

Who makes the decisions in your not for profit corporation?

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The question of who should make the decisions in an organization is often a source of conflict between the board of directors and the members. Although the members elect the directors in most corporations, members often feel as if they are relinquishing too much power to the directors. Directors, however, need to be able to make decisions in a timely manner, and large groups such as the membership are not conducive to making timely decisions. Both parties should consider the following points.

Approving new members and board members.

Oftentimes, members are in charge of admitting new members. This is practical since volunteer ambulance services and fire departments are essentially clubs where it is important for the members to get along with each other. Thus, members often decide who will fit in to the organization.

If probationary periods are required, one suggestion is to let the board admit the member prior to the probationary period, but then to have the members approve or deny permanent membership after the probationary period has been completed.

Members are also well suited to elect the corporate officers and the directors, since the members work with their peers every week. Members should have trust in the directors they elect, and should not simply elect them as part of a popularity contest. Members should also be permitted to remove the directors for misconduct or poor attendance at director meetings.

Directors are liable for the finances of the corporation.

New York law provides that the directors in a corporation bear the liability for the financial well being of the corporation. Thus, if the members make a decision, the directors still may bear the liability for the outcome of that decision. Additionally, since decisions must be made daily, and it is almost impossible to defer all decisions until a meeting of the members, a smaller group of directors are often able to make timely decisions. Thus, directors may be better able to make the decisions on the day to day management of the corporation.

It therefore makes sense to permit the directors of the corporation to make the decisions regarding purchases and expenditures. However, if the members desire to have control over the budget, the board could be required to submit a proposed budget to the membership for approval at the beginning of the year. The budget would provide line items such as "office supplies" or "medical equipment", but would be no more specific than that. However, the directors should be free to spend within the confines of those line items. This method permits the members to understand generally where the corporation's funds will be spent. Any deviations from the line items would have to be approved by the membership.

Members may also retain control over the corporate finances by requiring the directors to obtain membership approval for all expenditures over a certain amount of money. A reasonable amount is debatable, but it should be one which is not an amount ordinarily spent to run the corporation. Amounts such as \$2,000.00 or more may be a reasonable figure requiring membership approval.

If members are not willing to give up their right to make most of the management decisions of the corporation, the board of directors could be expanded to permit as many persons to act as directors as the membership desires. You might find that people shy away from their need to approve all of the decisions if they will be legally responsible for those decisions. Be that as it may, since directors may be personally liable for their decisions or for wasting corporate assets, members who wish to make the decisions should bear the same liability.

Corporations should be careful to avoid having the members approve each of the decisions of the directors, or continually permitting the directors to act only after approval of the members.

Let the bylaws be clear.

Regardless of the decision as to who makes what decision, the bylaws should be very clear about this issue. Otherwise, directors, officers or members could be accused of taking action "without authority".

Conclusion

The membership should carefully consider who should make the corporation's decisions. Members should be sympathetic to the fact that the directors they elect could bear personal liability for their decisions. The decisions can be split between the membership as a whole and the directors. While members do not like giving up the power to make decisions, the membership should consider that there are some decisions that are better made by a smaller group in a timely manner. The members should also realize the power they could have to elect and remove directors from the board. The realization of this power may convince the members to permit directors to make most of the corporation's decisions.