

Governing Documents of an Organization

Governing Documents

Why are governing documents so important? Sometimes it is hard to remember that the ALA as an entity is an incorporated, non-profit organization. It can be held accountable for not following state non-profit laws and the organization's own bylaws. In the worst case scenario, if an ALA organization would be sued, the courts would look at the governing documents of the organization and whether they were being followed. So while the legal system and the organization's own internal governance system are two paths, the organization still has to abide by the legal system laws that protect the rights of its members, such as the fundamental fairness of providing due process in disciplinary proceedings.

State Law – the laws of the state supersede everything. State non-profit laws mandate compliance of incorporated non-profits on topics from how meetings may be held, minimum number of directors or officers, whether an annual meeting is required, how voting may be conducted—all the way to what happens to the assets if a non-profit dissolves. It is the responsibility of each Unit, District, County, and Department to ensure their governing documents comply with the laws of their individual states. An attorney in the community might be willing to assist a Unit in reviewing its documents at a reduced fee or for free to ensure that the documents comply with the laws of its state.

Articles of Incorporation – the formal legal document filed with a state government and available to the public that describes the legal name, structure, and purpose of an incorporated organization.

Constitution/Bylaws – provide the governance structure for the organization and how it will function. It includes the basic rules that are so important that they cannot be changed without prior notice. A Unit, County, District, or Department constitution/bylaws may be patterned after and cannot be in conflict with the American Legion Auxiliary's National Constitution & Bylaws. These should be reviewed regularly, but changed infrequently. These are the basic sections of an organization's bylaws:

- Name of the organization
- Purpose
- Membership
- Officers
- Meetings
- Governing Board
- Committees
- Subsidiary Organizations
- Parliamentary Authority
- Amendment Process

Breaking it down a little more, governing documents provide details on who is eligible for and the types of membership, who can vote; the officers the organization will have and their responsibilities; how officers are nominated, elected, the term in office, vacancies filled, or how discipline is handled; types of meetings (regular, special, annual), how they will be called, the quorum needed to transact business, how they may be conducted (in person or electronically); if an executive board will exist, its composition and authority; what standing committees will exist and how new committees may be formed, their composition and scope of authority; what parliamentary authority the organization will use to govern itself (Robert's Rules or another authority—yes, there are more authorities besides Robert's Rules); and how the governing documents may be amended.

Standing Rules – here is where it gets even more detailed about administrative policies. They may be changed as the needs of the organization change: with prior notice to members, by a majority vote: by 2/3 majority without prior notice. Here are some provisions suitable for addressing in standing rules:

- Meetings – with COVID-19, meetings that were locked into a specific day and time ran into a problem when they were unable to meet. Consider carefully how specific this needs to be. Also can include annual meetings such as state convention here.
- Dues
- Elections (when, how)
- Equipment (rules for loaning, maintenance)
- Finances
 1. What the fiscal year will be
 2. Cash management and check signing procedures
 3. Rent, Utilities
 4. Special funds: poppy, ALA Girls State, VA & R
 5. Gifts (ex: retiring officers)
 6. Flowers/Gifts for funerals, illnesses
 7. Delegate expenses
 8. Contests and prizes (poppy, essays)
 9. Mandatory funds (for district/departments)
 10. Donations to programs
 11. Compliance – filing of IRS forms
- Audit of books – who will conduct the audit and when

Robert's Rules of Order, Newly Revised is the parliamentary authority of the American Legion Auxiliary and will be the authority on issues not otherwise addressed by state law, the constitution/bylaws, or special/standing rules.

Amending a Constitution/Bylaws/Standing Rules

The ALA has moved away from presenting all motions as resolutions and reserves the use of resolutions for temporary or honorary purposes. They can be prepared and distributed in advance. Think of it like this: *Whereas*, I want to give special recognition to someone or present a motion that only applies to the coming year and *Whereas*, I have a lot of reasons for this motion, and

Whereas, I wanted to explain my reasons in writing; therefore be it *Resolved*, that I present to you this formal resolution for all to admire and applaud.

A resolution, therefore, is a fancy motion. For handling the ordinary business of a Unit, a motion serves the purpose. See the **Basic Parliamentary Procedure** for details on making a motion in a meeting.

The American Legion Auxiliary national organization has moved toward using a **3-column motion form** for proposing amendments to its governing documents. This simplifies the process of presenting a motion by putting the reasoning behind the motion in plain language in the *Rationale* section at the bottom of the form. These amendments are prepared in advance and sent to the voting members. Here is what goes in each of the three columns.

Column 1:

The precise working of the existing bylaw or rule. If none currently exists, this is blank.

Column 2:

The proposed change beginning with “amend by striking out” or “amend by striking out and inserting.” Then include the existing bylaw or rule with the new words to insert in **bold** and words to be deleted with a line ~~struck through them~~. If it’s a completely new rule, the entire rule would be in bold.

Column 3:

How the bylaw or rule will read if the amendment passes.

Below the three column table, a rationale statement explains the need for the change being presented.

What’s the big deal? The words used in governing documents have precise legal meanings. If your documents say “shall,” then it means that whatever it is, it **must** happen and it must **always** happen. If an action of the organization is challenged in court, the court will look at the organization’s governing documents to see if they have been followed. So, governing documents not only explain how the organization will function and govern itself, they have a direct impact on the rights of its members. The national organization engages a professional registered parliamentarian from the National Association of Parliamentarians to review proposed amendments for clarity and consistency with our governing documents. Engaging a professional parliamentarian can save an organization a lot of time and help protect the rights of members.