

Essential Components of Nonprofit Bylaws

Presented by Brock Malcolm, Esq.

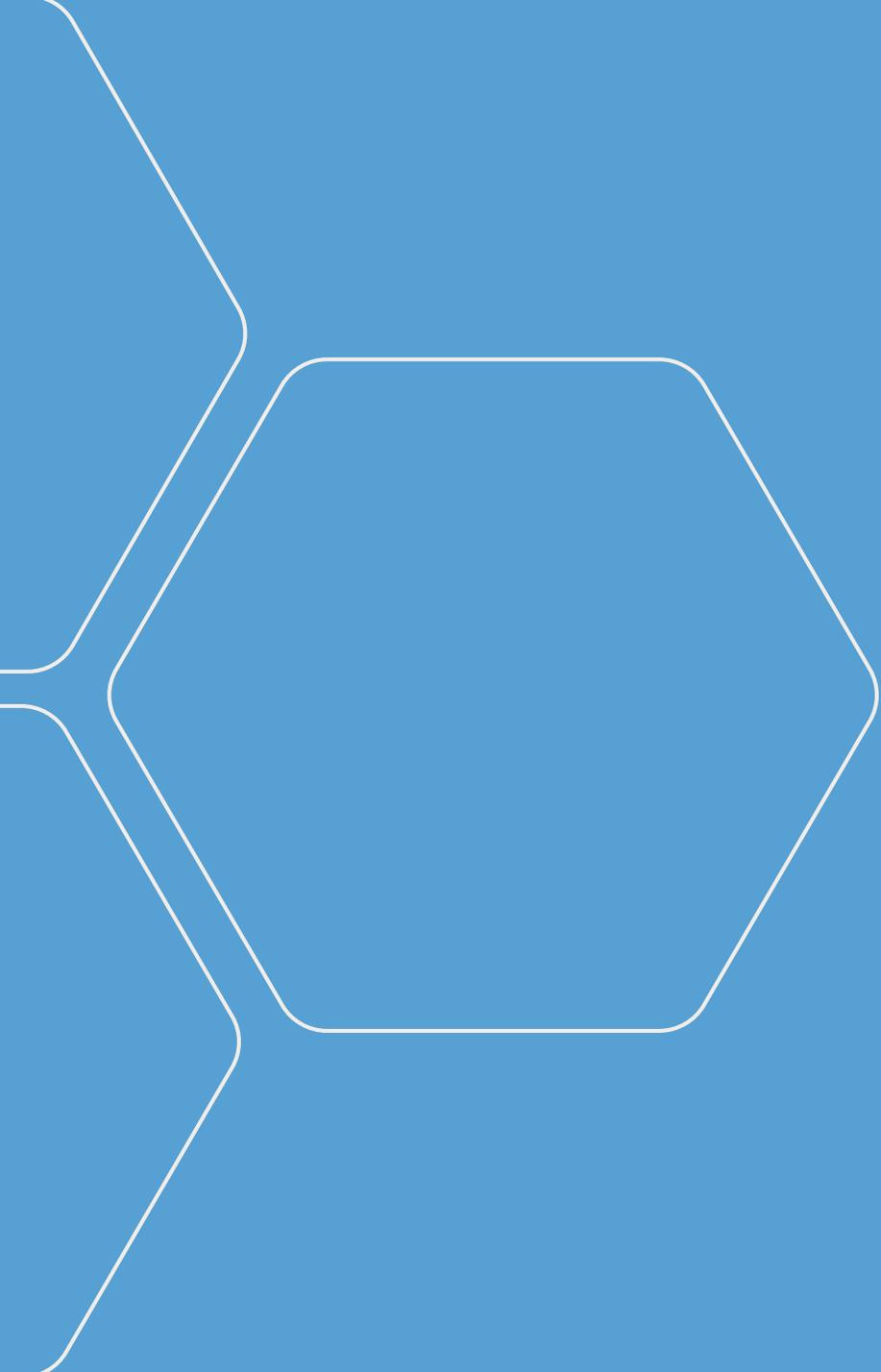
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Before We Dive In

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Before We Dive In

- **Remember:** Everyone must play by the rules, including nonprofits.
- Nonprofit bylaws establish procedures, structures, requirements, and guidelines for how it operates.
- In other words, it keeps everyone accountable for their actions and prevents conflict and confusion.

Before We Dive In

- Avoid the temptation to copy and paste old sample bylaws from the internet.
- While such documents can provide a good starting point, you need to tailor your bylaws to your nonprofit organization.



What are Nonprofit Bylaws?

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What are Nonprofit Bylaws?

- Nonprofit bylaws (usually considered in conjunction with the Articles of Incorporation) explain how your organization operates.
- Think of them as the operational manual for your nonprofit.
- While the bylaws do not have to be publicly accessible, many organizations decide to share them.
 - Increases transparency and trust among donors, constituents, and other supporters.

What are Nonprofit Bylaws?

- The nonprofit's Board is responsible for compiling, maintaining, and following the nonprofit's bylaws.
- Ideally, the company did this thoroughly when the organization was formed.
 - If not, there is no need to panic! You can amend your bylaws at any time.
 - In fact, Boards should undertake periodic reviews, making edits as needed.

What are Nonprofit Bylaws?

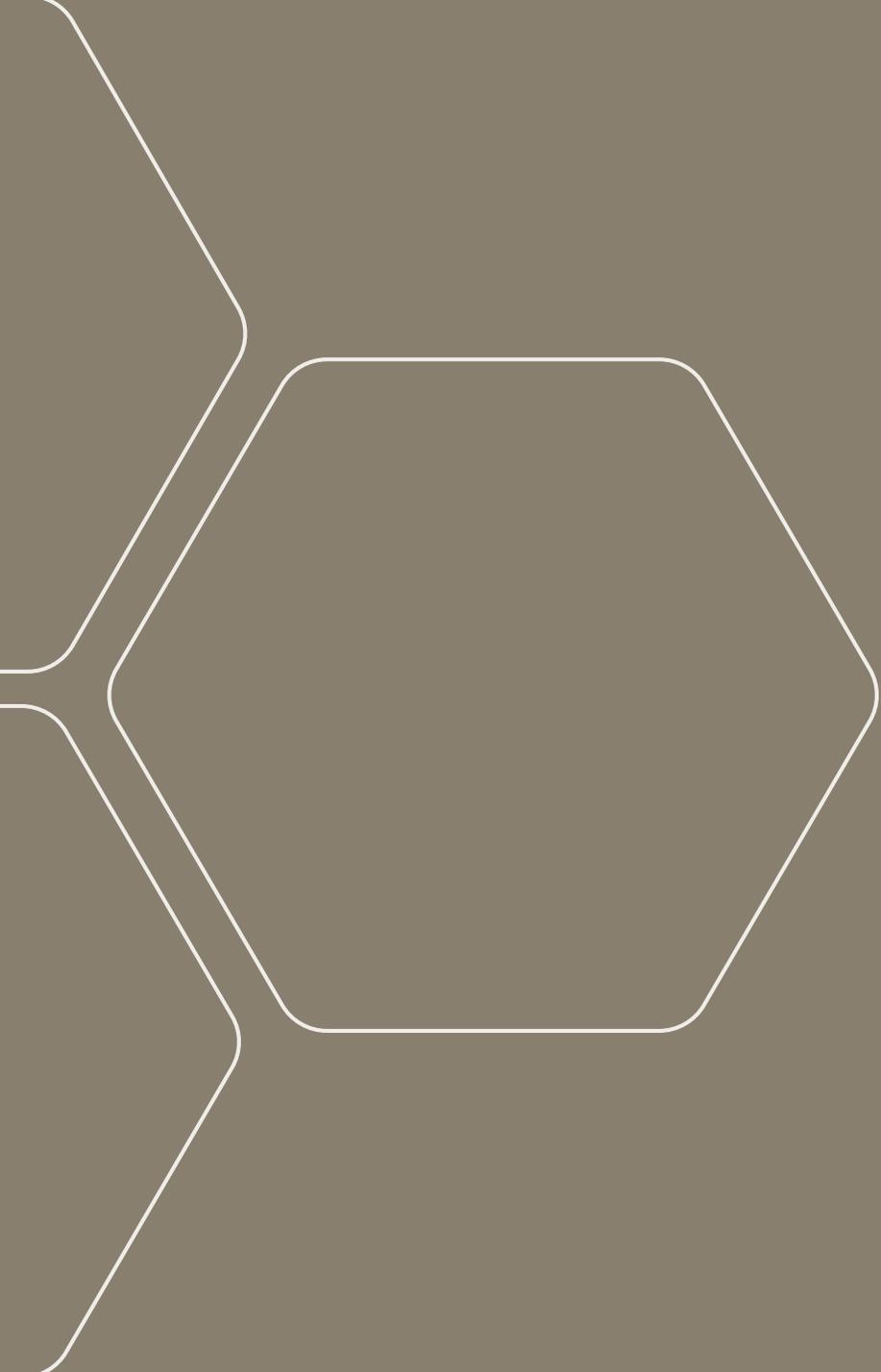
- Generally, federal law does not require any specific language to be contained in bylaws.
 - However, federal regulations pertaining to Federally Qualified Health Centers and other federal grantees do require certain bylaw components.
 - Bylaws must be filed with the IRS when applying for 501(c)(3) tax-exempt status.
 - 501(c)(3) does require bylaws to reflect how nonprofit's assets will be distributed if company is dissolved.

What are Nonprofit Bylaws?

- Many states have statutory requirements for nonprofits.
- In West Virginia, we have the West Virginia Nonprofit Corporation Act (W.Va. Code, Chapter 31E).
 - WV Nonprofit Corporation Act sets forth good guide for what should be included in the bylaws, as well as information pertaining to all required State reporting.

What are Nonprofit Bylaws?

Local Health Departments are governed by WV Code § 16-2-1, et. seq. which “establishes uniform provisions applicable to all local boards of health, whatever organizational form is elected, to ensure the consistent performance of duties, relating to basic public health services and other health services and the enforcement of the laws of this state pertaining to public health.”



Why Do Nonprofits Need Bylaws?

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Why Do Nonprofits Need Bylaws?

- **Legal reasons:** Bylaws are generally required for the establishment of the nonprofit company and for obtaining its tax-exempt status under Internal Revenue Code Section 501(c)(3).
 - Also, WV Nonprofit Corporation Act, § 31E-2-205:
 - a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.
 - b) The bylaws of a corporation may contain any provisions for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Why Do Nonprofits Need Bylaws?

- **Legal reasons:** For Local Health Departments, WV Code § 16-2-10(b) states “a local board of health shall adopt and may amend bylaws or rules governing the time and place of its regular meetings, procedures, and method of conducting its meetings.”

Why Do Nonprofits Need Bylaws?

- **Define Powers:** Unless its articles of incorporation and bylaws provide otherwise, your nonprofit has perpetual duration and the same powers as an individual to “do all things necessary or convenient to carry out its business and affairs,” WV Code § 31E-3-302 (General Powers).

Why Do Nonprofits Need Bylaws?

- **Define Powers:** Include, but are not limited to, the power:
 - to sue (and to be sued);
 - to have a corporate seal;
 - to make/amend bylaws;
 - to buy, sell, hold, use, or otherwise deal with real or personal property;
 - to mortgage, lease, exchange or dispose of property;
 - to buy, sell, hold, vote, use, and dispose of shares in other entities;

Why Do Nonprofits Need Bylaws?

- **Define Powers:** Includes the power to:
 - to make contracts and guarantees, to incur liabilities, and to issue notes, bonds, and other obligations;
 - to lend money, invest/reinvest its funds, and receive/hold property as security for repayment;
 - to conduct activities, locate officers, and exercise powers within and without the state; and
 - To elect directors and appoint officers, employees, and agents, to define their duties, and to fix their compensation.

Why Do Nonprofits Need Bylaws?

- **Define Powers:** For Local Health Departments, WV Code § 16-2-11 defines those powers and duties of the Board, including but not limited to:
 - Community health promotion
 - Environmental health protection
 - Communicable or reportable disease prevention and control
 - Immunizations
 - Threat preparedness
 - Appointment of local health officer (on one-year terms)

Why Do Nonprofits Need Bylaws?

- **Accountability:** Bylaws are the mechanism through which we hold the organization and its leaders accountable.
 - This accountability is especially important if your nonprofit relies on others (federal or state grantors, philanthropic grantors, community-based donators, etc.) for funding, as they will want to ensure that your nonprofit has appropriate safeguards in place to protect resources and prevent fraud, waste, and abuse.

Why Do Nonprofits Need Bylaws?

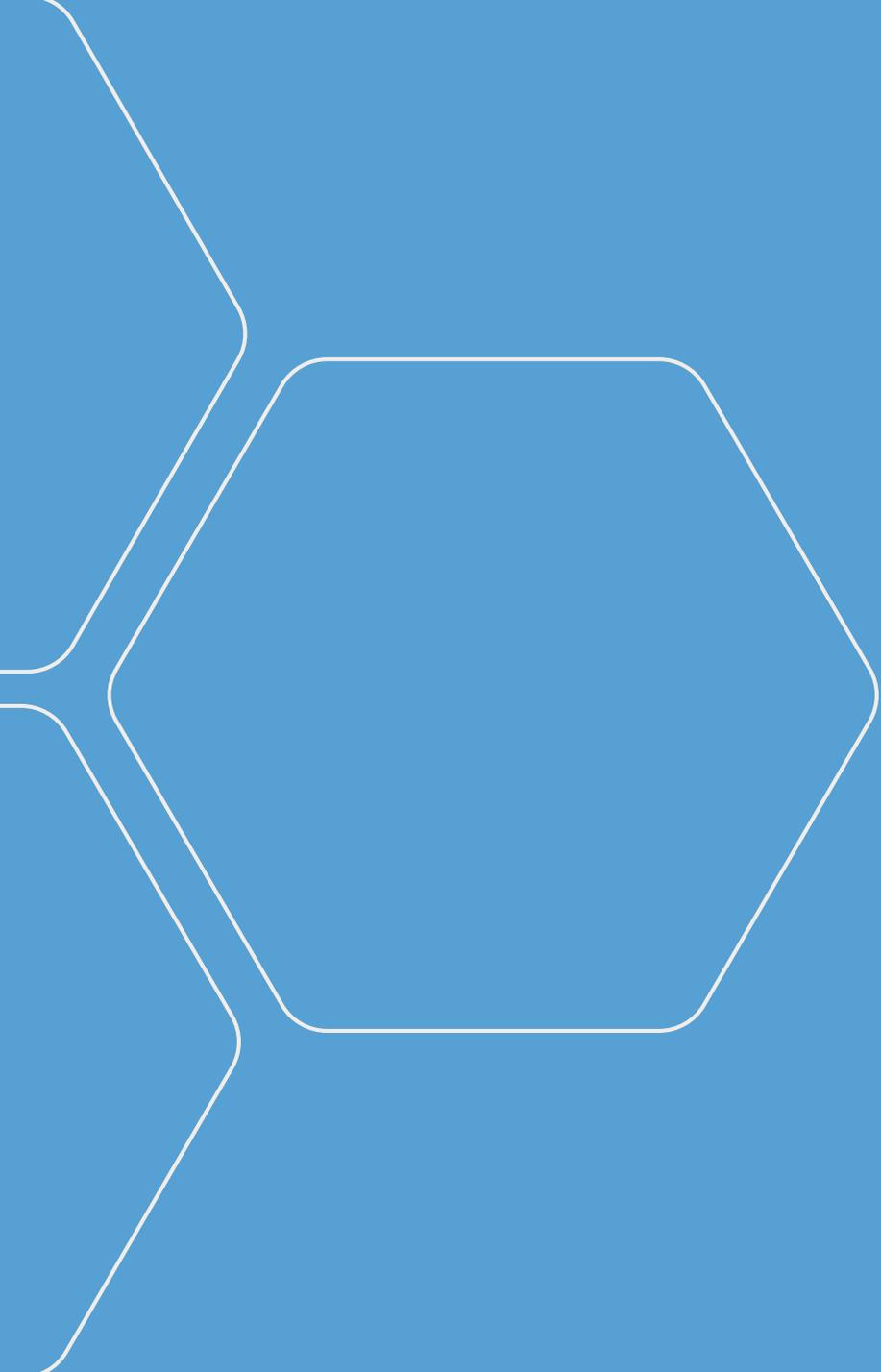
- **Decision-making:** Bylaws define how we make decisions, including how and how often we hold meetings, elect our members and officers, and fulfil the terms of those offices.
- **Emergency Situations:** While not required, WV Code § 31E-2-206 allows for the adoption of emergency bylaws to be effective only during an emergency (defined as when “a quorum of the corporation’s directors cannot readily be assembled because of some catastrophic event”).

Why Do Nonprofits Need Bylaws?

- **Conflict Resolution:** Ideally, bylaws present the rules clearly, thus eliminating most confusion and potential disagreements. They also should provide the mechanism for resolving conflicts when they do arise.

Why Do Nonprofits Need Bylaws?

- **Protection:** Bylaws limit personal liability of Board members.
 - Protections are only for Board members acting in good-faith, fiduciary capacity and within the scope of their duties.
 - Nonprofits should provide Directors and Officers (D&O) insurance, and the bylaws should outline the terms and conditions for indemnifying Board members who are pulled into legal action because of their service on the Board.



What to Include in Bylaws

Article I. Name, Offices, and Purposes

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What to Include in Bylaws

Article I. Name, Offices, and Purposes

§31E-4-401. Corporate name.

1. Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language.
2. Must be distinguishable from other corporations or businesses incorporated or authorized to transact business in West Virginia.

What to Include in Bylaws

Article I. Name, Offices, and Purposes

§31E-3-301. Purposes.

Corporations may be organized for any lawful purpose, including any one or more of the following purposes: Charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional commercial, industrial or trade association.

What to Include in Bylaws

Article I. Name, Offices, and Purposes

While not required in the bylaws, many nonprofits will include an “Offices” section under this Article, establishing its principal place of business and defining the scope of their business interests.

Still will include a disclaimer, such as “The Corporation may have such other office or offices and may transact business, either within or without the State of West Virginia, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

What to Include in Bylaws

Article I. Name, Offices, and Purposes

While not required in the bylaws, many nonprofits also will include their Mission Statement in this Article, either as a stand-alone section or as part of the Purposes section.

Regarding Purposes, it is critical to align the corporation with the approved purposes contained within Section 501(c)(3) (or another nonprofit section).

For example, the Corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended, and the corresponding provisions of any similar law subsequently enacted.



What to Include in Bylaws

Article II. Membership/Directors

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What to Include in Bylaws

Article II. Membership/Directors

WV Nonprofit Corporation Act

- § 31E-6-601. Classes of Members
- § 31E-6-601. Rules for Membership
- § 31E-6-601. Imposition of fines and penalties; levy of dues and assessments.
- § 31E-6-601. Liability of Members
- § 31E-8-801. Requirement for and duties of board of directors

What to Include in Bylaws

Article II. Membership/Directors

§ 31E-6-601. Rules for Membership

- a) Membership is to be governed by rules of admission, retention, withdrawal and expulsion as the bylaws prescribed, provided all bylaws are to be reasonable, germane to purposes of corporation, and equally enforced as to all members.
- c) Membership may be limited to persons who are members in good standing of another corporation, organization, or association, if provided for in the articles of incorporation. If membership is so limited, failure to keep in good standing is sufficient cause for expulsion.
- e) Unless otherwise provided, membership is terminated by death, voluntary withdrawal, or expulsion.

What to Include in Bylaws

Article II. Membership/Directors

Section 1. Duties and Responsibilities.

- Perform any duties imposed by articles or bylaws.
- Employ CEO/Executive Director to manage day-to-day operations and to supervise and manage all other employees.
- Supervise the CEO/Executive Director to ensure duties are adequately performed; terminate the CEO/Executive Director if duties are not performed.
- Approve the annual budget.
- Meet at such places and times as required by bylaws.
- Provide for recordation and preservation of minutes from meetings.

What to Include in Bylaws

Article II. Membership/Directors

Section 1. Duties and Responsibilities.

- Enter into contracts, leases, mortgages, sales contracts, and other statements of agreement as are needed to carry out the functions, plans, and purposes of the corporation.
- Approve all business locations and hours of operation.
- Review, adopt, and amend (as needed) the policies of the organization (although not necessarily the procedures).
- Ensure the nonprofit operates in compliance with all applicable federal, state, and local laws and regulations.

What to Include in Bylaws

Article II. Membership/Directors

Section 2. Qualifications and Number.

- WV Code § 31E-8-802 (Qualifications of directors): “The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles of incorporation or bylaws require he or she to be a member.
- Who and How Many?
 - WV Code § 31E-8-802 states “a board of directors must consist of three or more members, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.”

What to Include in Bylaws

Article II. Membership/Directors

Section 2. Qualifications and Number.

For Local Health Departments, WV Code § 16-2-6 (municipal health departments) and 7 (county health departments) state:

- 5 appointed Members.
- Must be Resident of county or municipality (as appropriate).
- No more than 2 residents of same county district or municipal ward.
- No more than two members may be personally licensed or certified in, engage in, or actively participate in the same business, profession, or occupation.
- No more than 3 members of the same political party.

What to Include in Bylaws

Article II. Membership/Directors

Section 2. Qualifications and Number.

For Combined Local Health Departments, WV Code § 16-2-8 states:

- At least 5 Members, selected by agreement of the participating counties or municipalities (each may appoint 1-3 members).
- No more than one-half of the members may be personally licensed or certified in, engage in, or actively participate in the same business, profession, or occupation.
- Number of members belonging to the same political party may not exceed by more than one the number of members belonging to another political party.
- No member may represent more than one county or municipality.

What to Include in Bylaws

Article II. Membership/Directors

Section 3. Nominations.

- Unusual provides for a nominating committee to consider qualifications of potential members and to make formal nominations.
- Also allows for nominations from the floor from other Board members who are entitled to vote at the annual meeting.
- Committee should actively and strategically assess needs of nonprofit board, including areas of expertise, education, lived experiences, access to potential donors, etc.

What to Include in Bylaws

Article II. Membership/Directors

Section 4. Term (WV Code § 31E-8-806)

- a) Annual Elections to fill vacancies for (X) number of years.
- b) Consecutive Terms/Term Limits.
- c) Use staggered terms when starting nonprofit or when increasing number of members (WV Code § 31E-8-807).

Section 5. Rules for Directors

(e.g., mandatory Code of Conduct, annual conflicts of interest reporting, payment of dues, membership in good standing, etc.).

What to Include in Bylaws

Article II. Membership/Directors

Section 4. Term

For Local Health Departments, Term is defined by WV Code § 16-2-9(a) at five (5) years. Members may be reappointed for additional terms of 5 years.

Section 5. Rules for Directors

In accordance with WV Code § 16-2-9(a), Health Department Board members' oath of office shall be duly recorded before entering into or discharging any duties of office.

What to Include in Bylaws

Article II. Membership/Directors

Section 6. Compensation

Generally, for nonprofit boards, you just clarify that there is no compensation for membership, but members may be reimbursed for actual expenses incurred while doing Board business. Reimbursement may be subject to Board approval.

Section 7. Vacancies

How will you handle them when they arise (i.e., temporary appointment vs. waiting for annual meeting)?

What to Include in Bylaws

Article II. Membership/Directors

Section 6. Compensation

For Health Departments, WV Code § 16-2-9(d) states that Board members may receive as determined by the local board for attending meetings and other activities; provided, however, compensation shall not exceed \$100 per day. Members may be reimbursed for all reasonable and necessary travel and other expenses actually incurred.

Section 7. Vacancies

WV Code § 16-2-9(b) states that vacancies will be filled by appointment of the original appointing authority for the unexpired term.

What to Include in Bylaws

Article II. Membership/Directors

Section 8. Attendance at Meetings.

Boards may set attendance requirements for members and those can trigger automatic termination provisions in the event of chronic or repeated absenteeism; usually will include some notice or excused absence provisions.

What to Include in Bylaws

Article II. Membership/Directors

Section 9. Liability of Members.

Board members will not be personally liable for the debts, liabilities or other obligations of the nonprofit. WV Code § 31E-6-604.

- Unless they have violated law by taking any distribution of income or assets from corporation; becomes liable to creditors and corporation for amount received.

What to Include in Bylaws

Article II. Membership/Directors

Section 10. Indemnification (Permissible and Mandatory, as described by WV Code §§ 31E-8-851 through 856).

The corporation shall indemnify any director, officer, or employee against expenses actually and necessarily incurred in connection with the defense of any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation itself), by reason of the fact that he/she was or is a director or officer of the corporation, except in relation to matters as to which he/she shall be adjudged in such action, suit, or proceeding to be personally liable for negligence or misconduct in the performance of his/her duty.

What to Include in Bylaws

Article II. Membership/Directors

Section 10. Indemnification

WV Code § 31E-8-857 (Insurance) provides for the purchase and maintenance of insurance (D&O) on behalf of an individual who is a director, officer, partner, trustee, employee, or agent of the corporation. This insurance is purchased in the effort to satisfy the indemnification requirements.

What to Include in Bylaws

Article II. Membership/Directors

Section 11. Resignation/Removal/Expulsion.

WV Code § 31E-8-809 (Removal of directors by members or directors)

- Generally, the directors may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

WV Code § 31E-8-843 (Resignation/Removal of Officers)

- Generally, resignations are effective when received.
- Generally, the Board may remove officers at any time with or without cause.

What to Include in Bylaws

Article II. Membership/Directors

Section 11. Resignation/Removal/Expulsion.

- Board may want to include behaviors that constitute grounds for removal. (e.g., Fiduciary irresponsibility or improper use of corporate funds/assets; dereliction of duties; being under the influence at Board meeting; conviction of felony or misdemeanor involving moral turpitude; failure to meet attendance requirements; violation of Code of Conduct)

What to Include in Bylaws

Article II. Membership/Directors

Section 11. Resignation/Removal/Expulsion.

- Establish procedures for notice (how much notice is required before vote?) and voting (simple majority or greater, such as 2/3 majority?) on challenges to membership.
- Decision of Board on removal is final and not appealable.

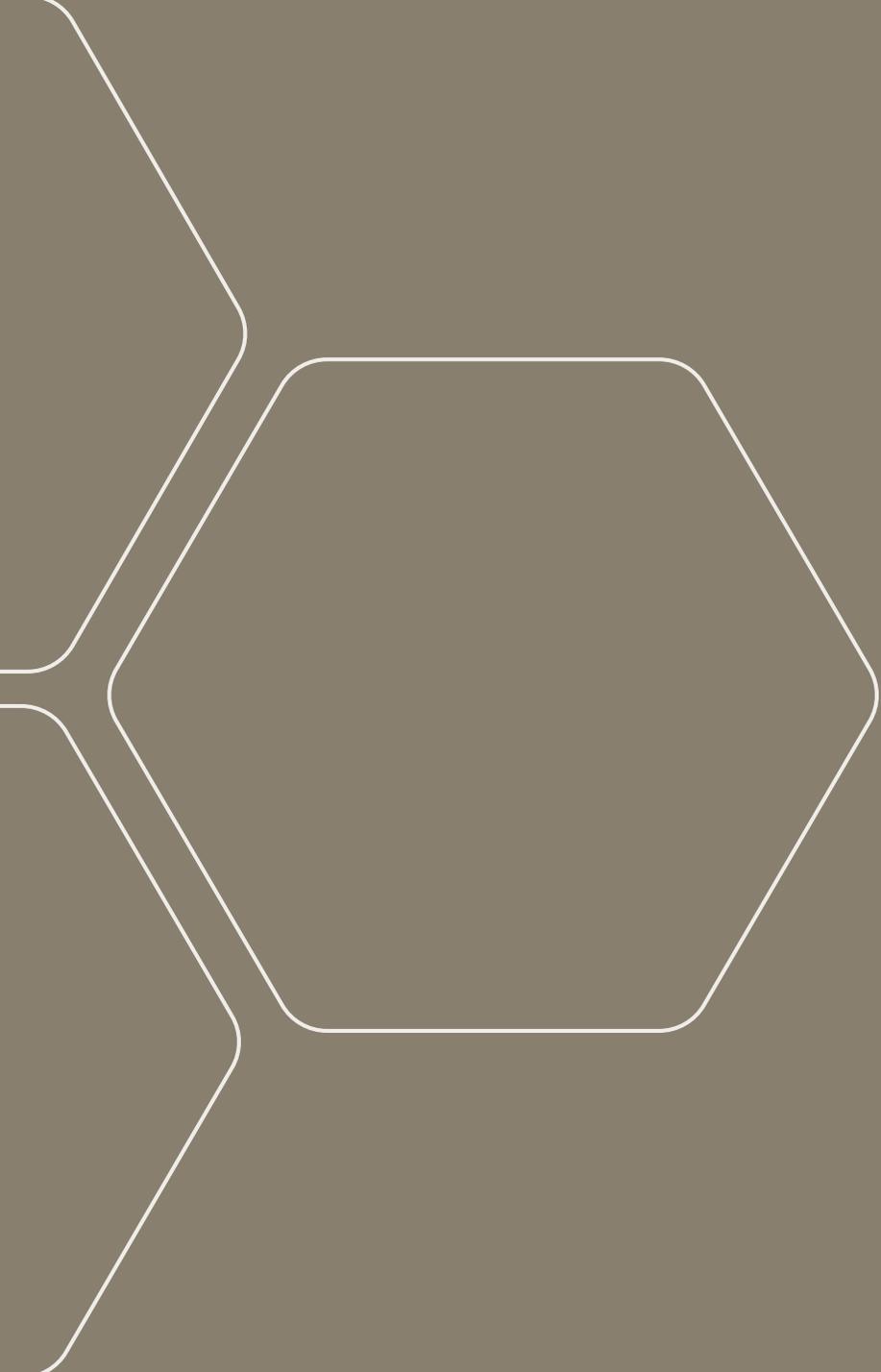
What to Include in Bylaws

Article II. Membership/Directors

Section 11. Resignation/Removal/Expulsion.

For Local Health Departments, WV Code § 16-2-9(c) applies to removal of members:

Members may be removed pursuant to the provisions of its lawfully adopted bylaws, and Board shall remove any of its members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification.



What to Include in Bylaws

Article III. Meetings

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What to Include in Bylaws

Article III. Meetings

Section 1. Regular Meetings (WV Code § 31E-8-820).

Section 2. Special Meetings (WV Code § 31E-8-820).

Section 3. Notice (WV Code § 31E-8-822).

Section 4. Waiver of Notice (WV Code § 31E-8-823).

What to Include in Bylaws

Article III. Meetings

Section 5. Quorum; Electronic and/or Telephonic Participation (WV Code § 31E-8-824).

Section 6. Presiding Officer; Recording Officer (WV Code § 31E-8-840).

Section 7. Voting.

- Does the Board allow voting by proxy?

What to Include in Bylaws

Article III. Meetings

Section 8. Written Agreement/Consent in Lieu of Meeting or Vote (WV Code § 31E-8-821).

Section 9. Order of Business.

Section 10. Presumption of Assent.

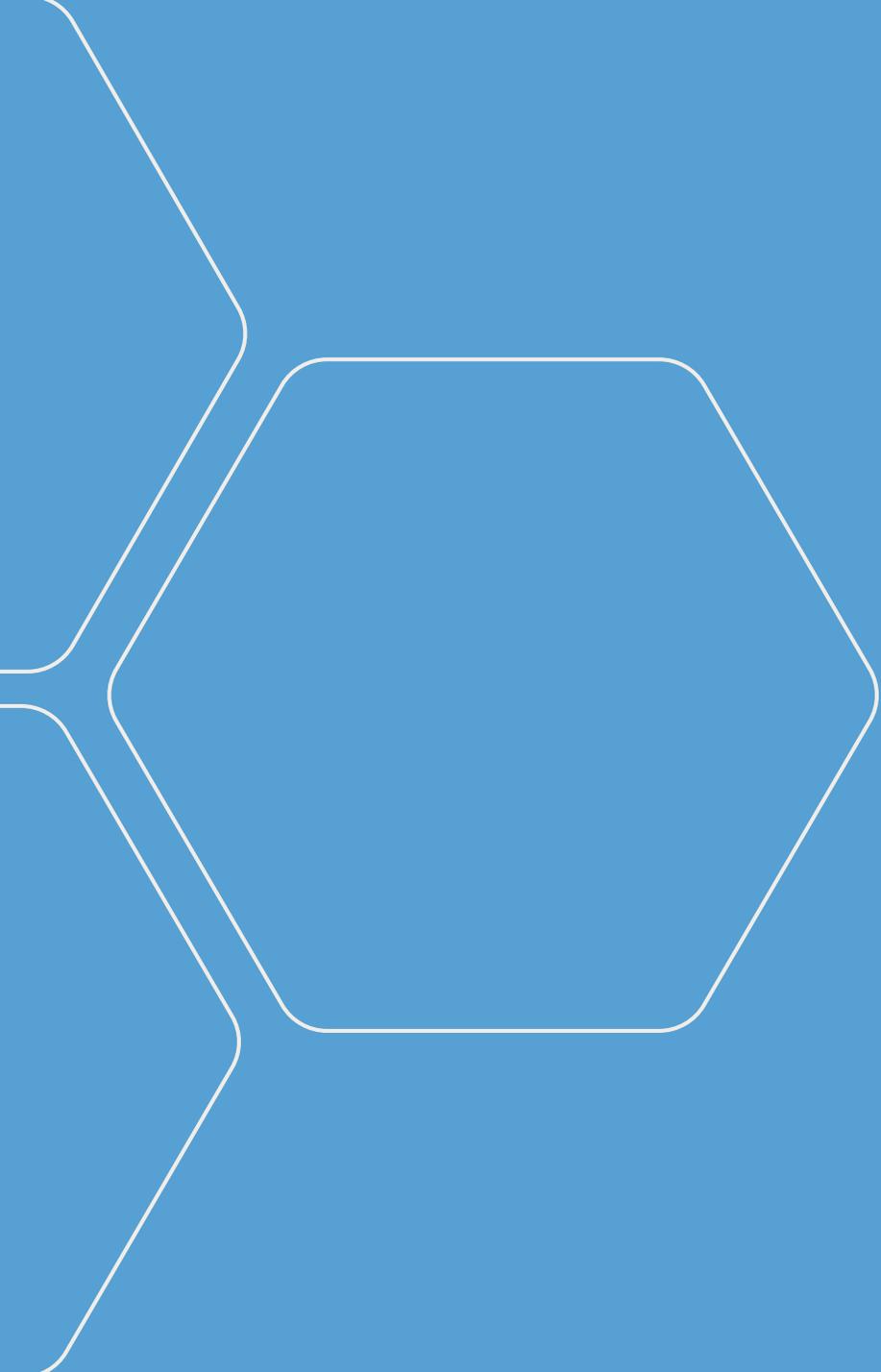
Section 11. Conflicts of Interest and Abstention.

- Does not impact quorum.
- Should be recorded in the minutes.

What to Include in Bylaws

For Local Health Departments, WV Code § 16-2-10 governs meetings.

- “Shall meet as often as necessary to orderly and effectively execute its duties and exercise its powers but no fewer than six times per year.”
- “The quorum of the board for transacting business is a simple majority of the constituent members of the board.”
- A local health department, pursuant to its bylaws, shall elect from its members a chairperson, who shall serve a term of one (1) year.



What to Include in Bylaws

Article IV. Officers

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What to Include in Bylaws

Article IV. Officers (WV Code § 31E-8-840)

Section 1. Number.

Section 2. Election and Term of Office.

Section 3. Resignation and Removal.

Section 4. Vacancies.

Section 5. Chief Executive Officer. Define relationship to the Board.

What to Include in Bylaws

Article IV. Officers (WV Code § 31E-8-840)

Section 6. President/Chair.

Define Duties of Office:

- Preside over meetings.
- Sign (usually with Secretary and/or Treasurer) official corporate documents and legal instruments, including deeds, mortgages, bonds, contracts.
- Appoint Board members to committees.
- Serve as ex-officio member of all standing and ad hoc committees, except nominating committee.

What to Include in Bylaws

Article IV. Officers (WV Code § 31E-8-840)

Section 7. Vice President/Vice Chair.

- Generally, performs all duties of the President/Chair in the absence of that individual and other duties as assigned.

Section 8. Secretary.

- Keeps, or at least oversees the taking of, the minutes of the meetings of the Board.
- Is responsible for ensuring all bylaw-related notice requirements are met.
- Traditionally, custodian of corporate records and seal of corporation.

What to Include in Bylaws

Article IV. Officers (WV Code § 31E-8-840)

Section 9. Treasurer.

- Oversee and report on the corporate funds, subject to supervision and control of Board.
- Often chairs meetings of Finance Committee.



What to Include in Bylaws

Article V. Committees

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What to Include in Bylaws

Article V. Committees (WV Code § 31E-8-825)

Section 1. Creation, Powers, and Duties.

- Committees must have two or more members.
- Committees are expressly prohibited from amending bylaws or articles of incorporation; filling vacancies on the Board; appointing officers of the Board; authorizing the sale, lease, exchange, or mortgage of corporate property or assets; authorize the dissolution of the corporation.
- The Board, or any director, is not relieved of any responsibility imposed on it by the delegation of any required tasks to a committee.

What to Include in Bylaws

Article V. Committees (WV Code § 31E-8-825)

Section 2. Standing Committees.

E.g., Executive Committee, Finance Committee, Nominating Committee, Personnel Committee.

Section 3. Committee Membership.

Section 4. Replacement of Committee Members.

Vacancies, Removals, Resignations

What to Include in Bylaws

Article V. Committees (WV Code § 31E-8-825)

Section 5. Quorum in Committee Action.

Section 6. Rules of Committee Procedure.

- Selecting the Chairperson and Minutes Recorder for Committee
- Determining meeting times, places, and frequency
- Making reports to Board

What to Include in Bylaws

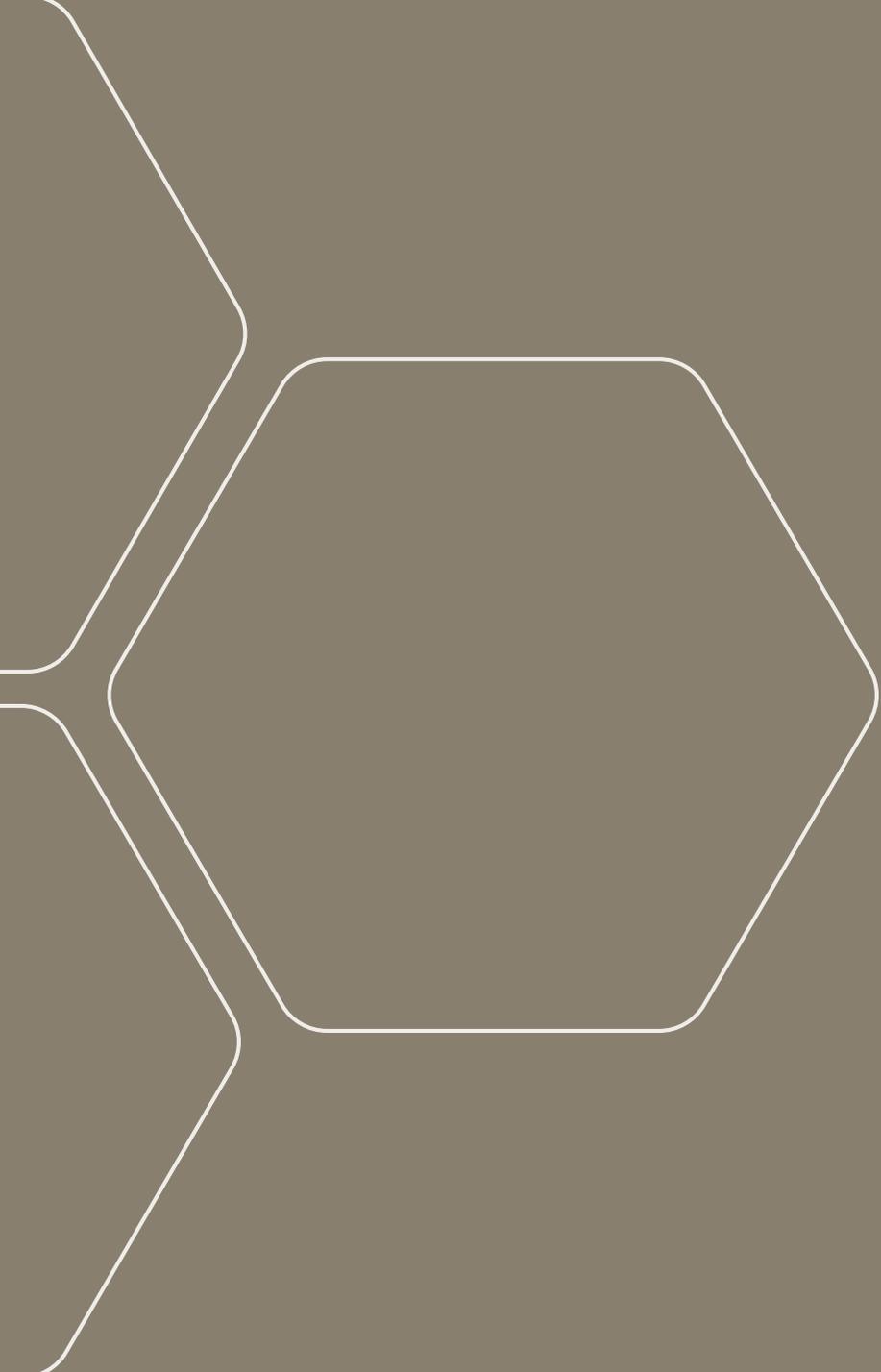
Article V. Committees (WV Code § 31E-8-825)

Section 7. Special/Ad Hoc Committees.

Generally created by President/Chair to accomplish specific task and are dissolved once specific task is accomplished.

Section 8. Advisors and Consultants.

Allows Board/Committee to ask CEO/Executive Director to retain one or more advisors and consultants who are specialists or authorities in a field of interest to the Committee.



What to Include in Bylaws

Article VI. Contracts and Accounts

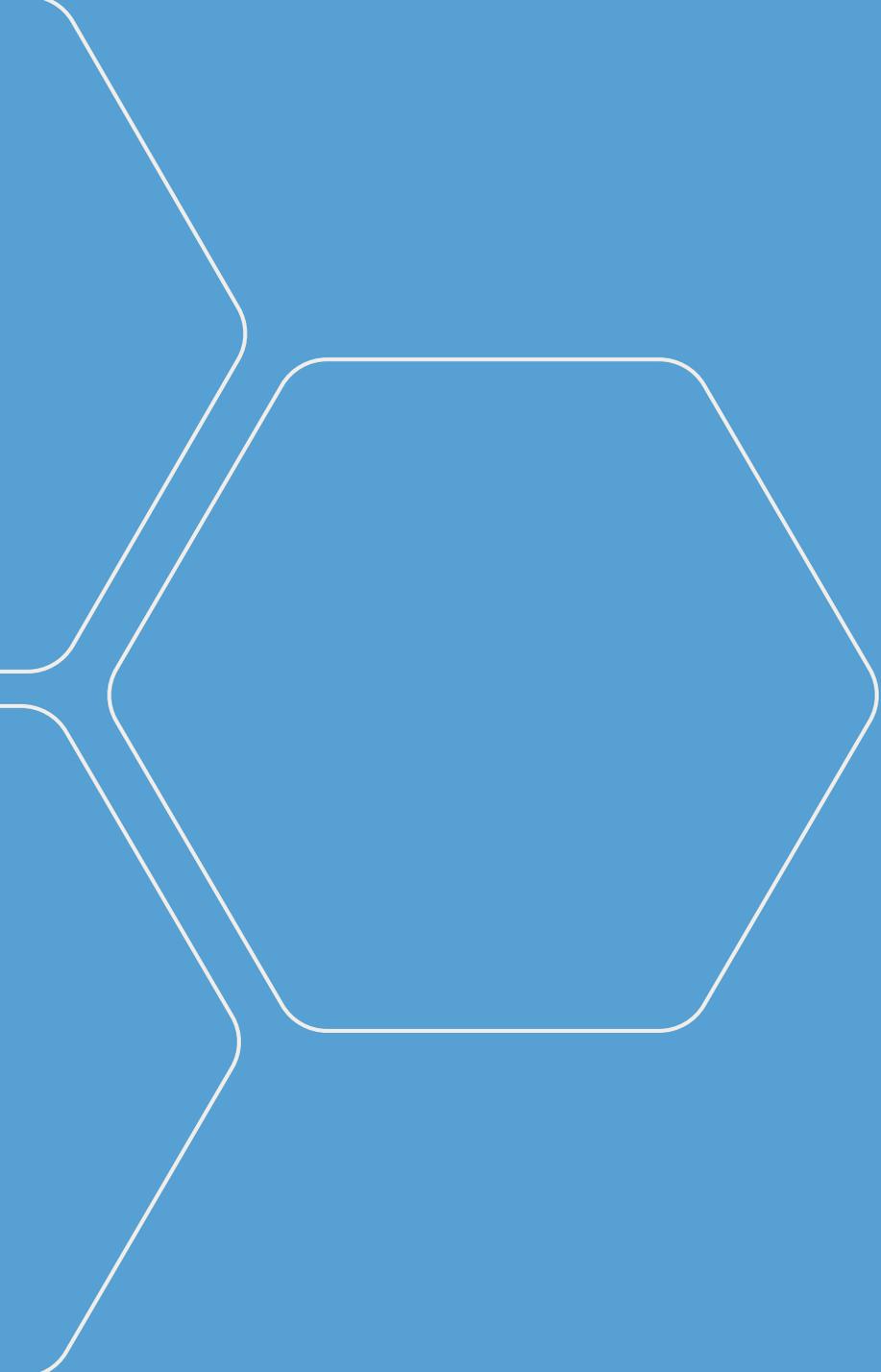
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What to Include in Bylaws

Article VI. Contracts and Accounts

While not required in the bylaws, the Board may wish to consider setting forth rules for the handling of the nonprofit's contracts and accounts.

- Who on the Board has check signing authority and how many signatures are required?
- What is the process for approving loans to and/or from the nonprofit?
- How will the Board delegate its authority to the CEO/Executive Director to enter into contracts on behalf of the nonprofit?



What to Include in Bylaws

Article VII. Miscellaneous Provisions

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What to Include in Bylaws

Article VII. Miscellaneous Provisions

- Establishment of Accounting Period.
- Confidentiality Provisions (subject to whistleblower protections).
- Other specific areas of delegation by Board?

What to Include in Bylaws

Article VII. Miscellaneous Provisions

- **Mandatory Dissolution Provision:**

“Upon the dissolution of the Corporation and its Board of Directors, the Corporation’s assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by a Court of competent jurisdiction in the county in which the principal office of the Corporation is then located, exclusively for such exempt purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.”



What to Include in Bylaws

Article VIII. Amendments

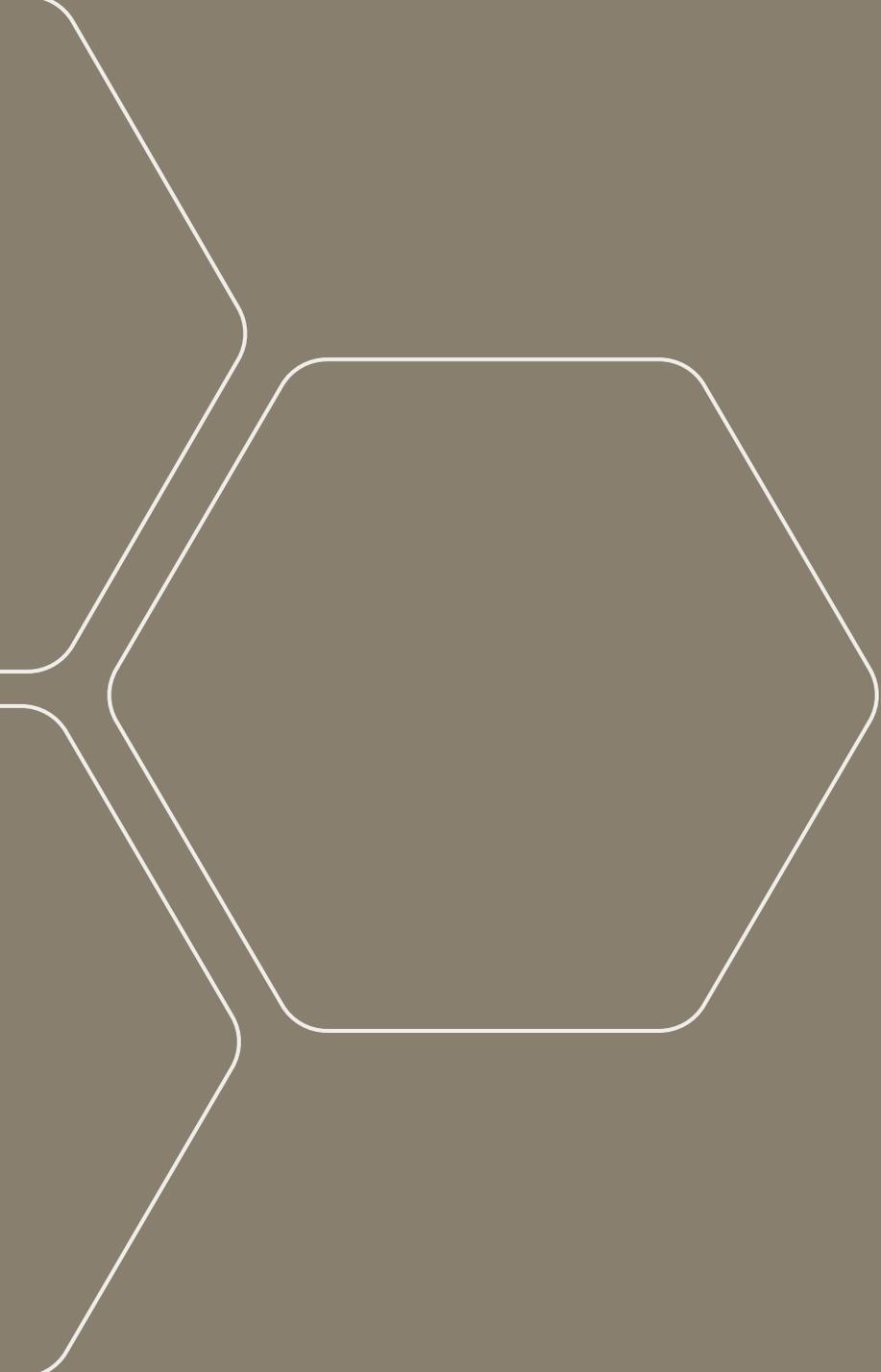
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Article VIII. Amendments

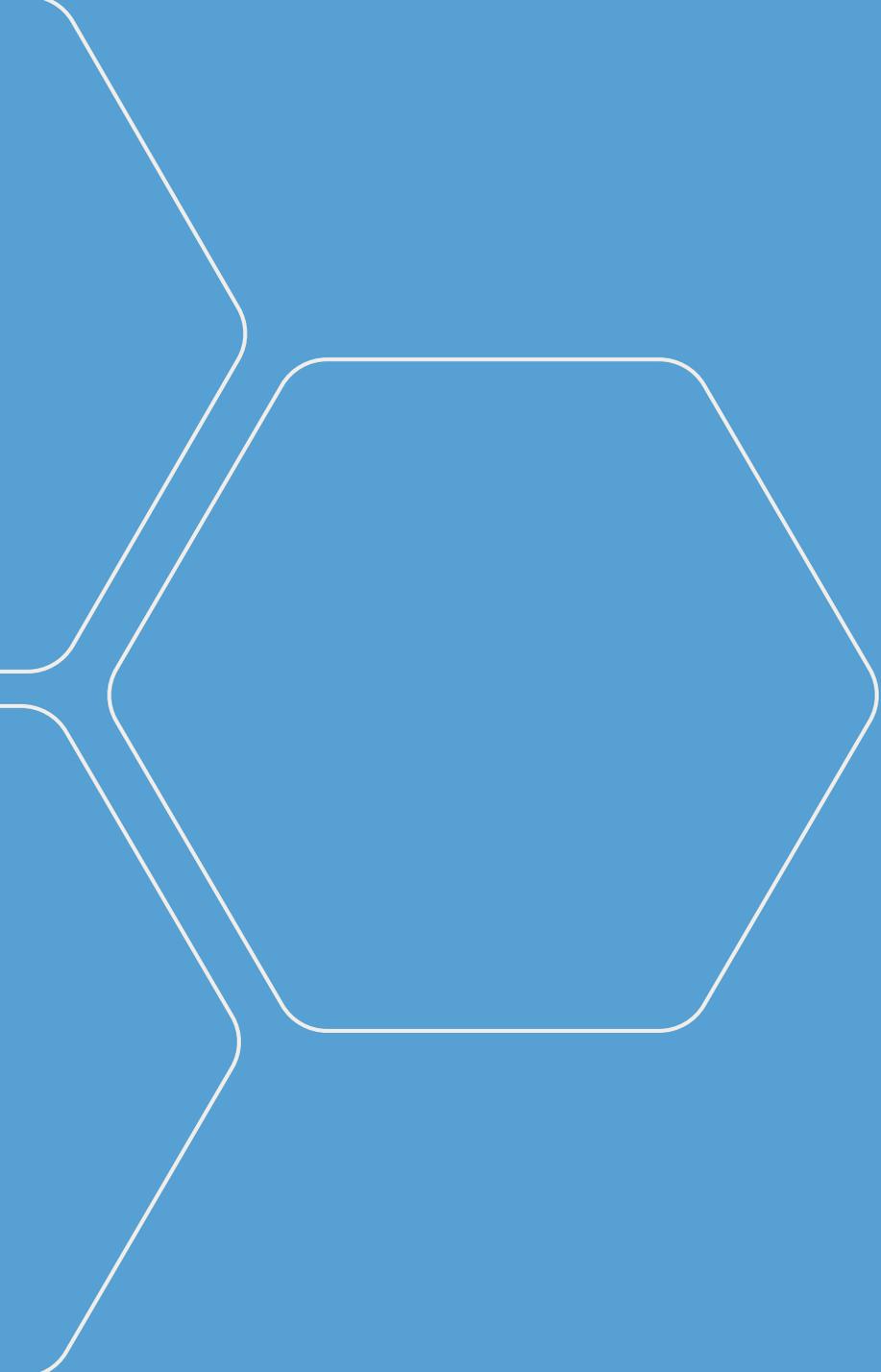
Establishment of procedures for amending bylaws and/or articles of incorporation (WV Code §§ 31E-10-1001 through 1008, and 1020 through 1022:

- What type of meeting (regular or special)?
- How much notice is required before voting?
- What are the voting rules (simple majority or greater, such as 2/3 majority)?
- When will the amendment go into effect?



Questions?

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Thank You!

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