

EXEMPT ORGANIZATIONS

INFORMATION MEMO

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Run it Like a Rockstar: Board Novice to Pro in 10 Moves

Every person joining a nonprofit board will want to walk into their first meeting knowing exactly what needs to happen for the meeting to be properly run and successful. While comprehensive expertise can take years to achieve, we've distilled some of the key points of a legally compliant board meeting so that you can achieve mastery of the fundamentals right from the start.

Two notes of caution before we dive in: First, everything we discuss below is based on the New York Not-for-Profit Corporation Law. If you aren't in New York, or if your nonprofit is formed under the laws of another state, or is subject to other laws for other reasons, the rules may be different from what we discuss here. Second, each nonprofit's bylaws are different, and in many cases those differences can lead to a different outcome from what we describe below. So, do make sure to always consult your nonprofit's bylaws when figuring out the right way to run your meetings. Ok, off we go!

1. Don't Overlook Notice. The very first thing to think about when planning a meeting is whether you need to give notice (or, if you're not the one who is planning the meeting, whether you received notice). If notice is required, you (almost) can't have a valid board meeting without it. The bylaws may prescribe in detail what constitutes valid notice, but typically the notice must state, at a minimum, the time and place of the meeting. Notice is required to be provided some minimum number of days before the meeting. Sometimes there is also a maximum number of days before the meeting that it can be provided.

When is notice required? The most common type of meeting for which notice is always required is the "special" meeting. Special meetings are meetings that are not being held at a time previously established by the board or the bylaws (these include what are typically called "regular" meetings and the "annual" meeting). Special meetings are usually held for a specific or limited purpose. Notice is also required for regular meetings where the date has not been fixed by the board (i.e., by voting to set the meeting date at an earlier meeting). Unless otherwise provided in the bylaws, notice is not generally required for regular meetings so long as the time and place has already been fixed by the bylaws or board vote.

But we previously said that you "almost" can't have a valid meeting without notice, so why "almost"? One word: waiver. Notice can typically be waived by any director who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting either before the meeting or once the meeting begins. Accordingly, many problems with notice can be fixed just by people simply showing up.

2. Own the Agenda. The law doesn't always require that an agenda be provided in advance (although it does in certain unusual but important situations), but it is generally best practice to do so. Board members are busy people, they want to know what the meeting is going to focus on, and the job of the agenda is to tell them exactly this. You want your board to be prepared, and if you are running the meeting, you want to make sure that you've laid the groundwork for whatever is going to happen. A basic agenda will include each of the procedural items discussed below (i.e., roll call, confirmation of the presence of a quorum, a list of items for board action, reports from executive leadership and committees and adjournment). The agenda should also state the date, time and location of the meeting.

BONUS TIP FOR HANDLING CONTROVERSIAL MATTERS: If you are the chairperson or otherwise are setting the agenda, whenever you can, make sure you've got all of the votes that you need lined up for significant and controversial matters BEFORE the meeting even starts. You do this by talking with everyone you can to make sure you know which way they are likely to vote, making sure they already have thought through the pros and cons of each position, and that you have heard all the questions and concerns that might be raised. With good planning and enough preliminary groundwork, you can often avoid inconclusive meetings and surprises.

3. Make the Call (to Order). The meeting is typically called “to order” (i.e., begins) by the president or chairperson (we’ll just assume that’s you from now on for purposes of this article). Calling a meeting to order is easy, all you have to do is say “This meeting is called to order.” Check your bylaws to confirm who is vested with this authority, and who your backups are if the primary player is not present. Sometimes the board needs to choose someone to “chair” a given meeting by vote if the person who holds authority in the bylaws is absent.

4. Slow Your Roll (Call). . . . You should conduct roll call to formally take attendance at the meeting. Directors’ attendance can either be in person or virtual, or a combination of the two, with some directors attending in person and others attending virtually (unless otherwise provided by the bylaws or fixed by the board). An important reminder – if directors are attending virtually, they need to be able to fully participate in the meeting (hear conversations, speak up to object or consent to a vote, etc.).

5. . . .and Confirm Your Quorum. A board can’t act without a “quorum.” A quorum is simply the minimum number of board members required to hold a meeting. With the exception of very limited circumstances or if the bylaws require a lower or greater proportion, a majority of the entire board constitutes a quorum for the transaction of business. So, if your board has five members, three are needed to establish a quorum. Directors who are present at a meeting but not present at the time of a vote due to a conflict of interest or a “related party transaction” (a specific type of conflict of interest transaction governed by the Not-for-Profit Corporation Law) are considered to be present at the time of the vote for purposes of determining if a quorum is present at such time. If, however, a director leaves for another reason, and the quorum breaks, substantive board discussions should end because all board members have a right to be present for and participate in board meetings.

Interesting fact: the etymology of the word “quorum” traces back to the fifteenth century Middle English word for the senior justices of the peace, whose presence was necessary to constitute a court. It derives from the Latin quorum, “of whom.”¹

6. Meeting Procedures. Once called to order, meetings should be held in accordance with any procedures required by your bylaws. In the absence of such required procedures, much of what happens during a meeting is custom rather than law. A prime example of this is when a resolution is being made and a director says “Can I get a motion?” “Can I get a second?” That’s typically just custom. It’s not legally required, but it is generally the practice that’s observed at most meetings.

7. Mind the Minutes. Minutes are the formal record of the meeting. They should not document every single word that gets said during the meeting but they should always: (i) document the specific procedures and actions taken by the board; (ii) whenever possible, provide support for discharge of board members’ fiduciary duties, such as documenting how long a matter was deliberated and/or what team members or experts spoke on a subject, and attaching copies of any reports that were provided; and (iii) more permissively, subject to judgment, serve as the general record of board proceedings. Minutes are generally prepared by the Secretary and approved by the board at the very beginning of the next board meeting. Typically, a draft is circulated prior to the meeting for comments, edits and corrections.

8. Take Action. At a board meeting, a board exercises its power and takes official action by the affirmative vote of a majority of a quorum (though some actions require a higher voting standard by law). Often matters are brought for board vote early in a meeting, after the prior meeting’s minutes have been approved and prior to any early board member departures that might occur. The voting procedure can vary, but, customarily, the chairperson will introduce a resolution by making or asking someone else to make a motion, that motion will be seconded by another director, then the chairperson will ask “All in favor?” “Any votes in opposition?” “Any abstentions?” Then, if a majority of a quorum votes in favor of the resolution, the chairperson will note that the action has been approved. The vote should be documented in the minutes. Note that it is only necessary to record vote totals, not how specific directors voted.

9. The Reports – Tis Better to Give or Receive? After addressing specific matters required board voting, it is very common for the Chief Executive Officer or Executive Director to provide the board with updates regarding the organization’s performance, new developments and key initiatives so that the board is broadly informed on the organizational affairs. Committees should also provide the board with updates regarding their activities since the last board meeting. Sometimes items will be brought up for vote of the board during these reports as well, if it makes sense from an efficiency or convenience perspective.

¹ <https://www.etymonline.com/word/quorum>

10. “Alright, that’s it for me.” Adjournment. Don’t sleep on adjournment, the formal act that ends a meeting. Unless otherwise required by the bylaws, there is no required procedure for adjournment. Sometimes, the chairperson, after completing the last item on the agenda and confirming that no one else has any other matters they would like to discuss, will simply state that the meeting is adjourned. Other times, the chairperson will treat adjournment like any other board action (i.e., there will be a motion, vote, etc.). Sometimes, the quorum breaks and adjournment is an inevitable result. Regardless of the precise method or circumstances of adjournment, it’s best practice to officially adjourn each meeting in some way and to document the same in the meeting minutes.

Down By Law? By the way, you might be surprised to know that the word “bylaw” itself also has its roots in Middle English, which can in turn be traced to Old Norse, combining the Old Norse words *býjar* (“town’s” or “settlement’s”) and *lög* (“laws” or “jurisdiction”)². Basically, the original meaning, which filtered down through Old and Middle English, was the local laws of a town. Imagine, one humble word’s journey from Old Norse to your 10:00 a.m. Zoom meeting – how epic is that?

If you have any questions related to board governance and meeting procedures or other matters concerning nonprofits, please contact [Thomas W. Simcoe](#), [Delaney M. R. Knapp](#), [Thomas R. Clifford](#), [Emily Ahlqvist](#) or the Bond attorney with whom you are regularly in contact.

² <https://www.etymonline.com/word/bylaw>

