

Questions from Module 1 Pre-Webinar Survey

1. Why are articles of incorporation and by-laws so important to our day-to-day work?

They define the who, what, where, when and how directing actions that are supposed to be taken and actions that are not supposed to be taken. Examples:

- *Who is responsible for carrying, monitoring, and reporting actions*
- *What each member, Board Members, employees are responsible for*
- *Where the office, meetings, mail, legal documents will be located and can be accessed*
- *When meetings, audits, reviews, hearings, notices, etc. will take place*
- *How actions are to be carried out*

2. What direction should I move forward in an organization that does not follow its by-laws?

Technically it isn't the organization that doesn't follow by-laws, it is the individual members of the board who aren't fulfilling their fiduciary duties to the members. All board members are required to understand and uphold their duties. Board members who breach or abuse their fiduciary duties can be held personally liable. Ignorance of what is required is not a defense, which is why it is a good idea for boards to regularly review their responsibilities and evaluate how well they are upholding them. Each state has laws that govern what members of a non-profit board must do and what their roles are, but, in general, every board member has three fiduciary duties to the members:

- *Duty of care. Board members must care for the organization the way other prudent and ordinary persons would. This means show up, participate, remain informed about all aspects of the organization, and take appropriate actions to help the organization meet its goals and thrive. Read and understand financial reports, track spending, and participate in strategic planning. Make sure the nonprofit's records are kept accurately and preserved.*
- *Duty of loyalty. Nonprofit board members must also be loyal to the organization itself. Work in its best interest and not use it for their own personal or professional gain. If they have a conflict of interest, they must disclose it.*
- *Duty of obedience. Board members are also required to be aware of the laws that affect the organization and ensure that they follow them. Understand and follow all of the organization's own governing documents, such as the by-laws. Help the organization carry out its stated goals.*

3. How do I find out if my organization is a 501c3?

Type "IRS tax exempt organization search" in the search bar of your browser.

<https://www.irs.gov/charities-non-profits/tax-exempt-organization-search>

4. How can I get members' input on updating 2004 by-laws?

Member input can be solicited through surveys or polls that allow members to only respond once.

5. My organization has by-laws written and is incorporated in Virginia. How do make sure I have properly set everything up and we have all our bases covered?

Start by researching non-profit law/statutes in your home state and consider having an attorney in your state who specializes in non-profit law look at your by-laws. If there are attorneys, parliamentarians, or CPAs in your membership you might solicit their input on specific sections of the by-laws pertinent to their professions. Try to attend the other by-laws sessions of this series and ask questions as other sections of the by-laws are addressed.

6. Please address the structure of by-laws. How detailed or vague should they be?

Detailed enough to provide clear guidelines but not so detailed that it is impossible to maintain compliance with them (consider time and economic restraints).

7. We have had multiple instances where the idea behind something in the by-law is great, valuable, and important, BUT in some instances, there is no way for a volunteer organization to enforce any deviation from the by-laws. How should we handle this?

An organization must maintain compliance with its by-laws. This requires establishing a method for removing members for violation of the by-laws. The right of expulsion may be based upon two grounds:

- 1. a violation of any of the established rules of the association as have been subscribed or assented to by the members which provide expulsion for such violation; and*
- 2. for conduct that clearly violates the fundamental objectives of the association and if allowed to persist would thwart those objectives or bring the association into disrepute.*

8. I'm unclear on whether my organization should remain incorporated in Texas now that we have fewer connections with that state. Our non-profit registration and banking are also based in Texas.

Please consider the following:

- Where laws are most advantageous to doing business*
- Where majority of members have best access to the office/events*
- Cost of changing location*
- Requirements for changing primary address for IRS 501c status*

9. How do I get articles of incorporation done and how do you remember of all the little things you don't know yet to think of, like the differences between 501c3 and 501c5?

No other organization's by-laws will exactly fit your organization's needs but by-laws for an organization with a similar mission/purpose can serve as a blueprint. If you decide to use them as a blueprint, be sure to talk with someone in that organization to discover what they see as problems in their by-laws.