



# **Hindu Mandir Executive's Conference**

***“Temple Bylaws and Legal Implications”***

**Session 8 B, HMEC Workshop**

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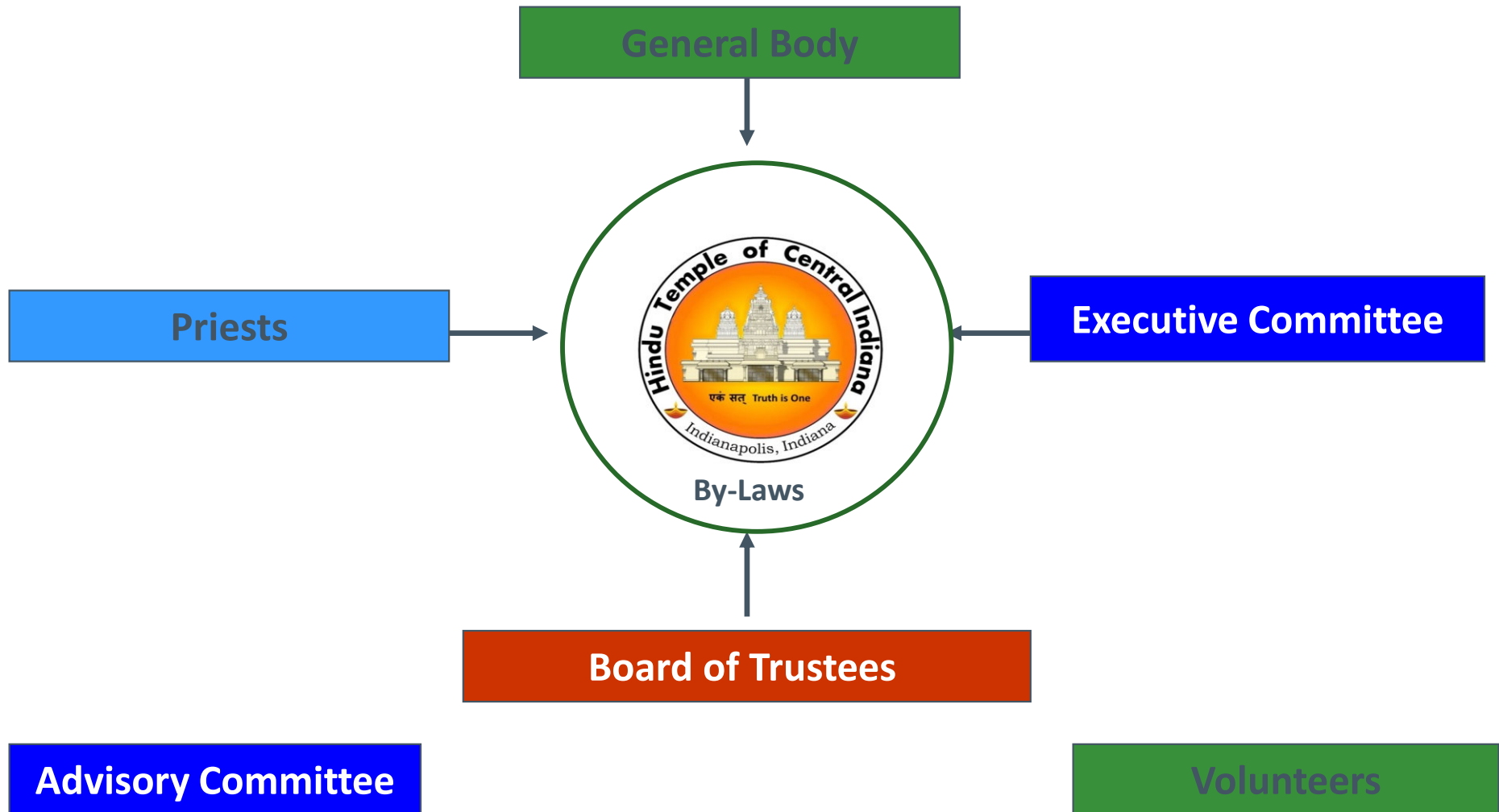


# Objectives for Workshop

- The Bylaws of a not-for-profits are legally binding rules by which the organization is governed. They set forth structure and guide Board of Directors in the conduct of its business.
- Most temples are non-for profit, which requires a copy of Bylaws to be submitted to IRS.
- In this session we will cover
  - Understand **Key Principles** that ALL Board Members should know about Bylaws
  - **Key parts** that all Bylaws should have
  - **Key Pitfalls** to be aware of and how to avoid in Bylaws
  - **Examples**



# Introduction: Together we Can Do it!!!!!!





# What Are By Laws and Why Do We Need



## By-Laws

- Bylaws are the written rules by which an organization is governed
- They set forth the structure of the board and the organization.
- They determine the rights of participants, the procedures by which rights can be exercised.
  - bylaws guide the board in conducting business.
  - Carefully crafted bylaws and adherence to them can help ensure the fairness of board decisions and provide protection against legal challenges.
- It's important to note that **bylaws are in fact legal documents**



# Key Principles of Bylaws all Board Members Should Know

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# Objectives for Workshop

- Understand **Key Principles** that ALL Board Members should know about Bylaws
- **Key parts** that all Bylaws should have
- **Key Pitfalls** to be aware of and how to avoid in Bylaws
- Draft a shell Bylaws document (Post conference)



# What are Nonprofit Bylaws

A nonprofit organization has two principal charter documents

- The articles of incorporation
- Bylaws
- Your nonprofit bylaws are both a legal document and a roadmap for your organization's action.
- A required element when forming a corporation, bylaws are a form of agreement or contract between the corporation and its owners to conduct itself in a certain way.



# Key Principles

- Legally binding document that courts will use
  - Long term document
  - Like US Constitution
- Do not put too much details in Bylaws
- Every Board has DUTY to understand bylaws
- Following Bylaws is NOT optional
- MUST be reviewed 2-3 years
- NOT Policies or Procedures





# Key Parts of Bylaws

- Your Mission Statement / Purpose
- Conflict of Interest policy
- Board Structure
  - Terms of Board Service and Term Limits
  - Removal Process
  - Board Roles and Responsibilities
  - Minimum and maximum Board Members
- Membership Provisions



## Key Parts of Bylaws (cont'd)

- Officers
  - Titles
  - Ex- officio members
  - Positions and responsibilities
  - Terms and term limits
  - How appointed / elected
- Committee structure
  - Do not need to list all committees
  - Can create by Board resolution
- Meetings
  - How to call a meeting
  - Virtual or not; email provisions
  - Quorum



## Key Parts of Bylaws (cont'd)

- Amendments
  - How to
- Dissolving the organization



## Avoid

- Board members that represent constituencies
- Large Board size
- Committee lists
- Which month certain meetings are required
- Hard copy, written notification of anything
- Any decision requiring unanimous vote



# Dos and Don'ts

Jatin Shah



# Nonprofit Bylaws Dos and Don'ts

## DOS:

- Get assistance in drafting or amending your bylaws from an expert experienced in nonprofit matters
- Stick to basics. It is good practice to think of bylaws much like the us constitution
- Know what is in your bylaws
- Follow the provisions religiously
- Keep your bylaws relevant
- Changes in your nonprofit bylaws should reported to the IRS
- Although bylaws are not public documents, it would be wise to keep them available for public viewing. Doing so will help with organization's transparency
- Bylaws should be used, changed when needed and examined often



# Nonprofit Bylaws Dos and Don'ts

## DON'T:

- Don't treat bylaws as policy and procedure manual.
- Employee vacation
- Non smoking policy.
- Above are inappropriate for bylaws
- Don't include provisions that tie the hands of future board.
- Don't fail to review the bylaws.



# Issues for Consideration: How to Avoid Traps, Pitfalls. (1)

- Understanding state's nonprofit corporation law
- Consistent with other regulatory documents.
- Be sure to address all foreseeable scenarios.
- Coordinate the actions of bylaw committee with legal advice
- Keep bylaws current.
- Keep bylaws flexible.
- Measuring effectiveness: guidance, accountability measures.  
Existing programs, considering new programs.





## Issues for Consideration: How to Avoid Traps, Pitfalls (2)

- Percentage vote of the board: is it simple majority, quorum (one more than one half )
- Qualifications or functions of board members: CPA, lawyer, fund raiser, one high profile
- Size of the board, frequency of meetings: large 9 plus become difficult to convene and manage. Small board ( less than 5 ) lack independent thinking and not provide effective leadership.
- Proxies: prevent certain circumstances like selling of building, firing of priest, taking significant debt.
- Removal of director: process, for cause, are cause specified.
- Disqualified to serve as director: conflict of interest receiving certain benefits as board member.
- Compensation of directors.



## Issues for Consideration: How to Avoid Traps, Pitfalls (3)

- Expense reimbursements
- Contracts: with family members of the directors.
- Loans to directors and officers.
- Duty of loyalty.
- Removal, discipline, expulsion, reinstatement of members.
- Document maintenance and destruction: in case of litigation, IRS audit.
- Privacy issues: donors information, credit cards, social security numbers.



# A Case Example for Discussion

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## A Case Example

- Landmark judgment (2003) could impact how temples are managed in the United States
- New York appellate court ordered fresh elections to the Board of Trustees of “XXXX Temple”
- Court reinstated members’ rights in electing the management of the 33-year old temple as it was stated in the original 1970 bylaws.
- Appellate Division said *no evidence was presented establishing that any of the current Trustees was legally elected*; thus, “*those Trustees acquired no legal right to such offices.*”



## A Case Example (cont'd)

- “We never adopted the 1970 bylaws, based on which the current judgment was made. We gave this copy of the bylaw to the Internal Revenue Service only to get a tax-exempt status,”
- “Although the temple was built to its current level through the efforts, funds and sacrifices of thousands of Hindu devotees over the past three decades, *it has never held any elections*, and has been run by a *self-appointed Board of Trustees*,”
- The temple’s Board has *allegedly* ‘revised’ the bylaws “*unilaterally*” to perpetuate themselves in office (including appointing some of themselves as ‘Life Trustees’), arrogating to themselves increasing power over the Society’s affairs and management, and excluding members’ participation.



## A Case Example (cont'd)

- “All efforts to bring transparency and democracy into the temple operation were thwarted. In turn, the temple Trustees slowly eroded the membership rights and in 2001 amended the bylaws so as to give spectator status to the members,”
- “The XXXX Supreme Court ***said the bylaw amendments made from 1978 to 2002 were invalid*** for two reasons: first, they deprived all members of voting rights and second, New York law limited the size of the board to seven, whereas the temple board had 19 trustees”



## A Case Example (cont'd)

- On appeal, the Second Department held that the 1970 bylaws, whose copies were obtained from the Internal Revenue Service by the petitioners, had never been lawfully amended.
- “It is undisputed that since the adoption of the 1970 bylaws, the Board of Trustees, acting alone purported to adopt and amend subsequent by-laws beginning in 1978 and continuing through 2002.
- There is ***no evidence in the record that the required procedures were ever followed*** to amend the 1970 by-laws,” the order stated.



## A Case Example (cont'd)

*“This landmark decision would set a precedent for all the temples in the US to observe the laws more carefully”.*





# Basic Bylaws Sections

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# Sample Section to Bylaws

- Article I: Identification
- Article II: Goal
- Article III: Objectives
- Article IV: Membership
  - Sections include: Categories of members, Membership Qualifications, Dues, Disqualification, Voting, Meetings
- Article V: Board Of Trustees
  - Sections include: number, term, composition, qualifications, vacancies, nominations/elections, Responsibilities, Meetings, Duties of Officers, Committees, Removal of members



## Sample Sections to Bylaws (cont'd)

- Article VI: Executive Committee
  - Sections include- goals, composition, terms, qualifications, vacancies, nominations/elections, responsibilities, duties of officers
- Article VII: General Body
- Article VII: Removal of members from Temple
  - Sections include- regular member, executive committee, Board member
- Article VIII: Amendments
- Article IX: Indemnification
- Article X: Dissolution