

## Nonprofit Boards & Bylaws Part V: Officers

March 22, 2023

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.

—

**Hello officer.** While laws differ from state to state, most require that a nonprofit board have one or more "officers" who are elected for a specified term. Many organizations' bylaws provide for a chair and/or president (to run meetings), a secretary (to record or oversee the recording of minutes, the sending of meeting notices, and the keeping of corporate records), a treasurer (to keep or oversee financial records, make financial reports, and sign checks), and others as the board may determine are necessary. Most states allow the same person to hold more than one officer role, but, in general, the officer who chairs meetings should not be charged, as well, with taking minutes. Bylaws typically spell out the basic roles and responsibilities of each officer. In general, officers may be removed with or without cause unless the bylaws say otherwise.

**Officers versus officers.** Some nonprofit professionals have the word "officer" in their title, implying power they do not have. A Chief Executive Officer and a Chief Financial Officer – to give two examples – are not necessarily elected officers (sometimes called "board officers") within the meaning of the bylaws and statute unless the bylaws say so. Ditto for a paid President. Each may have certain responsibilities that a board officer has (like the power to sign checks), but only if the board says so (or their employment contract says so). A paid staff person may also be an *ex-officio* board officer or member of the board, if the bylaws say so. But, unlike board officers (and all board members), a paid staff person typically is not a fiduciary of the nonprofit within the meaning of the bylaws and applicable law (though this may vary by state, e.g., New York law was recently amended to make individuals – other than board members and board officers – who meet the definition of "key persons" fiduciaries).

Bylaws set the terms for and method of removal of board officers. By contrast, many executive level employees' terms (duration) of employment and the conditions under which they can be terminated are laid out in detail in an employment contract. Complicating matters further, bylaws or an employment contract may provide that an executive level employee is an *ex-officio* board member and/or board

officer. In these instances, organizations need to take extra care to ensure that the provisions of bylaws governing board officer removal and term duration apply to the officer role only and do not contradict the removal and term provisions of an employment contract; and, more generally, to ensure they understand whether an executive level employee (who may have the word “officer” in their title) is or is not a board officer within the meaning of the bylaws. Moreover, since the board sets or oversees executive compensation, and evaluates their performance, any paid CEO/Executive Director/President with an *ex officio* role on the board must recuse themselves from the deliberation and voting around their own employment terms, evaluation, and compensation.

**Founder keepers.** It is not uncommon in founder-led and some other nonprofits for the CEO to be an *ex-officio*, voting or non-voting member of the board. In general, as a nonprofit matures and its board grows, it’s healthier for the founder or other senior paid professional to be a non-voting (ex-officio) member of the board or not a board member at all, since the board needs to set or oversee their compensation and evaluate their performance. If the bylaws provide for a paid professional to be an *ex-officio* board officer or member of the board, their employment contract should indicate that their officer or board service is only for so long as they are employed.

**Officer terms.** In practice, it is best for a nonprofit to enjoy several consecutive years of leadership under a single board chair or president; it can take a year for a board officer to learn the role and ease into their responsibilities! In general, three-to-four consecutive years of service is a preferred practice. As a practical matter, however, organizations can get into trouble with math and term-tracking when their bylaws provide for different term lengths for board members and board officers, particularly when their bylaws also provide that only board members may serve as board officers. For that reason, organizations may wish to set officer terms as one year and then re-elect those officers annually to avoid the complication that comes when the term for a board member misaligns with their term as an officer. (Unless the bylaws provide otherwise, board officers can be re-elected for any number of consecutive terms.)

*In two weeks: About Committees*

—

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 III: Board Membership and Terms | Carter Ledyard & Milburn LLP \(clm.com\)](#)

[Boards & Bylaws Part IV: Board Meetings | 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](mailto:mann@clm.com)

Jeremy S. Steckel / Partner

D 212-238-8786

[steckel@clm.com](mailto:steckel@clm.com)

Lauren W. Shandler / Associate

D 212-238-8611

[shandler@clm.com](mailto:shandler@clm.com)