

July 12, 2022

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Dear Nicole,

Thank you for your patience as I worked around a couple of big deals and a long-scheduled vacation.

Per your request, I have reviewed the Bylaws with an eye toward things that might pose a legal liability or that might be illegal. The Bylaws are generally in good shape and match up well with Washington's new non-profit act, RCW 24.03A. I will note below some changes that I believe are necessary to comply with the new RCW 24.03A, as well as some other changes that I noted as I reviewed and that I believe are advisable.

Necessary Changes:

- Proxy voting by the board is not allowed under RCW 24.03A.565. Section 4.2.1 should be deleted, and any other references to proxies in Section 4.2.2 or elsewhere should be deleted.
- Actions by written consent may only include abstentions if the abstaining director is an "interested director" and the vote complies with the requirements of RCW 24.03A.570. Section 4.3 should be adjusted to read "..... minus abstentions of any interested directors in compliance with RCW 24.03A.570."
- The language of Section 5.5 is inconsistent with Section 5.7.1 concerning the right of ex-officio members to vote on Executive Committee matters. I would add an exception to the first sentence of Section 5.5 for the Executive Committee, for the sake of clarity.
- There are two references to the old RCW 24.03 that still need updating. Section 1.4 should refer to 24.03A and Section 3.2 should refer to 24.03A.585.
- The references to Members, primarily in Section 6.12, suggest that NWYS is a member corporation like a Rotary club or a church, where there are member constituents with certain rights. RCW 24.03A.315 has language that allows member rights to be created in the Bylaws. I would be careful to delete any such references in the Bylaws.

Recommended Changes:

- The language is not clear on how the number of directors is to be determined. I would modify Section 2.2 to make clear that the number of directors may be set by resolution of the board from time to time, provided that no decrease shall shorten the term of any current director and provided that the number of directors must be at least three (or whatever higher number you wish to set).
- I would consider defining the term “relatives” in Section 2.3. Parent/child/grandparent/sibling relationships are often where the line is drawn, and aunt/uncle/first cousin relationships are sometimes included.
- I would consider deleting the first sentence of Section 2.5. The reference to a “two to three year term” leaves some room for ambiguity, and the rest of the paragraph is clear without that sentence.
- This comment is somewhat technical, but officers aren’t officers of the board, but rather of the corporation. I would delete “of the Board” wherever it appears.
- The list of required records is found in RCW 24.03A.210, and it differs from the list in Section 6.12. I would update the list to match .210.
- I would consider clarifying if committee members are afforded the indemnification protections of Section 6.14. As drafted, I would interpret the language to read that they are not covered.

I also briefly reviewed NWYS’s Articles of Incorporation to make sure it doesn’t contain provisions that conflict with the Bylaws. I did not see anything that poses an issue, but do note that the Articles are missing several key concepts that would be normally included, and that would be required in any new non-profit that was seeking 501(c)(3) status. These include language concerning political activities and other prohibited activities, language prohibiting distributions of funds to directors, officers, employees and their families, and language prohibiting the contribution of funds to any other entity that doesn’t have 501(c)(3) status. The current Articles only contain language on the latter point applicable at the time of dissolution, and not during the life of the organization. While I do not believe that an update is absolutely necessary, I would consider doing so.

You also asked questions concerning open meetings and confidentiality. Since NWYS is not a member corporation, no person has a right to attend Board meetings under RCW 24.03A. I also do not believe that NWYS would meet the definition of a “public agency” that would subject it to the open meetings act, RCW 42.30. Based upon this understanding, I do not see a need for NWYS to adopt open meetings and confidentiality language in its Bylaws. Please note that if NWYS does become subject to the open meetings act, the act does have comprehensive language governing when executive sessions are allowed.

Finally in answer to your question about Executive Committee procedures for voting, etc., I would recommend that you do include such standards, either by adding language in Article 5 that mirrors the language in Article 4, or by including a statement in Article 5 such as "Meetings of any committee shall follow the procedures for a Board meeting, as outlined in Article 4, to the greatest extent possible."

Please do not hesitate to contact me if you'd like to discuss any of the above comments.

Very truly yours,



Mitchell G. Faber