

Why Does It Say
That
In The
Bylaws?

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For over 20 years 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, churches, avocations, schools, condominiums, local governments, local government agencies and local communities.

National Association of Parliamentarians (NAP)

- Professional Registered Parliamentarian (PRP) 2000
- Delegate National Convention 2003, 2005, 2007, 2011, 2015
- Presenter National Training Conference 2008, 2020
- Presenter National Convention 2015
- Commission on Credentialing 2016
- Member Professional Development Committee 2017
- Instructor of Professional Qualifying Course 2018
- Instructor Professional Renewal Course 2020

Maryland Association of Parliamentarians (MAP)

- Chairman Membership Committee 2003—2005
- Treasurer 2003—2005
- Institute Coordinator 2004—2020
- President 2005—2009, 2011—2013
- Vice-President 2009—2011

American Institute of Parliamentarians (AIP)

- Graduate Teachers Course (T) 2000
- President C&PP Chapter 2002—2005
- Certified Professional Parliamentarian (CPP) 2007
- CP Examiners Division Chair 2013—2016
- Presenter East Coast Practicum 2013, 2017
- Faculty Teacher Certification Course 2015
- Presenter West Coast Practicum 2015, 2016

United States Department of Transportation

- Certified Trained Facilitator 2001
- Served in the Greater Baltimore—Washington Area 2001—2005

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

What is a bylaw?

- 1 A bylaw is a fundamental rule that structures the organization.
- 2 A bylaw is a fundamental rule that is too important to suspend.
- 3 A bylaw is a fundamental rule of a certain level, rank, in the hierarchy of the governing documents.
- 4 A bylaw is an agreement between you, the member, and the Corporation.

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 had a particular problem and tried to solve it with a bylaw.
- 4 The members did not follow the adopted parliamentary authority *Robert's Rules of Order Newly Revised 11th Edition*.

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

Explain our positions.

- 1 I, the parliamentarian, am concerned with the procedure; I have no authority.
- 2 You, the members, are concerned with the result; you decide.

Explain the conditions.

- 1 The levels, ranks, of governing documents and where the bylaws fit in that hierarchy.
- 2 The need to use a particular style manual.
MLA..., Harbrace..., Chicago...
- 3 The need to use defined terms.
Webster's..., Oxford..., Robert's..., Black's...

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

Explain eight principles of interpretation.

- 1 If a bylaw is **ambiguous**, it must be interpreted, if possible, 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 always 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 what is 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 and/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?

Explain the state corporation code, MCCA.

- 1 Do not simply re-write statements from a state corporation code.
- 2 Use a state corporation code where applicable and as intended.
- 3 A state code is written to cover all the corporations in a 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

Explain the national bylaws.

- 1 Do not simply re-write statements from national bylaws.
- 2 Use national bylaws where applicable and as intended.
- 3 A national bylaw is written to cover all the Associations in the nation.
 - a the officers of an Associations shall serve a one or two year term...
 - b an Association shall prescribe its quorum as required by state law...
 - c an Association's nominating committee shall consist of at least three members...

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

Explain Robert's Rules of Order Newly Revised.

- 1 Do not simply re-write statements at will from RONR.
- 2 Use rules from RONR where applicable and as intended.
- 3 RONR is written to cover all deliberative associations.
 - 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?

Explain 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 first 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 understand this bylaw?
- 2 Do we agree on the meaning of this bylaw?
- 3 Does this bylaw make sense to us?
- 4 Is this bylaw appropriate for our Association?
- 5 Is this bylaw applicable to our Association?
- 6 Can we, the Association, amend this bylaw?
- 7 Can we, the Association, 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 for it.
- 2 It is not necessary to re-write a rule that is written in another document.
- 3 Statutes 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 bylaws are only one level out of _____ levels of governing documents.
- 6 The adopted parliamentary authority is encyclopedic; it has a table of contents, a 52-page preface, 669 pages of text, 48 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 Have it read by, someone who will be affected by it.
- 2 Have it read by someone with talent in writing, grammar, and spelling.
- 3 Anticipate what the opposition might think of the bylaw, and try to address those issues.
- 4 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 or conditions necessary, 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 vote required for adoption is 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 amendments.
- 3 The amendments are considered seriatim.
- 4 Amendments to the amendments are adopted by majority vote.
- 5 The vote required for adoption 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 for adoption of 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 papers 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 particular 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?

“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 or departments.
- 2 Articles of Incorporation
 - a An agreement between the Association and the State.
 - b Creates a separate legal entity of the state.
 - c Meet the State's requirements of incorporation.
 - d Amended according to the State Corporation Laws.
- 3 Bylaws, National or Charter National
 - a An agreement between the Association and a National Association.
 - b Creates a local unit in the National Association.
 - c Meets National's requirements for chartering a local unit.
 - d Amended according to National's rules.
- 4 Bylaws, Constituent Unit
 - a An agreement between the members.
 - b Structure the department.
 - c Contain fundamental rules too important to be suspended.
 - d Amended by previous notice and two-thirds vote or as prescribed.
- 5 Special Rules of Order
 - a An agreement between the members.
 - b Procedural rules to supplement or modify those in the Rule Book.
 - c Contain special rules and exceptions to those in the Rule Book.
 - d Amended by previous notice and two-thirds vote or as prescribed.
 - e Suspended by a two-thirds vote.
- 6 Rules of Order, Parliamentary Authority, Rule Book
 - a *Robert's Rules of Order Newly Revised* adopted by Association.
 - b Provides a standard reference book for the Association.
 - c Contains rules and procedures for all types of situations.
 - d Superseded by adopting Special Rules of Order.
- 7 Standing Rules
 - a An agreement between the members.
 - b Detail the administration of the Association.
 - c Contain rules dealing with the administration of the Association.
 - d Amended by a two-thirds vote or a majority vote with notice.
 - e Suspended by a majority vote.
- 8 Board Policies
 - a An agreement between the members and the directors.
 - b Detail the administration of the board.
 - c Contain rules dealing with the administration of the board.
 - d Amended by a two-thirds vote or a majority vote with notice.
- 9 Staff Policies
 - a An agreement between the members and the staff.
 - b Detail the administration of the staff.
 - c Contain rules dealing with the administration of the staff.
 - d Amended by a two-thirds vote or a majority vote with notice.