followed by the name.

• What:

The "what" question is answered by the purpose of the organization. The group may be a fraternal club, a civic organization, a neighborhood group, an issue based association, etc. Within the "what" component, membership criteria may be outlined, such as a neighborhood association may indicate that all people residing within certain boundaries are eligible for membership. The "what" is frequently stated as a broad purpose.

The other four components (where, when, why, and how) fall in no particular order after "who" and "what", but they direct the organization in relation to the first two components.

• Where:

"Where" addresses jurisdiction and boundaries of the organization, which also impacts membership and function. This section delineates the geographic scope of membership -- both for membership and for action. A group may draw membership from a town or a specific area, but have as its intent activity that is focused elsewhere such as a local group forming to address tropical rain forest depletion or aid to children in developing countries. Conversely, a broad membership, such as state or national allegiance, may be formed to focus on a particular place, such as is the case with alumni organizations. The scope of both membership and operations are important to have clearly defined in the By-Laws.

• When:

"When" covers the frequency of meetings. This component does not need to be very specific other than the group will meet on a regular (and defined) basis. The frequency, times, and dates can be more fully outlined in the Policies and Procedures. What is important is that the By-Laws indicate how meetings are called, how membership knows about meetings, and what distinguishes a regular from a special meeting.

• Why:

"Why" focuses on the purpose of the organization. It defines what is within the organization's jurisdiction and what is not within the jurisdiction. In the By-Laws, the normal activity of the group is outlined; the issues, action, and intent of

the group is simply written. Some organizations choose to perform as 501-C-3 or 503-D organizations and this status then is part of the "why." Any legal, fiscal, or social restrictions of the group need to be clearly outlined in the By-Laws to ensure that the intent of the organization is consistent over time.

· How:

"How" a group is to function is often more fully defined in the Policies and Procedures for the day to day operations of the organization. This "how" component in the By-Laws indicates the organizational structure, the governing group, and the operational procedures. Within the By-Laws, all references for meeting procedures, elections, governance, exceptions to policies and procedures, and so on, are referred to the policies and procedures/standard operating procedures.

Usually this section begins with the governance for the group:

- a) what is the governing structure
- b) what are the officers of the group including a brief and, broad enumeration of each position's responsibilities
- c) what is the standing committee structure for the organization, and
- d) how are decisions made

Also, "quorum" -- how many members are required to be present for official business to transpire -- is stated. Quorum can be a percentage of total or paid membership, a specified number, or a majority of members present at a regular meeting. A final inclusion in "how" refers to the funding of the organization. If dues or fees are to be assessed, the means and rate and when this occurs are included here.

The frequency and process of elections are included in this section which then identifies succession of leadership and how to handle vacancies in offices, on the board or governing committee, and standing and ad-hoc committee chairs.

Many groups fall into the trap of relying upon *Robert's Rules of Order* or parliamentary procedure as their means of conducting business without fully understanding the complexities and rigidity of these systems. For large groups, such process is strongly recommended, but for most organizations, an action agenda, modified parliamentary procedure, or consensus are offered as alternatives.

A M E N D I N G B Y - L A W S

Reasons

It is important that non-profit organizations have By-Laws that are responsive to the organization's constituents and its needs. Organizations that never review their By-Laws sometimes end up burdened with antiquated By-Laws that no longer reflect the organization's mission, needs, or direction.

By-Laws should be reviewed regularly to ensure:

- 1) that the group is functioning within the By-Laws; or
- 2) if the By-Laws should be altered to fit changes within the group.

Significant growth (positive or negative) of the group, a shift in the group's focus, or a re-organization of the group are a few examples of the types of change that may necessitate a review and possible revision of the By-Laws. Well written By-Laws should not need annual review or change, but there are some groups that tend to forget they have By-Laws and neglect them. This can result in an organization acting outside its agreed upon process and/or function.

Some organizations provide copies of By-Laws to all members, and to new members upon paying dues or signing to the membership roster. The executive board, governing committee, board of directors, etc. should each retain a copy of the By-Laws, as well as all members should have easy access to a copy. For records, the president and secretary should retain copies in their official notes.

As non-profit organizations attempt to alter/amend By-Laws to meet the changing requirements of the organization, they face a delicate task of making sure that any alterations stay in line with their mission and protect the organization from future difficulties. They also must make certain that by meeting their current needs, they do not ignore their long-term challenges.

Some common reasons organizations change their By-Laws include:

• ***Change in constituent demands:***

One of the most important reasons to change By-Laws is that the organization's constituents see a need for change. The By-Laws must remain responsive to the changing demands of the people it serves.

• ***Change in organization mission:***

The mission is the organization's guiding beacon. However, the beacon can waver or even cast its light in a new direction upon occasion. When an organization changes its mission, the By-Laws must change to stay on course with that mission.

Sometimes the organization's mission is contained in its charter or its articles of incorporation. It is a very weighty matter to change an organization's charter. This move requires wide-spread support and possibly consultations with state licensing agencies. A change in charter or articles of incorporation could affect the organization's non-profit status. However, charters do change and so do the By-Laws that support the charter.

Also, organizations that engage in strategic long-range planning may find that their By-Laws must change to stay in harmony with the new directions.

• ***Change in organization operation:***

Every governing body seeks to operate in a manner that reaps the greatest benefit for the people it serves. To do this, the body must frequently re-evaluate the rules by which it governs. These operating issues make up the bulk of most By-Laws.

• ***Response to specific situations:***

No non-profit board can foresee every situation that must be addressed in its By-Laws. Each organization will have its unique problems and challenges. When solutions to new problems are found, some organizations will wish to codify the solution to make things flow more efficiently in the future.

Some organizations find themselves with By-Laws over the decades that have become outdated. The By-Laws may no longer be feasible to enforce as written. There may be references to machines that no longer exist or procedures that are no longer relevant.

• ***Practices that need documenting:***

Every organization constantly searches for better ways to accomplish its tasks. The organization may grow and subsequently change the way it operates. Non-profit organizations may find that they have adopted certain processes and

practices or have formed long-standing committees that have never been documented. Any time a process, committee, or practice has lasted for many years, an organization may decide to document it.

· Change in social or legal environment:

Non-profit organizations frequently are part of the political and legal maelstroms that swirl through their communities. Even if they try to isolate themselves, they may find themselves caught up in the storms of controversy surrounding the issues they care most about. At best, organizations are able to weather those storms with little change. Others find themselves forced to painfully re-build after negative publicity. Still other organizations are pro-active and set up storm walls and shutter their windows before a hurricane strikes. These pro-active organizations establish procedures and policies to deal with the media or other outside influences.

Advice

Boards and By-Law Committees must carefully consider the legal ramifications of a proposed By-Law. The organization must be careful to safeguard its non-profit status. It must carefully evaluate each By-Law making sure they are clean and don't violate federal, state, or local regulations. Likewise, By-Laws must be carefully worded to minimize liability. Courts will expect organizations to live up to the standards of their By-Laws. Organizations that do not do this open themselves to civil lawsuits.

If something in the By-Laws needs to be amended, it takes a formal action and vote of the membership. On the other hand, if the operating procedures need to be amended, it only takes action by the executive or governing group of the organization.

P O L I C I E S and P R O C E D U R E S

Purpose

A Policy defines the goals of the organization and a Procedure defines the steps required to achieve these goals. Policies and Procedures (PAP) are dated documents that can be simply amended as needed by the organization. The PAP indicates the day-to-day operations of the organization or "how do we get things done." If an organization has turnover in its administration the learning curve in operating the group will be high and continuity, and perhaps experience, will be lost if there is no written documentation on policies and procedures. Having documented administrative and operational functions ensure that future administrations have the benefit of prior experience by having access to established guidelines. If policies and procedures are not written verbal versions of what to do and how to do it can lead to confusion and sometimes cause problems. When the group is operating from the same set of goals (policies) and guidelines (procedures), the group can avoid problems and allows itself to focus on moving the organization ahead.

The written procedures should outline what issues and concerns the group will address. This is operationalized from the "what" and "why" in the By-Laws and further clarifies the normal activity of the organization and the way the group will monitor its activities. While the By-Laws outline any standing (or on-going) committees, the PAP further designates how these committees function. The PAP defines expected results a committee is to produce.

There are several reasons to create these documents:

· To develop structure within the organization:

Documenting current processes will provide the organization with the knowledge of how the group manages each operation. If a new member enters the organization and is able to see how it operates an activity, one will be able to immediately help. If a corporate sponsor wants to see if the group is worth sponsoring, the sponsor can see the different checks and balances the organization has in place.

· In order to operate efficiently:

If an organization does not document the what, when, how, and why of its operations, the group will be unable to improve the organization. Analyzing what was done and what problems arose allows the organization to make improvements and enhance the efficiency of that activity. This is a continual improvement process because all documents are to be revision controlled. This provides integrity to the system and allows for changes to be managed effectively.

· Provides for checks and balances:

The institution of PAP ensures the organization is managing several areas effectively by creating some checks and balances into each procedure to safeguard the organization from top to bottom.

Suggested Process

The PAP is distinct to the organization. One technique for writing procedures is to get a small group together for a brainstorming session. Have everyone write on note cards (one idea per card) all the problems they have experienced in groups in which they have been or are a part. After a few minutes, the people read their cards, one at a time. When all ideas have been shared, the group keeps talking. The new ideas that grow from the discussion are also recorded on note cards – one idea per card. The cards can then be separated into clusters related to the ideas shared above. As the procedures are written, all these ideas are covered so that this group can learn from the problems or mistakes of others.

Like the By-Laws, all members should have access to a copy of the PAP. All official books, official records, and governing members need to have the most current copy of the PAP in their possession. The procedures are dated documents because they are identified by the most recent version through the date printed on the cover and as a header or footer on each page. Through this dating, it is easy to ensure that the most current PAP is being used. The secretary's file maintains an historical copy of all the PAP versions. Also, like By-Laws, the PAP should be reviewed regularly. Any change in the By-Laws usually causes a corresponding change in the PAP. Regular review will ensure that the PAP accurately reflects the By-Laws and the functioning of the organization.

Summary

By-Laws and Policies And Procedures (or Standard Operating Procedures) are essential documents for on-going organizations. To ensure equality, fairness, and consistency, these written documents compliment one another to describe an organization and how it functions. For an organization to continue, the members must agree on how they will function in an organized manner is reflected in the written documents of By-Laws and PAP.

These documents define the parameters of the organization's concern, the boundaries of operation, expanse of authority, and accepted behaviors of members. To use the example from earlier, By-Laws create the boundaries of the parking lot and PAP are the painted parking spaces within the parking lot. While these documents may not solve all problems that arise in an organization, the By-Laws and PAP/SOP allow for a process to address problems or concerns.