

**Top Ten Tips For Attorneys  
Reviewing CAA Bylaws**

Thursday, September 22, 2016

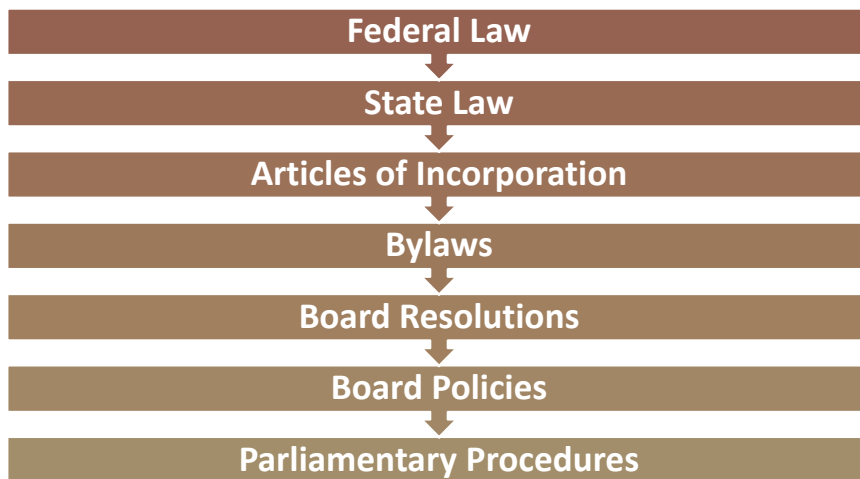
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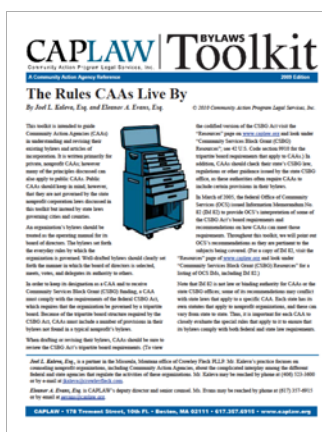
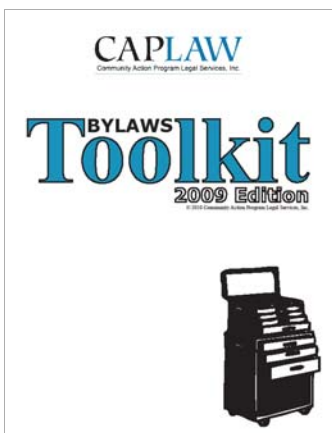
## What Laws Apply?

- IRS tax-exempt laws
- State Nonprofit Corporations Act
- Federal CSBG Act
- State CSBG statutes and regulations, if exist
- State CSBG Agreement
- OCS Information Memorandum 82 (non-binding)
- Other federal and state funding source laws and agreements; e.g., Head Start, HUD

## Which Laws Take Precedence?



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### Tip #1: Include Articles of Incorporation in Review

- If articles and bylaws not consistent, articles will trump bylaws
- 501(c)(3)s need to include specific language in articles
  - Charitable purposes and fact that purposes limited to those described in section 501(c)(3)
  - No substantial part of activities is influencing legislation

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### Tip #1: Include Articles of Incorporation in Review

- Other required 501(c)(3) language:
  - No part of earnings inures to benefit of private shareholders or individuals
  - No participation in political campaign activity
  - Upon dissolution, distribution of assets only to 501(c)(3) or to federal, state or local gov't, for public purpose

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## Tip #1: Include Articles of Incorporation in Review

- Avoid repeating provisions, such as:
  - Name
  - Purposes
  - Dissolution
- Why?
  - Ensures consistency
  - Results in more efficient board operations
  - Bylaws easier to amend

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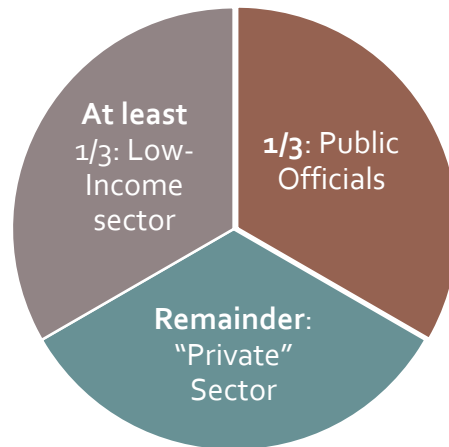
## Tip #2: Incorporate Board Composition Rules

- Federal CSBG Act (42 U.S.C. § 9910) and some state CSBG laws set tripartite board requirements
  - If state CSBG law or policy is inconsistent with federal CSBG Act, federal CSBG Act governs

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## Federal CSBG Act Requirement



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## Tip #2: Incorporate Board Composition Rules

- Board members are to be chosen by grantee
  - Must use democratic selection process for low-income board members
- Important to include general selection language establishing that CAA will vote to seat all members once specific composition requirements met

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## Public Sector Provision Recommendations

- Federal law no longer requires boards to include, or have board members chosen by, “chief elected officials.”
  - For nonprofit CAAs, best to specify in bylaws that CAA itself elects public official board members – but not specify which ones
  - For public CAAs, since governing officials of city/county usually have final say on decisions affecting CAA, encourage CAA to consider including other public officials on tripartite board

## Public Sector Provision Recommendations

- CSBG Act says “holding office at time of selection”
  - OCS IM 82 recommends that public officials serve only while they are in office
- Good idea to have specific terms rather than permitting public officials to stay on board as long as they are in public office

## Public Sector Provision Recommendations

- If elected officials not available, may include appointed officials
- Public officials may designate representatives
- For nonprofit CAAs
  - Generally, if public official designates representative to serve in his/her place, that person (and not public official) is board member

## Low-Income Sector Provision Recommendations

- Nonprofit CAA low-income representatives:
  - Must be democratically selected to assure representative of low-income people in service area
  - If chosen to represent a particular neighborhood, must live there
- Public CAA low-income representatives:
  - Must be representative of low-income individuals and families in service area
  - Must live in service area

## Low-Income Sector Provision Recommendations

- Must represent current low-income residents, but don't need to be low-income themselves
  - At least some (if not all) low-income board members should be low-income themselves

## Low-Income Sector Provision Recommendations

- Bylaws may, but do not need to (unless required by state CSBG office), describe democratic selection procedure
  - If not described in bylaws, selection procedure should be described in a separate document referred to in the bylaws and approved by the board





- ## Private Sector Provision Recommendations
- Check state CSBG statutes/regulations
    - Depending on state laws, board may choose representatives from organizations or individuals
    - If choosing reps from organizations, board has more flexibility if organizations not specified in bylaws
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## Check other funding source requirements

- For example, Head Start:



## Tip #3: Discuss Board Size Options

### Federal Law

- Does not address

### State Law

- State CSBG laws and/or state nonprofit corporation act may set minimum or maximum

### Strategic

- Manageable
- Flexible
- Divisible by 3

## Tip #4: Understand the Use of Alternates/Proxies

- Most states' nonprofit corporation laws don't permit board members to vote by proxy
- Even if state law permits alternates to vote, consider not allowing vote by alternate/proxy
  - Could permit alternates to attend meetings and report to primary board member
  - Permit attendance of board members by telephone if state nonprofit and open meetings laws (if applicable) permit

## Tip #5: Include Terms and Consider Term Limits

### Terms:

- Federal CSBG Act is silent
- Check state CSBG and nonprofit corporation laws

#### Recommendation

- Include board member terms in bylaws
  - 3 years is common
  - If not specified in bylaws, state's nonprofit law may set term

- Consider staggered terms

## Tip #5: Include Terms and Consider Term Limits

### Term limits:

- Federal CSBG Act is silent
- Check state CSBG and nonprofit corporation laws
- Some CAAs permit board members who have reached their term limits to re-join the board after a break (e.g., 1 year)

## Tip #6: Include Removal Provisions

### Recommendation

- Include removal provisions for board members and officers and use them if necessary

- Check state law for removal requirements
- Include in removal of directors provision
  - With or without cause
  - Vote needed
  - Procedures (e.g., notice, opportunity to be heard)

## Tip #7: Include Provisions for Addressing Board Vacancies

- Federal CSBG Act does not address vacancies
- Check state CSBG laws and nonprofit corporation act

### Fill vacancies ASAP

- Have a plan in place before vacancies arise

### Specify in bylaws:

- How vacancies in each sector will be filled
- Term length of replacement director
- How partial term counts towards term limits, if any

### Have full board:

- Elect replacement board members once chosen through appropriate process

## Tip #8: Include Board Meeting Procedures

### Quorum:

- Check state law. Most states' nonprofit laws require quorum to be at least 1/3 of voting board members in office
- Most nonprofits use majority of board members in office as quorum

### Recommendation

- Bylaws should state the exact fraction of voting board members then in office needed to constitute quorum

## Tip #8: Include Board Meeting Procedures

### Voting:

- Check for applicability of state's sunshine laws
- Usually act by affirmative vote of majority at meeting at which quorum is present
  - State nonprofit corp. laws sometimes require super-majority (2/3) in certain cases (e.g., amending articles or bylaws, dissolution)
- CAA can choose to require "supermajority"
- For nonprofit board members, state nonprofit corporation laws generally do not allow voting by alternate/proxy, email, or phone/email polling

## Tip #9: Establish Rules and Procedures for Board Committees

### Establish authority of committees

- Many state nonprofit corp. laws prohibit boards from delegating certain powers to committees (e.g., adopting, amending or repealing bylaws)
- Clearly indicate either in bylaws or resolution adopted by board if committee is advisory (i.e. makes recommendations) or has authority to make decisions
- Don't say: "subject to ratification by board"
- All committee recommendations and decisions should be timely reported to full board
- Use committee charters to set out responsibilities

## Tip #9: Establish Rules and Procedures for Board Committees

### Creating committees:

- Who has authority to create committees and appoint members?
- Who can be on committees?
  - Just board members as voting members?
  - Require that committees reflect tripartite board structure?

#### Recommendation

- Consider creating standing committees, such as executive, governance, finance, and personnel committees

## Tip #10: Include Provisions On Officers

- Bylaws should specify officers and their duties
  - Nonprofit CAAs: check state nonprofit corp. law as to number and specific officers required
  - State whether one person can hold more than one office
  - Require officers to be board members?
  - Note that board may appoint additional officers not specified in bylaws
- Usually board elects officers by majority vote and they serve for one-year terms
  - Require term limits?

## Tip #10: Include Provisions On Officers

### Recommendations

- Include removal and resignation procedures
- Specify how vacancies filled
- Permit officers to delegate duties to employees or agents in certain cases
- Specify whether officers required to be bonded

## Bonus Tip!

### Describe procedures for amending bylaws:

- Check state nonprofit corporations laws
- Specify notice required – decide whether to include special notice requirements if state law doesn't require them
- Specify vote required



## Bonus Tip!

### Include language re: petitioning for board representation:

- Federal CSBG Act requires CAA to establish procedures for low-income individuals, community organization, religious organization or representative of low-income organization to petition for representation

## Bonus Tip!

### Include provision specifying board/ED relationship:

#### Board:

- Hires and supervises ED
- Evaluates ED and sets his/her compensation on an annual basis
- If necessary, can remove ED

#### Executive Director:

- Acts pursuant to board's direction
- Manages day-to-day affairs
- Implements board goals & policies
- Reports on & advises board and committees re: CAA's affairs & activities
- Hires, supervises & terminates employees pursuant to board-approved personnel policies

## Bonus Tip!

### Address board compensation:

- Bylaws should state that board members will not be compensated for services as board members
- Bylaws should state that board members may be reimbursed for reasonable and documented expenses incurred in course of performing services as board members

## Bonus Tip!

### Include provision addressing signing checks and contracts :

- Can specify certain officers to sign and let board authorize, by resolution, other officers, employees and agents to sign, or
- Can leave it general and let board authorize, by resolution, specific people to sign

## Bonus Tip!

### Reference conflict of interest policy:

- Bylaws should require board to adopt and implement separate conflict of interest policy
  - Review and update periodically
- Be sure to include in conflict of interest policy other funding source requirements
  - For example, Head Start requirements regarding financial conflicts of interest, board operating independently of staff, & prohibition against employing board members & immediate family members

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