

Considerations for Bylaws Amendments

Proceed Carefully

The following provides a basic overview of how to make changes to your club's bylaws.

CLUB BYLAWS are living club documents that should be reviewed by the board annually to ensure the club is evolving with the times while preserving its culture and traditions. Numerous clubs have undergone this process; however, there are careful considerations clubs should make when reviewing and changing these governing documents. Club boards should consider the legal and practical issues of a proposed bylaws amendment and how to maximize the chances of bylaws amendment approval. The following provides a basic overview of how to make changes to your club's bylaws.

The Amendment

Club board members and club managers should first decide on the specific amendments to propose to the bylaws. The bylaws may be amended solely to revise a single provision or multiple provisions, or the board may decide to adopt comprehensive amended and restated bylaws. Some clubs have trouble in obtaining quorums for member meetings, so the members voting on several amendments at one time avoids the need for the club to try to reach a quorum at multiple meetings. A club board must also decide whether members vote on the entire set of amendments as a single vote or present individual amendments as separate votes.

The board may consider amendments for different reasons, including:

- *Updating Bylaws to Reflect Actual Practice.* Clubs often issue memberships in new categories without a bylaws amendment or adopt important policies that should be incorporated into the bylaws.
- *Creating a Unified Bylaws Document.* Many club bylaws have inconsistent or

redundant provisions, and do not read like a cohesive, organized document. Such inconsistencies and redundancies may even result in ambiguity regarding members' rights, privileges and obligations.

- *Updating Bylaws to Reflect Industry Trends and Practices.*
 - *Family Privileges* – More clubs are expanding the definition of family to increase the age of included children and to recognize significant others. Some clubs in resort areas provide vertical family privileges that afford privileges to adult children, parents and grandchildren when they visit the member's home. Expanding the family definition may result in increased membership sales and improved member retention because members and prospective members may find that the ability of their family members to enjoy the club justifies the purchase of a membership or continuing to pay dues.
 - *Spouse Membership* – Some clubs title memberships in both spouses, welcoming women and recognizing the leadership roles that they play on committees and as board directors. If membership is restricted to a single member—often the male—bylaws amendments are often required for spouses to serve on the board.
 - *Junior and Legacy Programs* – Clubs are increasingly adopting junior or young executive programs for members below a certain age, with reduced dues or installment payment financing of the membership purchase, to attract younger members. Similarly, more clubs are offering

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members legacy privileges, which afford the member's adult children facilities-use privileges upon payment of dues only. Legal counsel should be consulted regarding the potential application of age discrimination laws to invalidate such programs.

- Meeting Requirement Provisions – Many clubs learned during the pandemic that bylaws provisions do not permit electronic voting and member attendance at member meetings by videoconference. In addition, many clubs find bylaws quorum requirements difficult to attain. Clubs should consider amending these provisions to make it easier for clubs to have official meetings and elections.
- Addressing Access and Use Issues. Bylaws provisions may create or

exacerbate access and use issues. Liberal guest and entity designee use privileges may permit persons to frequently use the membership of a friend or colleague without purchasing a membership or paying dues and may create compaction issues.

Legal Considerations

The club and its legal counsel should confirm that the proposed bylaws amendment is consistent with the bylaws amendment provision and is adopted in accordance with applicable legal and contractual requirements, including:

- Consistency with Corporate Statute. The proposed bylaws amendment should be reviewed for consistency with state corporate statutes. State corporate statutes often govern matters

that are also addressed in club bylaws, such as member and director meetings and voting, membership transfer and member discipline.

- Amendment Approval Requirements. The bylaws and sometimes the state corporate statutes establish requirements for approval of bylaws amendments, including whether a member vote is required and if so, what percentage of members is required to vote for the amendment.
- Consistency with Membership Agreements. A bylaws amendment may not amend express provisions in members' membership agreements. Therefore, a club should confirm that the bylaws amendment does not change a bylaws provision that is repeated in membership agreements.

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■ **Lender Approval Requirement.**

If a club loan is outstanding, the loan documents could give the lender the right to approve bylaws amendments, either generally or as to specific provisions.

■ **Consistency with IRS Code.**

For tax-exempt clubs under IRS Code Section 501(c)(7), the bylaws and amendments should be reviewed for compliance with IRS regulations, rulings and guidance.

■ **Caselaw.**

Courts in some states have invalidated bylaws amendments even if the club followed the mandated bylaws and statutory requirements on the grounds that the amended provisions take away or materially adversely affect the complaining member's vested rights or violate the club's duty of good faith and fair dealing. Below is a summary of *Share v. Broken Sound Club*, a Florida appellate court decision that provides insight on potential challenges to a bylaws amendment and how a court considers such challenges.

Share v. Broken Sound Club

In *Share v. Broken Sound Club*, in March 2021, a Florida appellate court rejected a club member's challenge to club bylaws amendments to the method of calculating dues for each category and the assessment and reserve fund use provisions, which had been adopted by the club board. The case began when the club sued Marla Share, a club social member, for unpaid dues. Share filed a counterclaim asserting that the board lacked authority to adopt the bylaws amendments and the club breached an implied covenant of good faith and fair dealing.

When Share joined the club in 2004, the board apportioned dues increases among each membership category by allocating costs to each category. In 2007, the board adopted a policy of charging an equal amount of dues

increases across all categories. In 2016 and 2017, the board adopted several amendments, including removing the requirement that dues increases be in an equal amount for every category, and allowing social members to access dining facilities to which they previously had no access. The amendments also allowed the club's reserve funds to be used to pay capital expenses for facilities used only by golf members and required social members to be charged for capital and operating expenses for the golf courses to which they do not have access. Share argued that the board, which Share alleged was controlled by golf members, breached its contractual duty under the implied covenant of good faith "when it unilaterally changed the bylaws so that it could disproportionately increase social membership dues to the direct benefit of [the golf members] and to her detriment" and amended the bylaws in an unreasonable way that favored golf members.

Before addressing Share's challenges to the bylaw amendments, the court first noted that Share entered into a membership agreement consenting to be bound by all the terms and conditions of the club bylaws. The court then noted that the bylaws in effect when Share joined the club gave the board the power to amend the bylaws, prepare and amend budgets and determine the amounts of dues, fees and charges.

The court next addressed Share's claim that the club breached the implied covenant of good faith and fair dealing. The court indicated that although every contract imposes an obligation of good faith and fair dealing, it cannot be used to vary the terms of the contract, which in the case of the Broken Sound Club, gave the board the power to establish dues and amend the bylaws. The court concluded that Share failed to demonstrate that no reasonable club board would have made the same operational decisions.

With respect to Share's other claims that the board did not have the authority to adopt the bylaws and breached the bylaws and the member's membership agreement and the board's actions were arbitrary, capricious and in bad faith, the court determined that the trial court correctly rejected such claims based on the business judgment rule. With respect to Share's challenge to the board increasing the dues on all membership categories by the same amount, the court noted that golf members still paid significantly higher dues than social members and that social members benefitted from revenue generated by the golf facilities. The court explained, "[i]t is not our role to second-guess or micromanage the dues structure of a private club simply because a new rule for dues increases may slightly benefit one membership class over another."

Share also argued that she was not bound by the bylaws amendment because her membership agreement did not qualify her agreement to be bound by the bylaws with "as they may be amended in the future," which was in other forms of membership agreement. The court responded that Share's agreement to be bound by the bylaws included being bound by its amendment provisions.

Covering All the Bases

Club management and boards should fully consider not only the bylaws amendment itself, but also possible bases to challenge the amendment, and consult with legal counsel regarding bylaws amendment requirements and whether the amendment is consistent with state corporation statute and IRS guidance in the case of a 501(c)(7) organization. **CD**



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