

Nonprofit board isn't following bylaws?



If your board isn't following its own bylaws, here are some different approaches you can take.

1. Educate the board about liability

The first step is to educate the board. Point out to them that bylaws are not a “suggestion,” they are mandatory. They form the foundation of how the entire organization functions. Failing to follow them puts the board, and the nonprofit, at legal risk. It may also put each director at individual risk, which D&O insurance will not cover.

This excellent article by Ellis Carter explains it: [Ultra Vires Acts: Why Nonprofits Must Follow Their Articles & Bylaws](#).

In many states you can locate educational institutions that provide helpful information specific to your state. The Attorneys General of some states have also published useful guidebooks.

2. Invoke a higher authority

If your nonprofit is part of a larger organization, you may be able to speak to headquarters about this. A Rotary Club, a parent-teacher association, or the state chapter of a national professional organization has obligations to its higher authority. However, note that many nonprofits are free-standing, in which case this would not apply.

3. Turn to members

Members of an HOA or other membership organization ought to care about whether the board is fulfilling its duties (though sometimes they don't). Perhaps you can rally the members about this issue. If your nonprofit has no members, perhaps you can turn to key stakeholders—donors, grantors or supporters. This will not make you popular, but it can be effective.



4. Hire an attorney to send a threatening letter

Sometimes boards will listen when the law threatens. Locate an attorney who is knowledgeable about nonprofit law in your state of organization. Ask the attorney to prepare a letter to the president, or the whole board, outlining the ways that they are neglecting their duty. The letter should describe the potential liability for your organization. I have personally known of an instance where a forceful letter did achieve the necessary result.

5. See if your state authorities will assist

In some states, the attorney general's office will take an interest if a nonprofit organization, such as a homeowner's or condominium association, did not follow proper procedures in carrying out its election, or is engaging in financial shenanigans, for example. You could write to inquire about this.

6. Publicize the issue

Although it's a dangerous method, you could write a letter to the editor, post on social media, or speak with a reporter about what is happening. The risk, of course, is that the board will just dig in its heels. You may damage the organization's reputation and functioning without getting the result you seek. You may also "burn your bridges" so that the current board will not want to work with you ever again. This is a blunt instrument that we do not recommend.

7. Go to court

If none of these approaches work, your only option is to file a lawsuit. Of course you would prefer to avoid this drastic and expensive alternative. In addition, the courts are not interested in violations of procedure or bylaws unless someone has been harmed. So this is really a venture of last resort. Few people are willing to undertake it. If you are tempted, consider the cost/benefit ratio before proceeding.

Have you had issues like this with your nonprofit board? [Let us know!](#)

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