



# LEVEL UP LAW

South Carolina Legal Services

LEVELING UP YOUR LEGAL KNOWLEDGE

TUESDAYS AT NOON



# Basics of Bylaws

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- ▶ The purpose of this webinar is to provide general information regarding the construction of bylaws. The information provided is not be construed as specific advice.
- ▶ If you would like specific advice and/or suggestions for your bylaws, you may apply for our services. The contact information will be provided at the conclusion of today's presentation.
- ▶ If you are a non-profit or starting one, you should always consult the South Carolina Nonprofit Act at S.C. Code 33-31-101, et seq

# Basics of Bylaws Webinar

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1. Why are they important?
2. Creating and maintaining bylaws
3. Not a comprehensive review

# SCLS Services Provided to Non-profits and Small Businesses

Attorneys at South Carolina Legal Services may provide eligible individuals or groups with various levels of service such as:

- ▶ Drafting bylaws
- ▶ Reviewing governing documents
- ▶ Understanding the differences and advantages between nonprofits and fiscal sponsorships
- ▶ Filing for tax exempt status
- ▶ Advising small businesses on legal matters

# What are Bylaws?

Bylaws are internal governing documents that are essentially the roadmap for your organization.

▶ **S.C. Code of Laws 33-31-140 (4)**

"Bylaws" means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.

▶ **S.C. Code of Laws 33-31-206. Bylaws.**

The incorporators or board of directors of a corporation **shall** adopt bylaws for the corporation. The bylaws **may** contain any provision for regulating and managing the affairs of the corporation that is **not inconsistent with law or the articles of incorporation.**

# Why are by-laws important?

- ▶ How to handle significant events in the operations of the corporation are covered in the by-laws.
- ▶ By-laws provide guidance on handling the day to day operations of the corporation.
- ▶ If something goes wrong, we look to the by-laws for guidance on what to do.
- ▶ If the corporation is going to discontinue operations, the by-laws say how to wind it down.

# S.C. Non Profit Act S.C. Code 33-31-101, et seq

The word bylaws appears in the Act 162 times

- ▶ Must 136
- ▶ Shall 145
- ▶ Sometimes the Act's provisions are requirements but otherwise can be the default rule if your bylaws don't cover a matter or the bylaws cannot overrule a law.
- ▶ Example:

## **SECTION 33-31-722.** Quorum requirements.

(a) ***Unless this chapter, the articles, or bylaws*** provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter ***must*** be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to change the quorum for a member action may be approved by the members and, if required, be approved as provided in Section 33-31-1030.

(c) An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum must be adopted under the quorum then in effect or proposed to be adopted, whichever is greater.



# When Drafting Bylaws Keep in Mind

- ▶ Failure to comply with your bylaws may have severe consequences to the organization and/or its members.
  - ▶ Decisions can't be ratified by the board
  - ▶ Could constitute Breach of Fiduciary Duties
  - ▶ Potential Shareholder Derivative Suits
  - ▶ Could result in Loss of indemnification

# Common Bylaws Problems

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- ▶ For many, bylaws are forgotten documents
- ▶ The board members are not familiar with the rules
- ▶ They are not referred to in making important decisions for the nonprofit
- ▶ They include too many rules or not enough
- ▶ They are often not reviewed or updated

# What Should Your Bylaws Include?

- ▶ Statement of your lawful purpose
- ▶ Your official office
- ▶ Provisions on officers and directors
- ▶ If a membership organization, provisions governing members
- ▶ Administrative and Financial Provisions
- ▶ Procedure for Amendments
- ▶ BUT see the Act for how it is set up which can make it easier to compare your bylaws to the Act when drafting, amending or taking action.

# Documents helpful to have available when creating or reviewing by-laws

- ▶ Articles of Incorporation
- ▶ To make sure they don't conflict
- ▶ The Act provides provisions that **must** and **may** be included in Articles
- ▶ South Carolina Non Profit Act
- ▶ S.C. Code 33-31-101 et seq
- ▶ IRS Form 1023 and Form 990
- ▶ To make sure bylaws have any required/suggested provisions or ones they ask about

# Ultimately Bylaws will address:

## Will Address

- ▶ Governance Structure
- ▶ Control Provisions
- ▶ Director's Terms
- ▶ Officers
- ▶ Voting Procedures
- ▶ Committees
- ▶ Conflicts of Interest
- ▶ Amendments

# What kind of Corporation will you have?

## Self-Perpetuating

- ▶ No members
- ▶ The board is the ultimate seat of authority

OR

## Voting Members

- ▶ Member driven
- ▶ Members have statutory rights
- ▶ Similar to Shareholders

# Determining the Rights of Members in a Membership Organization

- ▶ Member Class
- ▶ What voting rights will they have?
- ▶ Admission
- ▶ Retention
- ▶ Suspension
- ▶ Expulsion

**S.C. Code SECTION 33-31-723.** Voting requirements.

*Unless this chapter, the articles, or the bylaws* require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

A bylaw amendment to increase or decrease the vote required for a member action must be approved by the members and, if required, be approved as required in Section 33-31-1030.

An amendment of the articles of incorporation or bylaws adding, changing, or deleting a voting requirement must be adopted by the same vote and classes of members required to take action under the voting requirements then in effect or proposed to be adopted, whichever is greater.

# Choosing your Board of Directors?

- ▶ Things to consider?
  - ▶ What authority will they have?
  - ▶ What qualifications will they need?
  - ▶ The minimum and maximum number of directors.
  - ▶ Terms to be served.
  - ▶ What happens when there is a vacancy on the board?
  - ▶ Removing a director.
  - ▶ Compensation, if any.
- ▶ **S.C. Code SECTION 33-31-803.** Number of directors.
- ▶ A board of directors ***must consist of three or more directors***, with the number specified in or fixed in accordance with the articles or bylaws.
- ▶ The number of directors may be increased or decreased, but to no fewer than three, by amendment to or in the manner prescribed in the articles or bylaws.



# How Officer and Directors are Elected

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- ▶ Self-Perpetuating
  - ▶ No members
  - ▶ Board elects officers and directors
  - ▶ The board is the ultimate seat of authority OR
- ▶ Voting Members
  - ▶ Member can elect the officers and directors
  - ▶ Members have statutory rights

# Meetings

- ▶ Regular, annual and special meetings
- ▶ When will they be held?
- ▶ What constitutes notice of meetings?
- ▶ What makes a Quorum at your meetings?
  - ▶ Are there exceptions to in person voting?
  - ▶ May members vote by proxy?

# Amendments

- ▶ Bylaws should indicate how they can be amended
  - ▶ Who can amend the bylaws?
    - ▶ The Board?
    - ▶ Members?
    - ▶ Third Party?
    - ▶ Combination of all 3?
  - ▶ How will you approve amendments?
    - ▶ Majority Vote?
    - ▶ Exactly whose consent is needed for amendments to by-laws
  
- ▶ **SECTION 33-31-1030.** Approval of the articles of incorporation and bylaws by third persons.
  
- ▶ The articles of only a religious corporation or public benefit corporation may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. The article provision may be amended only with the approval in writing of such person.

# Conflicts of Interest

Occurs when there is a conflict of interest between the nonprofit and individuals who may benefit personally.

**SECTION 33-31-831.** Director conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into or is approved as provided in subsections (b) or (c)

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(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

## Examples of provisions

- ▶ Have directors, officers, and/or members to sign the policy
- ▶ Develop a process to address conflicts
- ▶ Indicate the consequences for violation of policy

# Avoid Pitfalls

- ▶ Review regularly to be familiar with them.
- ▶ Refer to bylaws in making important decisions.
- ▶ Don't include too many rules/be too specific.
- ▶ Update/amend to account for growth, address unanticipated problems, changes in the law, etc.

Thank You!

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QUESTIONS?

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