

Why Does It Say
That
In The
Bylaws?

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I have been a parliamentarian for over twenty-five years and have obtained the combined designations of Professional Registered Parliamentarian (PRP) with the National Association of Parliamentarians (NAP) and Certified Professional Parliamentarian-Teacher (CPP-T) with the American Institute of Parliamentarians.

I have served as a parliamentarian, a presiding officer, a secretary, an instructor, and an expert witness. I have also written and revised bylaws, written parliamentary opinions, and judged parliamentary competitions. I have performed these services for parliamentarians, professionals, veterans, avocations, schools, condominiums, local governments, government agencies and local communities.

As a professional parliamentarian I serve as

- a meeting, convention, and board parliamentarian
- a floor parliamentarian,
- a professional presider at meetings,
- a judge of parliamentary competitions,
- an expert witness, and
- a consultant for officers, directors, and members,

and I

- write professional opinions on parliamentary procedure,
- write, and revise bylaws, and related governing documents, and
- present customized workshops and training sessions on parliamentary procedure and rules of order.

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version 250106

Why does it say **that** in the bylaws?

What is the very first step?

The very first step in writing, amending, or revising bylaws is to research the governing documents.

1. The governing documents are researched and interpreted in order of rank from the top down.
2. If a higher-ranking document is silent on an issue the lower ranking documents are referred to for the rule.
3. If there is any disagreement between rules in the documents, the rule in the higher-ranking document invalidates the rule in the lower-ranking document.
4. The result of the research is determined by observing the hierarchy of documents while applying the principles of interpretation and logic.

Why does it say **that** in the bylaws?

What is a bylaw?

1. A bylaw is a fundamental rule that structures the Corporation.
2. A bylaw is a fundamental rule that is too important to suspend.
3. A bylaw is a fundamental rule at level four in the hierarchy of the ten governing documents listed on the back cover.
4. A bylaw is an agreement between you, the member, and the Corporation.
5. A bylaw is an agreement between you and the member next to you.

Why does it say **that** in the bylaws?

...Bylaws Differ from...

Federal Code & State Code

A Corporation's bylaws differ from a federal code, and a state code in that those codes cannot be adopted, lost, or amended by the members of the Corporation; those codes must be followed.

Parent Bylaw

A parent or central Corporation's bylaws differ from, a constituent or affiliate bylaws, in that the parent Corporation's bylaws cannot be adopted, lost, or amended by the members of the constituent or affiliate Corporation.

Bylaw

A constituent or affiliate Corporation's bylaws are rules adopted by the members to which the members agree to adhere under the provision that it may be adopted, lost, or amended as prescribed by another bylaw in the constituent or affiliate Corporation's bylaws; and the bylaws of a subordinate unit need to conform to those of the superior body only on clearly requisite points.

Special Rule of Order

A Corporation's bylaws differ from special rules of order in that special rules of order are procedural rules adopted by the Corporation in addition to or in exception to a rule of order in *Robert's Rules of Order Newly Revised* 12th edition and may be amended by a two-thirds vote with notice or a majority vote of the entire membership or suspended by a two-thirds vote.

Rule of Order

A Corporation's bylaws differ from rules of order in *Robert's Rules of Order Newly Revised* 12th edition in that the rules of order are already written, published, and adopted by the Corporation as prescribed by another bylaw in the Corporation's bylaws. And a rule of order may be suspended by a two-thirds vote.

Standing Rule

A Corporation's bylaws differ from standing rules in that standing rules deals with the administration of the Corporation and may be adopted or amended by a majority vote. And a standing rule may be suspended by a majority vote.

Why does it say **that** in the bylaws?

Why does it say **that** in the bylaws?

1. The members included rules from higher ranking governing documents in the bylaws.
2. The members included rules from lower ranking governing documents in the bylaws.
3. The members included undefined terms in the bylaws.
4. The members included terms of art¹ they did not understand in the bylaws.
5. The members had a particular problem and tried to solve it by writing a bylaw.
6. The members did not follow the adopted parliamentary authority *Robert's Rules of Order Newly Revised*.

¹ A term of art is a word or phrase that has a specific or precise meaning within a given discipline or field and might have a different meaning in common usage

Why does it say **that** in the bylaws?

The level

1. The levels, the ranks, of governing documents, the hierarchy.
2. The level, the rank, of the bylaws, where they fit in that hierarchy.

The Need

1. The need to use defined terms.
Oxford..., Robert's..., Black's...
2. The need to use plain English.
3. The need to use the two Word functions.
 - a. "Tools," "Spelling and Grammar"
 - b. "Search in Document," "List Matches in Sidebar"

Why does it say **that** in the bylaws?

Eight principles of interpretation.

1. If a bylaw is **ambiguous** interpret it in harmony with the other bylaws.
2. When a provision of the bylaws is susceptible to **two meanings**,
 - a. one of which conflicts with or renders absurd another bylaw provision,
 - b. and the other meaning does not,
 - c. the other, latter, must be taken as the true meaning.
3. A **general statement** or rule
 - a. is of less authority than a specific statement or rule
 - b. and yields to it.
4. If the bylaws authorize
 - a. **certain things** specifically,
 - b. other things of the same class are thereby prohibited.
5. A provision granting **certain privileges**
 - a. carries with it a right to a part of the privileges,
 - b. but prohibits a greater privilege.

Why does it say **that** in the bylaws?

6. A **prohibition or limitation** prohibits
 - a. everything greater than that prohibited,
 - b. or that goes beyond the limitation,
 - c. but it permits what is less than the limitation,
 - d. and also
 - i. things of the same class that are not mentioned in the prohibition or limitation and
 - ii. that are evidently not improper.
- A sentence with a series of semi-colons or commas is in effect **a list** of things permitted, **a list** of privileges, or **a list** of things prohibited.
7. The imposition of a definite **penalty** for a particular action
 - a. prohibits the increase or
 - b. diminution of the penalty.
8. In cases where the bylaws use
 - a. a general term
 - b. and also two or more specific terms that are wholly included under the general rule
 - c. a rule in which
 - i. only the general term is used
 - ii. applies to all the specific terms.

Why does it say **that** in the bylaws?

The state Corporation code, Title __, subtitle __, §__...

1. Do not re-write statements from the state Corporation code.
2. Use the state Corporation code where applicable and as intended.
3. The state code is written to cover every Corporation in the state.
 - a. the bylaws (or board, or Corporation) may _____option
 - b. unless the bylaws provide otherwise _____default
 - c. a Corporation shall _____ directive
 - d. a Corporation may not _____ prohibition
 - e. each director of a Corporation shall _____ directive
 - f. if permitted by the bylaws a person may _____option
4. Legislation is not a bylaw.

The articles of incorporation

1. Do not re-write statements from the articles of incorporation.
2. The articles of incorporation are written to create a legal entity a nonprofit Corporation
3. Include only that which is necessary to create a Corporation.
4. The **name** and **purposes**, or object, of the Corporation is that which is filed with the state as shown on the following page.
5. Article of Incorporation is not a bylaw

Why does it say **that** in the bylaws?

Articles of Incorporation form filed...

FIRST: The undersigned _____ whose address is _____, being at least eighteen years of age, do(es) hereby form a Corporation under the laws of the State of Maryland.

SECOND: The name of the Corporation is **the name inserted on this line.**

THIRD: The purposes for which the Corporation is formed are as follows: **the words inserted on these lines of the form.**

Said Corporation is organized exclusively for charitable, religious, and scientific purposes, including, for such purposes, the making of distributions to associations that qualify as exempt associations under Section 501(c)(3) of the internal Revenue Code, or the corresponding section of any future federal tax code.

FOURTH: The street address of the principal office of the Corporation in Maryland is _____.

FIFTH: The name of the resident agent of the Corporation in Maryland is _____ whose address is _____.

SIXTH: The Corporation has no authority to issue capital stock.

SEVENTH: The number of directors of the Corporation shall be _____ which number may be increased or decreased pursuant to the bylaws of the Corporation. The name(s) of the director(s) who shall act until the first meeting or until their successors are duly chosen and qualified is/are _____.

EIGHTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office, Notwithstanding any other provision of these articles, the Corporation shall not carry any other activities not permitted to be carried on (a) by a Corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a Corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Upon dissolution of the Corporation, 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 so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the Corporation is the located, exclusively for such purposes or to such association or associations, as said Court shall determine, which are organized and operated exclusively for such purpose.

IN WITNESS WHEREOF, I have signed these articles and acknowledge the same to be my act.

SIGNATURE(S) OF INCORPORATIO(S):

Michael L. Swift PRP, CPP-T
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Why does it say **that** in the bylaws?

The United States Code (USC)

1. USC, Title 26 Internal Revenue Code, Subtitle A. Income Taxes, Chapter 1 Normal Taxes and Surtaxes, Subchapter f Exempt Associations, Part I General Rule, §501 Exemption from Tax on Corporations, Certain Trusts, etc., c list of exempt associations 1–29.
2. USC, Title 26 Internal Revenue Code, Subtitle A. Income Taxes, Chapter 1 Normal Taxes and Surtaxes, Subchapter b Computation of Taxable Income, Part VI Itemized Deductions for Individuals and Corporations, §170 Charitable, etc., contributions and gifts

The corresponding Code of Federal Regulation (CFR)

3. CFR Title 26 Internal Revenue, Chapter 1 Internal Revenue Service, Department of the Treasurer, Subchapters A–H
4. The Corporation's IRS acceptance letter
5. United States Code Title 26 is not a bylaw.

Why does it say **that** in the bylaws?

The parent, or central Corporation's bylaws.

1. Do not re-write statements from the parent, or central, Corporation's bylaws.
2. Use the parent or central Corporation's bylaws where applicable and as intended.
3. The constituent, or affiliate, Corporation's bylaws must conform to the parent, or central, Corporation's bylaws only on clearly requisite points.
4. A parent, or central, Corporation's bylaw is written to cover every constituent, or affiliate, Corporation.
 - a. the officers of a constituent Corporation shall serve a one- or two-year term...
 - b. a constituent Corporation shall prescribe its quorum as required by state law...
 - c. a constituent Corporation's nominating committee shall consist of at least three members...
5. A parent, or affiliate, Corporation's bylaw is not a constituent or affiliate Corporation's unit bylaw.
 1. Do not simply re-write statements at will from *Robert's Rules of Order Newly Revised* (RONR) 12th edition.
 2. Use rules from RONR where applicable and as intended.
 3. RONR is written to cover every deliberative association.
 - a. ...unless otherwise ordered by the...
 - b. ... may from time to time...
 - c. as... shall from time to time deem necessary...
 - d. from time to time as the bylaws may prescribe.

Why does it say **that** in the bylaws?

Private acts and legalese.

According to the *Guidebook for Directors of Nonprofit Corporations* 3rd Edition, Editors George W. Overton & Jeannie Carmedelle Frey, on page 281 states:

Private Acts (Contracts) That Bind the Corporation
Corporations through their own voluntary actions are frequently making law: by contracts, agreements, leases, etc. These private actions [bylaws], which are part of the daily business of the Corporation, create a set of legal restraints that are as effective within their limited sphere as any statute or regulation [and therefore should be written as much as possible in plain English a member can understand and not in legalese]. Yet, no business could survive if every contract, every purchase of goods, etc., required the services of a lawyer. Here, the prudent board attempting to control its legal environment will separate those contracts which require the assistance of counsel from those which can be handled by Corporation's staff [and members] as part of the Corporation's day-to-day business.

Legalese is a term used for legal writing that is difficult for you and me to read and understand. Legalese is characterized by long sentences, many modifying clauses, complex vocabulary, high abstraction, and insensitivity to the reader's need to understand the document's meaning.

Why does it say **that** in the bylaws?

Members should ask.

1. Do we, the members, understand this bylaw?
2. Do we, the members, agree on the meaning of this bylaw?
3. Does this bylaw make sense to us?
4. Is this bylaw appropriate for our Corporation?
5. Is this bylaw applicable to our Corporation?
6. Can we, the members, amend this bylaw?
7. Can we, the members, enforce this bylaw?
8. Is this bylaw written in another document at another level?
9. What is the reason for this bylaw?
10. What happens if we strike this bylaw?
11. Does this bylaw conflict with another bylaw?

Members should answer.

1. Each member should answer the 11 questions above with the same answer.
2. Each member should give the same answer to the question, "What is the meaning of this bylaw"?
3. Each member should give the same answer to the question, "Why does it say **that** in the bylaws"?

Why does it say **that** in the bylaws?

Consider these points.

1. It is presumed that nothing is placed in the bylaws without a reason.
2. It is not necessary to re-write a rule that is written in another governing document.
3. State codes supersede bylaws that conflict with them, even if not stated in the bylaws.
4. There should be nothing in the bylaws that we do not understand.
5. The adopted parliamentary authority is a reference book; it has a table of contents, a 48-page preface, 633 pages of text, 52 tinted pages of charts, tables & lists.

Consider the argument.

1. When we are not at the meeting where the question arose.
2. When the question does not involve a motion before the assembly.
3. When the adoption of the motion does not depend on the answer.
4. When the rejection of the motion does not depend on the answer.
5. When the question is not a contentious issue before the assembly.

Why does it say **that** in the bylaws?

Before writing a bylaw.

1. Make certain you understand what the bylaw is intended to accomplish.
2. Discuss the purpose with those who have proposed it and explore with them how the bylaw will be applied.
3. Check the statutory constraints within which you must proceed in writing the bylaw.
4. Ask yourself if the bylaw is sufficiently inclusive and appropriate to the situation.

After writing a bylaw.

1. Use "Tools," "Spelling and Grammar," "Editor" and "Search in Document," List in Matches in Sidebar."
2. Have it read by someone who will be affected by it.
3. Have it read by someone with talent in writing, grammar, and spelling.
4. Anticipate what the opposition might think of the bylaw and try to address those issues.
5. Organize the bylaw logically and in harmony with the other bylaws.

Why does it say **that** in the bylaws?

Writing a proviso.

1. Do not include time sensitive transitional information in an amendment to a bylaw.
2. Write a motion identifying the necessary time and/or event that must occur before the amendment takes effect.
3. Adopt the motion, attach it to the bylaws, and remove the attachment after the prescribed time elapsed and/or after the prescribed event occurred.
4. This practice prevents cluttering bylaws with material that becomes of no use after a certain time or event.

A motion making a qualification, condition, or restriction a prerequisite should be adopted.

A motion relating to the mechanics of transition from current to amended bylaws should not be included within bylaws.

The proviso must be adopted first; if the bylaw is adopted first, it takes effect immediately and can only be amended by following the procedure for adopting the bylaws as prescribed by the bylaws.

While a bylaw amendment is pending, adopt an incidental motion that, in the event of the amendment's adoption, it shall not take effect until _____, indicating the time and/or event necessary, for the provision.

Why does it say **that** in the bylaws?

Considering original bylaws.

1. There is no proviso.
2. There is no scope of notice limiting amendments that can be applied to the bylaws.
3. The bylaws are considered seriatim.
4. Amendments to the bylaws are adopted by majority vote.
5. The bylaws are adopted by a majority vote.

Considering an amendment.

1. The proviso covers any conditions of the transition.
2. The scope of notice limits the amendments that can be applied to the amendment, an incidental main motion.
3. Several amendments offered at the same meeting are considered seriatim.
4. Amendments to the amendment are adopted by majority vote.
5. The vote required to adopt an amendment is that prescribed by the current bylaws.

Considering a revision.

1. The proviso covers any conditions of the transition.
2. There is no scope of notice limiting amendments that can be applied to the bylaws.
3. The revision is considered seriatim.
4. Amendments to the revision are adopted by majority vote.
5. The vote required to adopt the revision is that prescribed by the current bylaws.

Why Does It Say **That** In The Bylaws?

Authorizing a one-time delegation...

1. Only the assembly can amend captions or headings under the rules applicable to bylaws or other documents if such change could have any effect on meaning, and this authority may not be delegated.
2. Corrections of article or section numbers or cross-references that cannot result in a change in a meaning can be delegated to the secretary or, to a committee. An assembly may delegate its authority in a particular case, by adopting a resolution such as the following.

It is moved that...

“The secretary shall be authorized to correct punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the intent of the assembly in connection with the amendments adopted at the Association Convention.”

1. Do not delegate such authority without giving the information, without specifying the time, without specifying the limits, without specifying the conditions, and without making it perfectly clear what can and cannot be done under this temporary delegation of authority.
2. Do not include such authority in the bylaws; this is in effect a blanket delegation of the authority of the members of the association to one member or group of members. It is inappropriate to do so. Refer to the governing documents.

Why Does It Say **That** In The Bylaws?

Bylaws are not Policies & Procedures

A. What do policies and procedures do?

1. Policies, level 9, and procedures, level 10, connect the Corporation's higher ranking governing documents, such as bylaws, to its day-to-day operations.
2. Policies and procedures work together, in sequence, and are not interchangeable.

B. What is a policy?

1. A policy is an established principle that outlines the Corporation's plan for following a course.
2. A policy is a rule that covers member behaviors and attitudes.
3. Policies:
 - a. Change infrequently
 - b. State who, what when or why
 - c. Are broad and general

C. What is a procedure?

1. A procedure is an established way the Corporation does something.
2. A procedure is a list of steps prescribing how to implement a policy.
3. Procedures:
 - a. Continuously change and improve
 - b. State what, how, when or who
 - c. Offer a detailed description of activities

D. Subjects for writing policies and procedures.

1. Policies and Procedures for Finances
2. Policies and Procedures for Accounting
3. Policies and Procedures for Conflict of Interest
4. Policies and Procedures for Ethics & Conduct
5. Policies and Procedures for Use of Corporation's Property
6. Policies and Procedures for Internet and Social Media Use

Why Does It Say **That** In The Bylaws?

Example of Ranked Documents for Treasurer

4th Bylaw, Treasurer

The bylaw establishes the office of treasurer who is understood to be the officer entrusted with the custody of the funds of the Corporation, and a bylaw establishes the term for the treasurer.

5th Special Rules of Order

The first Special Rule of Order, the Order of Business, has the Treasurer's report as one of the headings for the meetings.

6th Rules of Order, Treasurer

The rules of order in *Robert's Rules of Order Newly revised* 12th edition prescribe some general rules for the office of treasurer. RONR (12th ed.) 47:38–39; 48:20–26.

9th Policy, Treasurer

The treasurer shall maintain a complete and accurate account of the financial records in a secure and readily reproducible backed-up format using Generally Accepted Accounting Principles as specified by the Financial Accounting Standards Board to ensure the Corporation receives a standard unqualified audit opinion.

10th Procedure, Treasurer

1. The treasurer shall use the accrual system to maintain the Corporation's
 - a. balance sheets
 - b. income statements
 - c. statement of cashflows
 - d. statement of retained earnings
2. The treasurer shall submit the most recent balance sheet at the board meetings.
3. The treasurer shall arrange for an annual audit, at the end of the fiscal year, with an independent financial institute.
4. The treasurer shall submit the audit report at the board meeting following the end of the fiscal year.

Why Does It Say **That** In The Bylaws?

Example of Ranked Documents for Membership Committee

4th Bylaw, Membership Committee

The bylaw establishes a membership committee of four members appointed by the president promptly after the annual meeting whose duty it is to maintain the records of the membership of the Corporation.

5th Special Rules of Order

The first Special Rule of Order, the Order of Business, has the Reports of Standing Committees as one of the headings for the meetings.

6th Rules of Order, Membership Committee

The rules of order prescribe, in Robert's Rules of Order Newly Revised 12th edition, some general rules for committees. RONR (12th ed.) 50:1-30.

9th Policy, Membership Committee

The Membership Committee shall maintain a complete, accurate, and dated list of voting members in good standing as required by the state's Corporation code.

10th Procedure, Membership Committee

1. the chair of the Membership Committee shall
 - a. submit the dated list of the names of the voting members in good standing to the secretary at the start of each meeting
 - b. verify upon request the membership of any voting member in good standing attending a meeting
 - c. prepare and maintain a dated sign-in list of attendees for each meeting.
2. make available to any voting member in good standing the dated list of the voting members in good standing upon request.

Why Does It Say **That** In The Bylaws?

“It ain’t what you don’t know that gets you into trouble.
It’s what you know for sure that just ain’t so.
Mark Twain

Hierarchy of Documents

1. Law; statutory law, that applies to Corporations.
2. Articles of Incorporation
 - a. Create a separate legal entity of the state.
 - b. Adopted as prescribed by the state.
 - c. Amended as prescribed by the state.
 - d. Cannot be suspended.
3. Bylaws, Parent, or Central
 - a. Create a constituent Corporation in the Parent, or Central, Corporation.
 - b. Adopted as prescribed by the parent bylaws.
 - c. Amended as prescribed by the parent bylaws.
 - d. Cannot be suspended.
4. Bylaws, Constituent, or Affiliate Corporation
 - a. Structure the constituent Corporation.
 - b. Adopted as prescribed by the bylaws.
 - c. Amended as prescribed by the bylaws.
 - d. Cannot be suspended.
5. Special Rules of Order
 - a. Procedural rules to supplement or modify those in the Rule Book.
 - b. Adopted by previous notice & two-thirds or a majority of entire membership.
 - c. Amended as prescribed by the special rules of order.
 - d. Suspended by a two-thirds vote.
6. Rules of Order, Parliamentary Authority, Rule Book
 - a. *Robert's Rules of Order Newly Revised* adopted by the Corporation.
 - b. Adopted by a bylaw.
 - c. Superseded by special rules of order.
 - d. Suspended by a two-thirds vote.
7. Standing Rules
 - a. Details of the administration of the Corporation.
 - b. Adopted by a majority vote.
 - c. Amended by a two-thirds vote or a majority vote with notice.
 - d. Suspended by a majority vote.
8. Minutes
 - a. Acts of the assembly, orders and directives authorizing acts.
 - b. Adopted by majority vote.
 - c. Amended by a two-thirds vote or a majority vote with notice.
 - d. Cannot be suspended.
9. Policies
 - a. Established principles that outline the plan for following a course.
 - b. Adopted by majority vote.
 - c. Amended by a two-thirds vote or a majority vote with notice.
 - d. Cannot be suspended.
10. Procedures
 - a. Established way of doing things.
 - b. Adopted by majority vote.
 - c. Amended by a two-thirds vote or a majority vote with notice.
 - d. Cannot be suspended.