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THE IMPORTANCE OF GOOD BYLAWS (and Policies)

Black's Law Dictionary (*the* classic and definitive "Webster's" dictionary of the legal profession) defines "Bylaws" as: "Rules or administrative provisions adopted by an association for its *internal governance*."

A nonprofit organization has two principal charter documents: the Articles of Incorporation, and the Bylaws. The organization is formed by the filing of the Articles with the Secretary of State, which can and often should contain certain specific provisions that are not required, but permitted by the nonprofit corporations code of each state; may further include specific limitations on the ability of the directors or members to amend those provisions; and will contain provision required by the Internal Revenue Service for the issuance of a determination letter that the organization will be exempt from corporate income taxes (and donations deductible by donors). These provisions can serve to protect the original purposes and mission of the organization.

The Bylaws, which are not filed with any public agency (except the IRS and state taxation authorities with applications for income tax exemption), should define, control and set the basic principles and manner by which the organization will be operated. If the Bylaws do not address certain matters of corporate operation, then the California Nonprofit Corporations Code imposes its rules and, in the absence of specific clarification in the Code, the rules of common law (court interpretation of corporate law), treatises on corporate law and, if all else fails, perhaps to Robert's Rules of Order will govern. While the Corporations Code may be adequate for many routine operational matters, it may be too restrictive, or too lax, on others that the organization's founders or present Directors would rather be better, or differently, defined, addressed or treated. In the case of removal of directors, for example, or votes required to carry certain resolutions, it may be particularly important to have Bylaws that are much more restrictive than the Code's requirement of only a simple majority of a quorum to pass a resolution.

The California Nonprofit Corporations Law requires a nonprofit corporation (referred to as the "organization" in this paper) to have directors and officers. The organization may also

have members, who may or may not have certain voting rights, as set forth in the Bylaws. The organization's board of directors (the "board") is comprised of three or more individuals—preferably always an odd number to avoid stalemates in voting—called directors. Directors are responsible for overseeing, governing, and controlling the business of the organization. Directors are bound by duties of loyalty and duties of care to have sufficient knowledge about the organization's finances and operations, to seek professional and other counsel as needed, and to make informed decisions, based upon reasonable business judgment and correct information, to govern the operation of the organization. Directors are to avoid conflicts of interest (discussed below). Officers (president, secretary and treasurer at a minimum, and others if provided for in the Bylaws or board resolution), have duties as described in the Bylaws or Nonprofit Corporation Code and report to the Board of Directors. An individual may be both a director and an officer unless the Bylaws provide otherwise.

An organization's Bylaws should be the principal guide, the primer, or "rule book" by which the organization runs its overall corporate affairs. Questions such as "when and how often does the board meet?," or "how and when do we elect directors?," or "how is a meeting of the board to be run?," or "how do we get rid of a board member who never comes to meetings?," or "how do we change the Articles of Incorporation or Bylaws?," or "who can serve on a committee, and what are the limitations on a committee's power to make decisions that bind the organization?," and many others, are questions that should be able to be answered by referring to the Bylaws. From time-to-time the Directors will adopt resolutions, or "policies," that governing important matters, like the formation and adoption of budgets, the job description of the executive director if not set out in the Bylaws, key financial policies, and other important matters. Those policies, adopted as formal resolutions of the Board of Directors, may have the same force and effect as Bylaw provisions. However, Bylaws may also provide that changes cannot be made to certain Bylaw provisions without a supermajority, or even unanimous vote of all directors, whereas most Board resolutions can be easily overturned or modified by the vote of a simple majority of those directors present at a board meeting (provided a quorum—one more than half of the total serving—are present at that meeting and all directors had notice of the meeting).

The Bylaws do not address the day-to-day operations details that executive directors and/or other employees oversee, but the principles, frameworks and policies (in some cases) for the overall governance of the organization, how that structure is maintained; how many directors will serve at one time, what their qualifications are, what they are to do, when they meet, what they can delegate to others and what they cannot, what committees are authorized, how committees function and what power they have over what matters, how directors and committee members are held accountable, how members are selected, meet, vote and function (if the organization has members), and who the officers are and what their job descriptions are. The Bylaws often will contain key policies regarding conflict of issues policies and how those are to be handled, duties of loyalty, overall guiding financial policies, and international grant making policies if the organization makes grants to organizations or efforts outside the USA.

The Bylaws are intended to be the "rule book" to which you can go for answers, when fundamental problems or questions arise regarding the overall governance of the organization,

such as how to fill a vacancy on the board; what are the qualifications for board members or Executive Director; how can an errant director be removed (or can he or she?); what is (or years ago was) the organization's principal purpose for existence, and how does that impact current decisions about proposed activities or opportunities before the Board); or what can we do to stop the majority of present directors from changing the organization's course of direction significantly from the founder's original mission?. Many disputes that arise are unhappily decided by application of general corporation law developed from years of litigation, or the Nonprofit Corporations Code, or worse yet, in court at great expense (and public embarrassment to the directors and organization—and chagrin of former or would-be funders). If complete, detailed, carefully thought out and crafted Bylaws had been adopted by the Directors, many of these problems could have been resolved, or never come up, by simply following that important charter document.

“Boilerplate Bylaws,” in the form obtained from Office Depot or a company specializing in incorporating companies, or a lawyer who has no additional information from his client, generally provide the barebones” basics of corporate operation: a section on directors (how many, how they are chosen, how long they serve (one year unless specified otherwise), when they meet, how to give notice of meetings); officers (president, secretary, treasurer and basic function); if the organizations is has voting members, how meetings are noticed, what business can be conducted at meetings, what voting rights members have); basic record-keeping provisions; how the Bylaws can be amended (what % vote of board or members); and other basic, general matters regarding finances, amendments to the Bylaws, and similar general directives.

The Corporations Code gives an organization's members and/or Board considerable latitude as to what can be included in Bylaws. It is this latitude that permits the founders, or later, the directors if amending the Bylaws, to develop Bylaws that provide foundation, definition, limitations, policies, specific mission and purpose details, that serve to provide overall structure, boundaries, operational direction and stability to the organization.

To the extent that an organization takes the time to carefully consider many of the issues identified below, and incorporate applicable provisions into its Bylaws, you will not only have a more useful document for corporate governance, but one which more provides a consistent guide to directors, keeps the organization along the path deliberately chosen by the founders, and better assures a continuity of operation in line with the originally intended purposes, mission and values. When disagreements or questions arise concerning certain matters of governance, it is often very helpful to be able to go to the organization's Bylaws for direction—a convenient way of steering the Board “back to the basics,” or away from one director's ‘interesting’ (or troubling) idea that could lead the organization down an unwanted path.

Bylaws do not *have* to include anything beyond the basic “boilerplate.” To the extent that boilerplate Bylaws are relied upon, the articles and Bylaws may be changed by simple majority vote of a quorum of the members or board, for example, leaving a board or membership free to radically change the purposes, direction and mission of the organization with just a few votes.

Recent scandals in the public sector (Enron, Worldcom, Tyco) have led to the passage of the Sarbanes-Oxley Act, which primarily applies only to public (for profit) companies, but in some instances also applies to nonprofit organizations. Effective January 1, 2005 California adopted laws that require nonprofit organizations with annual gross receipts of \$2 Million or more to observe similar financial, audit, separation of finance committees, auditors and directors, other duties, restrictions and accountability on nonprofit organizations, and, regardless of annual revenues, to observe strict guidelines regarding fund raising. A review of your organization's financial policies and systems, and fund raising policies and practices, with legal and accounting counsel is strongly recommended.

I have listed a number of issues or matters below that deserve the careful consideration of the Board of Directors. Consultation about some or all of these matters with legal counsel specializing in nonprofit corporate organization and operation is strongly recommended, to the extent that these matters have not been reviewed by and discussed with counsel in the last year or so. The list is not exhaustive (nor particularly explanatory) of 'all' matters that should be seriously considered for inclusion in the organization's Bylaws or in separate resolutions (policies) adopted by the directors. The list is not legal advice or opinion, and the fact that your organization's Bylaws does not address an issue raised below does not necessarily imply that there is a "problem" or legal "defect" in its Bylaws. Use the list to raise issues and generate thoughtful discussion, and determine from there, with counsel, whether it is appropriate to amend the organization's Bylaws.

A number of the issues listed below are more commonly (and in some counsel's or directors' opinions, more properly) addressed in written policies adopted by the Board, briefly addressed in the Bylaws and expanded further by separate board policies or resolutions. Since the Bylaws provide both an education to new and existing directors about the organization's governance that is more easily gleaned in one document than in a loosely-maintained set of policies adopted over a number of years and often included in (buried!) pages of board minutes, inclusion in the Bylaws (perhaps supplemented-expanded in board-adopted policies) may be a good idea. Also, to the extent that Bylaws are protected from amendment by supermajority vote restrictions, many of these matters, if set forth in hard-to-change Bylaws, help define, guide, fix and maintain consistency in governance over many years, and preserve and protect the organization's original mission. Further, certain matters, like duties of loyalty, and conflict of interest, self-dealing, are matters that are not well understood by volunteer directors, who may not take their duties nearly as seriously as they should if not educated by a concise document—the Bylaws—that clearly state the organization's standards, and the corporations law, on the subject.

KEY ISSUES FOR CONSIDERATION

1. Are the organization's **principal (or specific) purpose(s), "mission," "core values," and "objectives" (at least specific purpose or "mission") set forth in the Bylaws?** Should one or more of those items be (that is, would defining mission, values, purpose (perhaps already briefly, though not necessarily, stated in Articles in Incorporation) help define the organization better to third parties, to potential large donors or their counsel, or help "stay the course" and keep the Board from wandering into tangents? If the organization has not adopted a "mission statement" or "core values" or "objectives," (buzz words to 'strategic planners'),

2. **Measuring Effectiveness.** Should the Bylaws contain provisions (guidance) on how the effectiveness of the Board, and the organization, is to be measured? Monitoring or measuring provisions or policies, or some kind of accountability measures? Therefore all difficult to define and adhere to and consistently apply, but even if generally stated, such provisions may provide helpful and consistent guidelines for analyzing existing programs, considering new proposals, and so forth. Coupled with #1 above, and if bolstered by a supermajority-only Bylaw amendment provision, a combination of #1 and #2 in the Bylaws can provide considerable stability and guidance to successive boards in "steering the course" straight and consistently with the original intent of the organization's founders.

3. **For religious organizations, do the Bylaws contain a statement of faith** (like the Apostles' or Nicene Creed, or similar faith statements) that give clear definition to what the organization requires its board members (and organization members, if any) to affirm and adhere to, and to express through the organization's activities? If not, new Director's in later years, with different views on faith, religion and practice can significantly reduce the focus or mission of the organization.

2. **What percentage vote of the Board** (or members) is required to amend the Bylaws? Is it a simple majority of all directors (or all members)? Is it a simple majority of a quorum (one more than one-half) of the board (or members) presents at the time of the vote (which could be just 26% of the total, for example)? Should the Bylaws, or *portions* of the Bylaws, be subject to a supermajority vote (of ALL directors or ALL members, or of just a quorum), so that key provisions (like mission, values, vote required to amend, etc.) cannot be easily changed by board member? Defining this in the Bylaws can have enormous significance and impact on future issues coming before the Board of Directors.

3. Do the Bylaws define the **qualifications or functions of Board members?** How are prospective directors nominated? What are the selection criteria? Is there a search and nominate committee? What is a director is expected to do (in addition to attending board meetings: e.g. fund raise)? What "mix" of Board expertise, personality or strength should they exhibit (e.g. always include one CPA, one lawyer, one fund raiser, one high-profile person, etc.)? Bylaws often address these issues in some detail.

4. **Size of the board, and frequency of meetings,** can be key to an organization's success, and better set in Bylaws than in board resolutions from time to time that tend to be taken

less seriously. Large (9+) boards become difficult to convene and manage. Small boards (less than 5) may become too “inbred”, lack independent thinking and not provide effective leadership. State law will require that the Board meet at least once each year elect directors (if the organization has no voting members), and elect officers (President, Secretary and Treasurer at a minimum). Quarterly meetings may be better, with one of the four mandatory meetings each year designated as the “annual meeting,” to provide a continuity of management and ongoing oversight of the organization’s programs and fund raising.

5. **Means of participation of board members:** do the Bylaws provide for meetings by conference call? By instant messaging? By email? For approval of resolutions by email or instant messaging (i.e. without a “hard signature” from the director)? Most states’ laws now provide for electronic meetings, provided that all directors can hear one another, or see one another’s e-postings/comments, at the same time, and respond (as in instant messaging, or video-teleconferencing, or by skype).

6. **Proxies.** The Nonprofit Corporations Law permits directors and members to vote by proxy, unless the Bylaws provide otherwise. Does the organization want to prevent the use of proxies—at least in certain circumstances, to make it more difficult for one or more persons to control blocks of votes to ‘get their way,’ particularly when it comes to amending the articles or Bylaws, changing certain significant policies, firing a pastor or other key employee, buying or selling the organization’s building, taking on significant debt load, and other issues of significant impact to the organization?

7. Do the Bylaws identify **specific powers** that directors can only exercise upon supermajority votes of the directors (quorum, or total board)? (E.g. acquisition of real property, incurring debt in excess of \$XXX, selling off property, engaging in certain activities, or hiring certain employees (if the organization is a membership organization).

8. **Term of Service.** Does a director serve for one, or two, or three years? Do the Bylaws provide for staggered terms and staggered voting, to maintain continuity on the Board? Can a director serve an unlimited number of successive terms? Must a director step down for a specified number of years, and then can return as director again after that? Staggered terms are common, although the IRS has recently (June 2009) opined that perhaps one-year-only terms are more appropriate for directors of publicly-traded for-profit companies. Since nonprofit corporations law has in recent years followed, to some extent, the sorts of operational guidelines provided for or required by Sarbanes-Oxley and related law and regulations, multiple year, staggered terms may become a thing of the past for larger nonprofit organizations in years to come.

9. **Removal of a Director.** How may a director be removed? What is the process for removal? Must it be “for cause,” only, and are those “causes” specified? Only mutual benefit and religious nonprofits may remove directors “without cause,” and public benefit nonprofits (nonprofit, non-religious, public charities) may not remove directors except under very limited circumstances. Bylaws should spell out how a director can be removed, if state law provides a legal method other than by court order.

10. Do the Bylaws place **restrictions** on interested (“disqualified”) persons serving as directors? Or receiving compensation if serving as a director or officer? Or receiving certain other benefits (conflict of interest issues tied to “disqualified person” tax issues) from the organization?

11. **Compensation of Directors:** Do the Bylaws address the issue of compensation to directors (acceptable, not acceptable, not acceptable if the director is a “disqualified person”)? This is typically not a subject for the Bylaws, other than to prohibit compensation of directors and officers (typical of smaller nonprofit organizations). Written policies, adopted and carefully followed by the Board, should be in place governing the manner in which the organization sets the compensation (including benefits) for its most highly compensated individuals, including in some cases a compensation committee charged with researching and knowing what reasonable compensation packages are for individuals performing the duties of the office or position being considered.

12. **Expense Reimbursement:** Do the Bylaws address the matter of reimbursing directors for out-of-pocket expenses incurred in attending a board meeting? This would be a common provision, or if not in the Bylaws, covered by a board-adopted financial Policy, or in a Board resolution.

13. **Contracts:** Do the Bylaws address the matter of contracts for services or products between the organization and directors and officers, or their related parties (family members, entities they own or control? Mutual and public benefit corporations are subject to specific rules in the Nonprofit Corporations Law regarding these matters, but religious corporations are not (but that does not mean that accountability and careful consideration should not be given). [See §§5233, 7233, 9243 of the Nonprofit Corporations Code, and §§5234, 7233(b) and 9244]. Form 990, the organization’s tax return, must disclose related-party contracts, and such information as will disclose whether the contract has the appearance and terms of a commercially reasonable, arms-length transaction, or provides a special benefit to the related party to the detriment of the organization. Bylaws, or separate board-adopted Policy, should provide careful instruction to the Board, and/or officers, governing the letting of contracts when related parties are involved. Better to avoid such transactions altogether where possible.

14. **Loans to Directors and Officers:** While California and most states’ laws do not prohibit loans to directors or officers of nonprofit corporations, the terms must be commercially reasonable to the organization, should be secured, and must be documented. Donors may not like what they see or hear about such transactions, and create significant problems by filing complaints to the State Attorney General. Further, the corporate tax return (Form 990) filed by the organization each year with the IRS must disclose the fact and terms of any loans to and from “interested persons,” which include officers, directors, key employees, and others that fit into a broad definition of “interested persons,” and information concerning the process by which the loans were made. Tax exempt status may be questioned by the IRS, or even revoked, if transactions between the organization and interested persons or related parties run afoul of regulations, or what the IRS deems fair, reasonable, or within the appropriate conduct of the

organization. Loans to the organization's officers, directors, employees, contractors, members and families should be avoided as a general rule, and always collected, on time, if made.

15. **Conflict of Interest Policies:** The Bylaws should contain a conflict of interest policy, or separate, written board-adopted resolutions setting forth such policies in detail, describing how direct or perceived conflicts must be addressed by a director or committee member, and who has the power to vote on a matter. The organization should require its directors, officers and key employees to sign conflict of interest letters each year, and/or sign addendums each year disclosing all actual and potential conflicts. If it does not, the IRS will take a closer look at, and may withhold issuance of a determination letter granting tax exempt status, for lack of an adequate conflict policy.

16. **Duty of Loyalty:** The Bylaws, or a separately-adopted policy resolution, should define the directors' duties of loyalty to the organization. This may be important to state in the Bylaws if, for no other reason, so a director reading the Bylaws for the first time learns, or for the ninth time is reminded, what his or her duties of loyalty are, and what breach of those duties can mean.

17. **Committees:** Bylaws should define what committees may be established, who can serve on them, what powers and authority the committees are granted (as limited by state law), and other pertinent matters.

18. **Audits, Audit Committees,** California law requires a separate, independent audit committee if the organization has over \$2,000,000 in assets, with limitations on who can serve on that committee. Who can, who must, and who cannot be on the audit committee? What protections are in place to ensure that that the audit committee is independent of the finance committee, and that auditors are independent from tax and accounting service providers to ensure independence and oversight? Who in the organization must sign (certify under penalty of perjury) the organization's 990 and 199 (law requires the signer certify that the form is accurate, complete, filed on time), and what duties (levels of) inquiry, inspection and understanding are (and should be) required to ensure compliance? What additional matters of financial systems, operations, oversight, independence, and accountability should be considered, and set forth in written policies adopted and enforced by the board of directors?

19. Are policies regarding **private inurement**, excessive personal benefit and self-dealing addressed in the Bylaws? (Similar to conflict of interest issues). If not, separate, board-adopted resolutions establish policy concerning this issue should be considered, or at least counsel sought from legal and/or accountant professionals about what the concept means, and how to avoid the appearance or occurrence of such an event.

20. **Removal, Discipline, Expulsion, Reinstatement of Members.** If the organization is a membership organization, do the Bylaws provide a fair and reasonable mechanism for removing, disciplining, expelling, and/or reinstating a member? Are there stated causes for the removal of a member (or director)? If not, or if the Board has not adopted and consistently applied policies for these matters, *be very careful* how the organization goes about

such a process! Current policies and Bylaws provisions should be reviewed by counsel to ensure that whistler-blower (#21 below) and/or other laws are not violated by existing provisions, or do contain provisions or provide too much latitude for such procedures that may expose the organization to liability that could more likely be avoided if tailored to current law.

21. **Whistler-Blower Provisions.** Do the Bylaws define a formal process for dealing with employee complaints or reports of alleged illegal activities in the organization? While more typically spelled out in board policies, this can be addressed in the Bylaws, and gives the organization and Board a more formal, serious statement of policy that follows the current law against retaliation against “whistle-blowers.

22. **Document Retention and Destruction Policies:** What files must be kept, and for how long? How are electronic files and voice mail maintained? What back-up procedures, check-ups re system reliability, and document retention are in place to guide the board’s Executive director and other officers in the event of litigation, or an IRS or other audit? The Board should adopt a formal written policy (not typically in the Bylaws).

23. **Privacy Issues.** The Board should adopt a Privacy Policy which addresses how the organization is to comply with applicable privacy regulations, particularly with regard to donors’ information (credit card numbers, social security numbers, and other identifications that new laws require special protections for and treatment of). This is a *very important* area of the law to taken *very* seriously. It is wise to also have a policy in place detailing the steps the organization will immediately take in the event of a breach of privacy of its records (such as in the theft of an organization’s computer on which donor data is stored).

24. **International Grant-Making Policies.** For organizations making grants to individuals and/or organizations outside the USA, do the Bylaws contain provisions detailing the manner in which such grants can be made, control and oversight safeguards, and other provisions required by applicable revenue rulings? Such policies are imperative if foreign grants are made, and while can be covered in Board-adopted policies, are also well-stated in the Bylaws as a matter of education to directors, and stressing the importance of maintaining oversight and control. IRS regulations require that “equivalency determinations” and “expenditure responsibility” be conducted, controlled and regularly documented. Memorandums of Understanding and other key documents should always be in place documenting relationships with and grants to individuals and entities outside the USA.

25. **International (or national) Micro-Business Controls.** If the organization makes grants to individuals or organizations outside the USA that do not have IRS-exemption letters (most will not), do the Bylaws (or Board policies) set forth guidelines governing the manner in which the organization will make micro-business loans, the selection process, documentation, supervision, and control vis-à-vis the organization’s stated purposes (and bases upon which the IRS granted tax exempt status)? IRS Regulations and Revenue Rulings *require* written foreign grant-making policies that include several clearly delineated elements.

24. **Encroachments, Controls, Limitations of Religious Freedom.** For religious organizations, the Bush administration's emphasis on faith-based NGO's providing services to the public sector may add considerable limitations on, or application of Federal anti-discrimination laws (employment, facilities access and use, expression) to, the ability of the organization to express and carry out its religious purposes. Further, recent aggressive ACLU activities throughout the country regarding religious organizations access to and use of public facilities for 'religious' purposes are narrowing the freedom of religious organizations to carry out their purposes in ways, or in the places, formerly available to them. This places pressure on these organizations to modify, or water down, or abandon, their religious purposes or expression of those if public grants are to be received, or public facilities used. Religious organizations will want to give careful consideration to the extent to which they prohibit deviation from the organization's original religious purposes and mission by limiting the ability of directors or members to amend the organization's Bylaws, even if this results in public funds or public facilities unavailable to the organization.

26. **Internet, Email, Social Media and Networking Policies and Procedures.** The Board should adopt a thorough policy statement concerning officers', directors' and employees' use of the organization's computers (and use by those persons of their personal computers) for organization business. Internet, email, social media and networking (e.g. Facebook, YouTube, MySpace, Twitter, LinkedIn, and many others in an ever-growing "family" of such sites) is very popular, widely used, and may be of great benefit to the organization in publicizing it's mission and branding its name, key projects, and followers. However, these sites may also be used for many other purposes, and what organization representatives are saying about the organization and its programs, or about themselves when making personal statements on organization sites, can be very detrimental to the organization. A clear, thorough written policy, signed by all organization personnel with the ability to post messages or other content on organization sites, or to access organization computers for personal use while on the payroll or volunteer time, should give the organization the right to monitor all such usage, control all such content, and discipline or terminate personnel who abuse or violate the policy (be careful of state laws regulated the termination of employees, and how the organization observes and carefully conforms its actions to its policies, consistently and regularly, fairly applied).

27. **Disclosure of Foreign Bank Accounts to IRS.** While not a Bylaw or policy issue, nonprofit organizations maintaining bank accounts in foreign countries, or individuals who are directors or officers or key employees of the organization who have signing authority on foreign bank accounts (whether in the name of the organization, or for a foreign organization in which the US organization has an affiliate relationship of some sort) must "voluntarily" report (with civil and criminal penalties for not "volunteering" such information) the existence of such relationship, each year, on a "FBAR" IRS form. The organization should instruct its accountant and attorney about such accounts, and file the appropriate form.

28. **Disclosure of Identities of Foreign Recipients of Grants.** If the organization makes grants to individuals or entities not based in the United States, Form 990 requires very specific and detailed disclosure of the identity of all those recipients. This may create untenable problems for religious organizations making grants to foreign-based religious entities in

countries which have strict laws proscribing or limiting the practice of certain religious, where disclosure of the identities of individuals or organizations in those countries (because Form 990 is a public document) could endanger the lives of individuals, and existence of the organization, identified. While also not a Bylaw or policy issue, this matter should be carefully discussed with legal counsel. There are legal and appropriate methods for managing this problem, but it must be carefully analyzed and properly handled, to not run afoul of applicable laws and regulations and therefore endanger the tax exempt status of the organization.

29. **Unrelated Business Income Tax; Social Enterprise.** While this topic is far too broad for this paper, a trade or business, regularly carried on by the organization, which is not substantially related to the organization's tax exempt purposes, may result in the imposition of unrelated business income tax ("UBIT"), and trigger a requirement to prepare and file a UBIT Tax Return with the IRS and state taxing agency. "Social Enterprise" may involve a for-profit activity conducted by the organization which benefits the public, is consistent with its tax exempt purposes, and which has both charitable, and unrelated business income tax aspects to it (e.g. Goodwill operating a kitchen staffed by handicapped individuals, which provides meals to employees and volunteers (exempt activity), while also providing for-profit (and taxable) catering services to local corporations). Legal counsel should be consulted about all income-generating activities carried on by the organization, as a number of issues arise, including whether a separate, for-profit, wholly-owned subsidiary should be formed through which to conduct the activity generating the UBIT.

A number employment-related matters not mentioned above are of great importance and legal significance to every nonprofit organization, but are not typically addressed in the Bylaws. However, in these days of rapidly changing laws regarding harassment, whistle-blowing, and other employee matters, the organization's board of directors should adopt clear policies concerning these matters.

Most financial policies are generally not covered in Bylaws, but should be in writing, adopted by the Board of Directors, and regularly reviewed and used.

Many other legal, financial and tax issues, and sub-issues within issues noted above, are pertinent to the proper organization and operation of a nonprofit, tax-exempt organization. As the laws continues to rapidly change, you are strongly advised to regularly seek legal counsel experienced in representing nonprofit organizations regarding these and related issues.