

Nonprofit Boards & Bylaws Part III: Board Membership and Terms

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Join Carter Ledyard and management consultants [Plan A Advisors](#) on a lively exploration of nonprofit boards and bylaws. This multi-part series will help nonprofit executives and board members consider revisions and amendments to make your bylaws more congruent with the way your nonprofit actually operates, improve governance, and ensure compliance with current law.

This series is designed to offer principles of broad applicability, but laws vary by state, and what is best for your organization will depend on your unique circumstances. We encourage you to consult with an attorney who practices law in the state of your organization's incorporation. This series is not legal advice.

NOTE: Some portions of this series may not apply or may apply differently to a membership organization, meaning one with both a board of directors and a separate class or classes of voting "members." In a membership organization, the members have certain governance rights, such as the right to elect directors and officers or to amend the bylaws. If yours is a membership organization, feel free to contact us to discuss those differences.

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Size matters. Your bylaws set the size of your board (unless otherwise set forth in your Certificate of Incorporation), either as a fixed number or as a range. But what is ideal? In general, Plan A recommends that your board should be big enough to populate every needed board committee so that each committee has a minimum of three unique board members, and so that no board member is required to serve on more than one committee – in other words, here's a simple formula to use as a starting point to determine minimum board size: # OF COMMITTEES X 3 UNIQUE MEMBERS. Of course, in practice, board committees may have more than three members and some board members may choose to sit on more than one committee. Additionally, your board should be big enough to accommodate the diversity of expertise, skills, community representation, connections and financial wherewithal that you need to operate optimally.

Quorums count. Bylaws also set the "quorum" size, which is the minimum number of board members who must be present at a meeting to make the meeting valid and to allow the Board to take actions. The quorum threshold is different from the voting threshold: typically, a Board takes action by the affirmative vote of a majority of the board members present at the time of a vote, if a quorum is present at that time. Many organizations set quorums as a majority of board members, but smaller boards may consider setting the quorum as three-fifths or two-thirds so that consequential decisions are never made by too-small a group. While big boards can have certain advantages – particularly when most members make significant financial contributions – they can also be unwieldy. For example, it can be challenging to keep every member meaningfully engaged, and big boards with a significant number of less-engaged members may also have difficulty achieving quorums. Brainteasers abound when calculating quorums, so determine quorum size before the meeting starts: for example, is a quorum a majority of the total number of board members including or not including vacancies? Are quorums destroyed when board members recuse themselves due to a conflict of interest? Answers may vary by state, and depend on what your bylaws say.

Terms of engagement. Bylaws set terms for board members, typically two- or three-years per term. To avoid gaps, bylaws should provide that directors hold office until the expiration of their term *and* until their successor has been elected and qualified. Be mindful that some states limit the maximum number of years per term. Some bylaws create “classified” boards with two or more classes, as equal in number as possible, each with staggered terms so that the board can always maintain a healthy mix of members with institutional knowledge and new members.

Limited engagements. Some bylaws limit the number of consecutive terms an individual may serve before they must step off the board and take a break (typically one year) before they are eligible to be re-elected. Term limits can prove exceptionally effective in keeping a board fresh because they force a board to renew itself. New members tend to bring new perspectives, talents and resources. Retiring board members of exceptional value to the nonprofit can be kept engaged on committees that allow non-board members to serve, and then can be re-elected when eligible. Bylaws can also allow for exceptions to term limits, such as allowing board members to serve beyond those limits if they are also elected officers.

Removal. Some states permit removal of board members with or without cause, whereas other states permit removal only with cause. Bylaws often explicitly provide that failure to attend a certain number of meetings is cause for removal, since that board member’s absence inequitably burdens fellow board members and makes it difficult for the absent member to fulfill their fiduciary duties. In general, an organization should be able to remove board members for cause if they are underperforming, or in circumstances when a board member’s behavior in or outside the board room can be compromising to organizational function or reputation. However, it’s a good idea to consult with counsel if you are contemplating removing a board member for cause; in addition to ensuring proper notice, quorum, and voting thresholds are satisfied, removal for cause generally requires due process.

Next: Board Meetings

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Other publications in this series:

[Boards & Bylaws Part I: All About Bylaws | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part II: Mission and Board Role | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part IV: Board Meetings | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part V: Officers | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part VI: About Committees | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part VII: Core Committees | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part VIII: Bylaw Amendments | Carter Ledyard & Milburn LLP \(clm.com\)](#)

related professionals

Pamela A. Mann / Partner

D 212-238-8758

mann@clm.com

Jeremy S. Steckel / Partner

D 212-238-8786

steckel@clm.com