

Notes of Decisions

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4. Quorum

After resignation of two vice presidents of incorporated political club leaving only seven of the previous nine members of board, five board members constituted a quorum. *Petition of Serenbets, 1943, 46 N.Y.S.2d 475, affirmed 267 App.Div. 836, 46 N.Y.S.2d 127.*

5. Lists of members

A by-law of association affiliated with membership corporation prohibiting the furnishing of a list of members without specific authorization by governing council was void as inconsistent with letter and spirit of the Membership Corporations Law. *Davids v. Sillico, 1948, 297 N.Y. 355, 79 N.E.2d 440, reargument denied 298 N.Y. 618, 81 N.E.2d 353.*

Where purpose of furnishing director of membership corporation with copy of membership list to enable him to communicate his views could be accomplished by requiring corporation at own expense to mail to the membership any communications submitted by the director, director was entitled to inspect membership list and books of account and other records which contained names and addresses of contributors, but could not make copies. *Javits v. Investors League, 1949, 92 N.Y.S.2d 267.*

In a membership corporation, members may not be precluded from inspecting list of members, but are entitled to invoke discretionary power of court to grant such relief under appropriate safeguards. *Id.*

6. Inspection of books and records

An officer or director of a membership corporation has the right to inspect the books and records thereof and may enforce that right by means of a mandamus proceeding, and application made by an officer or director must be granted if no issue of fact is presented, regardless of the motive or good faith of such officer or director. *Pino v. United Democratic Regular Organization of Sixteenth Assembly Dist., Kings County, Inc., 1959, — Misc.2d —, 195 N.Y.S.2d 860.*

In proceeding on order to show cause why membership corporation should not be ordered to allow certain corporate directors and officers to inspect and make copies of certain corporate books and records, pleadings and affidavits submitted raised no issue of fact as to petitioners' right to relief sought, and order would be granted. *Id.*

Director of membership corporation has unqualified right to inspect books and records. *Javits v. Investors League, 1949, 92 N.Y.S.2d 267.*

7. Report

This section does not require directors to file an account but a report, and if the document submitted is not inclusive of all the statutory requirements the aggrieved persons may resort to proper remedies to compel the directors to file such report. *Hamilton v. Patrolmen's Benevolent Ass'n of City of New York, 1949, 88 N.Y.S.2d 683.*

45. Mandamus

The power of mandamus may be invoked where the rights of members of a membership corporation are affected. *Pino v. United Democratic Regular Organization of Sixteenth Assembly Dist., Kings County, Inc., 1959, — Misc.2d —, 195 N.Y.S.2d 860.*

ARTICLE VII—CONSOLIDATION

Sec.

51. Consolidation of foreign and domestic membership corporations [New].

52. Approval by the supreme court [New].

§ 50. Consolidation of domestic membership corporations

Any two or more membership corporations incorporated under or by general or special laws, for kindred purposes, may enter into an agreement for the consolidation of such corporations and such corporations

may be consolidated so as to form a single corporation which may be either a new corporation or one of the constituent corporations, by the filing of a certificate which shall be entitled and endorsed "Certificate of consolidation of and..... into..... pursuant to section fifty of the membership corporations law" (the first two blank spaces being filled in with the names of the constituent corporations and the last space being filled in with the name of the corporation which is formed by or which is to survive the consolidation) and which shall state:

1. The name of each corporation to be included in the consolidation and the date of filing of its certificate of incorporation in the office of the secretary of state, unless the corporation was duly incorporated in some other manner, in which case the certificate shall state the date and manner of such incorporation, or if any such corporation was created by a special law and has no certificate of incorporation, the chapter number and year of passage of such law.

2. The name of the consolidated corporation, which name may be that of any of the constituent corporations or any other name permitted under the provisions of section nine of the general corporation law.

3. The territory in which its operations are principally to be conducted.

4. The city, village or town and the county, within the state, in which its office is to be located.

5. The number of its directors or that the number of directors shall be not less than a stated minimum nor more than a stated maximum. In either case the number of directors shall be not less than three.

6. If the consolidated corporation is to be a new corporation, a statement to that effect and the names and residences of the persons who are to be its directors until the first annual meeting, and if any such director shall reside in a city, the street and number or other particular description of his residence. The number of the directors so named must be the number stated pursuant to the last preceding subdivision of this section if a definite number be stated, or, if an indefinite number be provided for, not less than the minimum number.

7. If the consolidated corporation is to be one of the constituent corporations and not a new corporation, a statement to that effect.

8. The terms and conditions of the consolidation, and the mode of carrying the same into effect.

Such certificate may contain such other provisions, not inconsistent with the agreement for consolidation, as might be included in a certificate of incorporation pursuant to article two of this chapter, and such other provisions as are deemed necessary or proper in connection with the consolidation.

Such certificate shall be either: a. Subscribed and acknowledged, in person or by proxy, by every member of each constituent corporation entitled to vote thereon, and shall have annexed an affidavit by the secretary or an assistant secretary of each such corporation that the persons who have executed the certificate, in person or by proxy, include all of the members of such corporation entitled to vote thereon; or

b. Subscribed and acknowledged by the president or a vice-president and the secretary or an assistant secretary of each constituent corporation, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes, cast in person or by proxy, of two-thirds of the members of such corporation entitled to vote thereon, at a meeting held upon notice as prescribed in section forty-three of this chapter and the date of such meeting; or

c. In the case of each constituent corporation having more than five hundred members, subscribed and acknowledged by the president or a vice-president and the secretary or an assistant secretary of the corporation, who shall make and annex an affidavit stating that they have been

authorized to execute and file such certificate by the votes cast by two-thirds of the members of such corporation entitled to vote thereon, present, in person or by proxy, at a meeting held upon notice as prescribed in section fifty-three of this chapter at which a quorum of the members entitled to vote with respect to consolidation was present, in person or by proxy, and the date of such meeting.

For the purposes of the affidavits required by paragraphs (b) and (c), a resolution of the members approving the agreement of consolidation as provided in section fifty-two of this chapter shall be deemed to authorize the filing of the certificate of consolidation upon approval by the supreme court of the agreement of consolidation, as provided in section fifty-two, notwithstanding any modification of the agreement directed by the order of the court, unless the resolution approving the agreement or the order of the court expressly directs that a further authorization be obtained from the members in such event, before filing of the certificate.

Such certificate shall have annexed thereto a certified copy of the order of the supreme court approving the agreement for consolidation and authorizing filing of the certificate, as provided in section fifty-two of this chapter.

If the corporate purposes of any constituent corporation are purposes for which a corporation could be created under this chapter only upon the written approval of a state or local board, body, or officer, the written approval of such board, body, or officer shall also be annexed to the certificate. As amended L.1944, c. 106, L.1953, c. 843, § 1, eff. Sept. 1, 1953.

Catchline amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 added "of domestic membership corporations".

Opening par. amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 among other changes substituted "so as to form" for "into", inserted "which may be either * * * constituent corporations," and in parenthesis substituted "first two blank * * * last" for "blank" and inserted "or which is to survive".

Subd. 1 amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 inserted "unless the corporation * * * of such incorporation".

Subd. 2 amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 substituted "any other" for "an entirely new".

Subd. 4 amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 inserted "within the state".

Subd. 6 amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 substituted "If the consolidated * * * effect and the" for "the" and inserted "persons who are to be its".

Subd. 7 added by L.1953, c. 843, § 1, eff. Sept. 1, 1953. Former subd. 7 was renumbered 8.

Subd. 8, formerly 7, as amended by L.1944, c. 106, renumbered 8 and amended by L.1953, c. 843, § 1, eff. Sept. 1, 1953. L.1953 substituted "and the mode * * * into effect," for "if any".

For Note of Commission on L.1953, c. 843, see note under section 51.

Forms for Membership Corporations Law

Affidavit of Authority of Officers to Execute and File Certificate of Consolidation, see Form No. 1560, Volume 4, Bender's Forms for Consolidated Laws: Agreement for Consolidation of Domestic Membership Corporations, see Form No. 1561.

Certificate of Consolidation of Domestic Membership Corporations, see Form Nos. 1562, 1562a.

Notice of Meeting to Vote Upon Consolidation of Membership Corporations, see Form No. 1558.

Resolution of Members Approving Consolidation, see Form No. 1559.

Notes of Decisions

3. Notice

Even if notice of meeting at which consolidation of membership club was voted was not given at least ten days before meeting and votes cast for consolidation were not by at least $\frac{2}{3}$ of members entitled to vote,

where treasurer did not act until a lapse of almost a year after the meeting, seven months after court approved the certificate of consolidation, and five months after club held election, consolidation could not be upset on such grounds. *Liberal Civic Club v. Poli*, 1954, 284 App.Div. 1057, 135 N.Y.S.2d 814.

§ 51. Consolidation of foreign and domestic membership corporations

1. One or more domestic membership corporations incorporated under general or special laws for kindred purposes, except a cemetery corporation, may be consolidated with one or more non-stock and non-profit corporations organized for kindred purposes under the laws of one or more other states or of one or more of the territories of the United States or by or under an act of Congress, if the laws of such state or states, territory or territories or acts of Congress, as the case may be, so permit, so as to form a single corporation, which may be either a new corporation or one of the constituent corporations, by the filing of a certificate which shall be entitled and endorsed "Certificate of consolidation of and into pursuant to section fifty-one of the membership corporations law" (the first two blank spaces being filled in with the names of the constituent corporations and the last space being filled in with the name of the corporation which is formed by or which is to survive the consolidation).

2. If the consolidated corporation is or is to be a domestic corporation, such certificate shall state:

(a) The name of each corporation to be included in the consolidation, and in the case of a corporation incorporated under the laws of this state, the date of filing of its certificate of incorporation in the department of state, unless the corporation was duly incorporated in some other manner, in which case the certificate shall state the date and manner of such incorporation, or if any such corporation is created by special law and has no certificate of incorporation, the chapter number and year of passage of such law, and in case of a corporation incorporated under the laws of another state or territory, or by or under an act of Congress, the name of the jurisdiction under the laws of which it is incorporated, the date and manner of its incorporation, and, if it is created by special act, the identification of such act and the year of its passage, and if it is authorized to do business in this state, the date of its certificate of authority.

(b) The name of the consolidated corporation, which name may be that of any of the domestic constituent corporations or any other name permitted under the provisions of section nine of the general corporation law.

(c) The territory in which its operations are principally to be conducted.

(d) The city, village or town and the county, within the state, in which the office of the corporation is to be located.

(e) The number of its directors, or that the number of directors shall be not less than a stated minimum nor more than a stated maximum. In either case the number of directors shall be not less than three.

(f) If the consolidated corporation is to be a new corporation, a statement to that effect and the names and residences of the persons who are to be its directors until the first annual meeting, and if any such director shall reside in a city, the street and number or other particular description of his residence. The number of the directors so named must be the number stated pursuant to subparagraph (e) of this section if a definite number be provided for, or if an indefinite number be provided for, not less than the minimum number.

(g) If the consolidated corporation is to be one of the constituent corporations and not a new corporation, a statement to that effect setting forth the name of such surviving constituent corporation.

(h) The terms and conditions of the consolidation and the mode of carrying the same into effect.

4. cation of unauthorized act

Although the secretary of a membership corporation had no authority to make a contract of lease, yet where his act in so doing was within the knowledge of the board of governors, and the corporation held a meeting on the premises and transacted business there, there was sufficient evidence to warrant the trial judge in submitting to the jury the question of a ratification of the secretary's act by the corporation. *Fischer v. Motor Boat Club of America*, 1908, 61 Misc. 66, 113 N.Y.S. 56.

ARTICLE VII—CONSOLIDATION

Sec.

50. Consolidation.

51. Effect of consolidation.

Historical Note

Title of article and schedule of sections amended by L.1926, c. 722, § 1; L.1939, c. 115, eff. March 23, 1939. Former Article 7 was omitted by the general amendment of 1926.

§ 50. Consolidation.

Any two or more membership corporations incorporated under or by general or special laws, for kindred purposes, may enter into an agreement for the consolidation of such corporations and such corporations may be consolidated into a single corporation by the filing of a certificate which shall be entitled and endorsed "certificate of consolidation forming pursuant to section fifty of the membership corporations law" (the blank space being filled in with the name of the corporation formed by the consolidation) and which shall state: 1. The name of each corporation to be included in the consolidation and the date of filing of its certificate of incorporation in the office of the secretary of state, or if any such corporation was created by a special law and has no certificate of incorporation, the chapter number and year of passage of such law.

2. The name of the consolidated corporation, which name may be that of any of the constituent corporations or an entirely new name permitted under the provisions of section nine of the general corporation law.

3. The territory in which its operations are principally to be conducted.

4. The city, village or town and the county in which its office is to be located.

5. The number of its directors or that the number of directors shall be not less than a stated minimum nor more than a stated maximum. In either case the number of directors shall be not less than three.

6. The names and residences of the directors until the first annual meeting, and if any such director shall reside in a city, the street and number or other particular description of his residence. The number of the directors so named must be the number stated pursuant to the last preceding subdivision of this section if a definite number be stated, or, if an indefinite number be provided for, not less than the minimum number.

7. The terms and conditions of the consolidation, if any.

Such certificate shall be either: a. Subscribed and acknowledged, in person or by proxy, by every member of each constituent corporation entitled to vote thereon, and shall have annexed an affidavit by the secretary or an assistant secretary of each such corporation that the persons who have executed the certificate, in person or by proxy, include all of the members of such corporation entitled to vote thereon; or

b. Subscribed and acknowledged by the president or a vice-president and the secretary or an assistant secretary of each constituent corporation, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes, cast in person or by proxy, of two-thirds of the members of such corporation entitled to vote thereon, at a meeting held upon notice as prescribed in section forty-three and the date of such meeting.

Such certificate shall have indorsed thereon or annexed thereto the approval of a justice of the supreme court of the judicial district in which the office of the corporation is to be located. The petition for such approval shall set forth the agreement for consolidation, a statement of all the property and liabilities and of the amount and sources of the annual income of each corporation.

If the corporate purposes of any constituent corporation are purposes for which a corporation could be created under this chapter only upon the written approval of a state or local board or body, the written approval of such board or body shall be annexed to the certificate. As amended L.1935, c. 431; L.1939, c. 115, eff. March 23, 1939.

Historical Note

Section amended in its entirety by L.1935, c. 431, eff. April 23, 1935.

Par. 2 amended by L.1939, c. 115, eff. March 23, 1939.

Prior to the general amendment by L.1926, c. 722, the subject matter of this section was contained in former section 7 as amended by L.1916, c. 421; L.1924, c. 327. Said section 7 was derived from the Membership Corporations Law of 1895, c. 559, § 7, as amended by L.1902, c. 439; L.1905, c. 663; L.1906, c. 493, § 1.

Cross References

Merger of stock corporations, see Stock Corporation Law, § 85.

Notes of Decisions

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1. Corporations entitled to consolidate

The plaintiffs were a majority of the board of directors of the Musical Mutual Protective Union, a membership corporation organized under the laws of this state, which was affiliated with the American Federation of Musicians, an unincorporated association having members in different states. In the by-laws of the Protective Union appeal from any decision of the board of directors to the executive board and the convention of the federation was provided for. It was decided that while the primary purpose of the federation was the formation of unions not incorporated under the laws of any state, this did not prevent a local union becoming incorporated and thereafter affiliating with the federation, but that if such corporation was accepted by the federation the acceptance was subject to the laws of the state under which the local union was incorporated. *Kunze v. Weber*, 1921, 197 App.Div. 319, 188 N.Y.S. 644.

The Young Woman's Association of Troy, a corporation organized under L.1848, c. 319, could consolidate with the Young Women's Christian Association of the City of Troy organized under former section 140 of this chapter, although the latter corporation was composed exclusively of persons conforming to the Protestant faith while some of the members of the former were of a different faith. *Matter of Young Women's Ass'n*, 1915, 169 App.Div. 734, 155 N.Y.S. 838.

A membership corporation could not legally consolidate with a religious corporation organized under L.1813, c. 60, as provided in former section 12, now section 13, of the Religious Corporations Law, as the former was not in any sense a religious corporation. *Selkir v. Klein*, 1906, 50 Misc. 194, 100 N.Y.S. 449.

2. Compliance with section, necessity

Where two corporations made an agreement "to consolidate the assets and members of the two corporations—to combine them under a slightly different name," but did not attempt in any way to comply with the statutory provisions touching the consolidation of such corporations, the agreement was clearly ultra vires and a single dissenting member of one of the corporations could maintain an action to set aside the agreement and to restrain the corporation from proceeding therewith. *Davis v. Congregation Beth Tephila Israel*, 1899, 40 App.Div. 424, 57 N.Y.S. 1015.

A consolidation even though assented to by all of the members of the corporation is void if not accomplished in the manner prescribed by law. *Chevra Benat, etc., v. Chevra Bikur, etc.*, 1898, 24 Misc. 189, 52 N.Y.S. 712.

3. Notice

Former section 7 required that notice be given to interested parties of the hearing of the application for consolidation and an order of consolidation which does not recite that such notice was given would be vacated. In *Lodge Principle, etc.*, 1917, 166 N.Y.S. 452. See also, *Agoodash Achim of Ithaca, N.Y., Inc. v. Temple Beth-El, Inc.*, 1933, 147 Misc. 405, 263 N.Y.S. 81.

4. Filing of certificate

Where the Supreme Court has made an order consolidating two membership corporations, and the court's direction that it be entered in the proper

county clerk's office has been complied with, it is proper, upon request so to do, for the secretary of state to file a certified copy thereof in his office. 1912, Op.Atty.Gen. 353.

5. Termination of old corporations

It seems that the existence of the consolidated corporations ceases upon complying with the provisions for consolidation and an entirely new corporation comes into existence which cannot be said to be a partnership of the old ones. *People v. Rice*, 1890, 57 Hun 486, 11 N.Y.S. 249, affirmed, 1891, 128 N.Y. 591, 28 N.E. 251.

6. Injunction restraining consolidation

A preliminary injunction having been granted restraining the consolidation of two corporations, the Court of Appeals refused to dissolve the same on appeal, as the case was not one in which it was clear that the plaintiff was not by settled adjudication entitled to final relief. *Young v. Rondout, etc., Gaslight Co.*, 1891, 129 N.Y. 57, 29 N.E. 83.

§ 51. Effect of consolidation

The consolidated corporation shall possess all the powers of the constituent corporations, and shall have the power and be subject to the duties and obligations of a membership corporation formed under this chapter for like purposes. All the rights, privileges and interests of each of the constituent corporations, all the property, real, personal and mixed, and all the debts due on whatever account to either of them, and other things in action belonging to either of them, shall be deemed to be transferred to and vested in such consolidated corporation without further act or deed; and all claims, demands, property and every other interest shall be as effectually the property of the consolidated corporation as they were of the constituent corporations, and the title to all real estate, taken by deed or otherwise under the laws of this state, vested in either of the constituent corporations shall not be deemed to revert or be in any way impaired by reason of the consolidation but shall be vested in the consolidated corporation.

Any devise, bequest, gift or grant contained in any will or other instrument, in trust or otherwise, made before or after such consolidation, to or for any of the constituent corporations shall inure to the benefit of the consolidated corporation; and so far as is necessary for that purpose, the existence of such constituent corporations shall be deemed to continue in and through the consolidated corporation.

The consolidated corporation shall be deemed to have assumed and shall be liable for all the liabilities and obligations of the constituent corporations in the same manner as if such consolidated corporation had itself incurred such liabilities or obligations. As amended L.1939, c. 115, eff. March 23, 1939.

quires privacy be protected). Thus they are *not public documents*, as court and other public records (such as a charter) usually are.²⁹

Waiver of Bylaws. Even on its members, or on informed third persons, an organization can waive the binding effect of its bylaws.³⁰ This can be done by resolution or by action contrary to the bylaws. These actions amount to adopting a different bylaw for the particular matter.

§ 103. Relationship Between Charter and Bylaws

Bylaws are the secondary law of the organization; the charter is its primary law. But ordinarily these supplement each other. Therefore, the bylaws must be interpreted in the light of the charter. Similarly, the charter sometimes can be interpreted by viewing the bylaws as an elaboration of its general terms. But if there is a conflict between the charter and the bylaws, the charter must govern.³¹

Bylaws always must be consistent with the provisions of the charter. Otherwise they are of no effect.

The charter, being on file in a public office (*e.g.*, in the secretary of state's office and in the county clerk's office), is constructive notice, to third persons, of what it contains. This is not true of the bylaws. Only members and those third parties who have actual knowledge of their provisions ordinarily are charged with knowledge of them. (See the foregoing section.)

Bylaws need not be so-entitled in order to be such. Whatever they are called, if they have the nature of bylaws that is what they are.³²

Neither the charter nor the bylaws may override statutes or ordinances. But statutes, ordinances, and the duly-issued regulations of governmental administrative agencies may override both the charter and the bylaws.³³

Either the charter or the bylaws may specify the quorum required for a general meeting, and make other such provisions. But today's charter ordinarily contains little more than a statement of the purpose of the organization. The bylaws therefore must do most of the providing for operation and management. They must at least provide for the election of directors and officers, and specify their powers and duties.³⁴

Members of the organization have an inherent right to see and make extracts from the bylaws, at reasonable times (*i.e.*, during business hours). Directors have not only an absolute right, but also a duty, to see the bylaws and familiarize themselves with their provisions.³⁵ The charter, being a public record, is available at the county clerk's office for inspection by any person who cares to see it (the certified copy there on file); and anyone may obtain a certi-

d copy by paying the fee charged by the county clerk (usually about 50 cents per page of photostatic copy).

§ 104. Contents of Bylaws

It should be obvious that there is no fixed form for bylaws. They must be tailored to the purpose and special situation of each organization. Their content, length, and amount of detail are largely a matter of common sense. Like a lady's dress, they should be long enough to cover the subject and short enough to invite study.

Corporate and non-corporate bylaws. Differences in details are dictated by the unincorporated or incorporated status of the organization. If the organization is incorporated, many details are covered by the corporation laws of the state. It is generally true that the bylaws of a corporation need not be quite as detailed as those of an unincorporated association.

Yet, it is wise to think of probable difficulties before they arise. It is good general policy to provide in advance in the bylaws for many possible eventualities. This includes both corporate and non-corporate bylaws.

Forms of bylaws for unincorporated associations are provided in Chapter IV.

Forms for corporations are provided in Chapter XIV.

Contents of bylaws. Typical important provisions in the bylaws of any organization are these:

1. Purposes stated in the charter should be restated in somewhat greater detail.
2. Qualifications for membership, methods of admission of members, rights and privileges.
3. Initiation or admission fees, dues, termination of membership for non-payment or otherwise.
4. Rules for withdrawal, censure, suspension, and expulsion of members (including appeals).
5. Officers' titles, terms of office, times and manner of election or appointment, qualifications, powers, duties, and compensation (for each office, respectfully).
6. Vacancies in offices or on the board of directors: when they shall be deemed to require action, and the method of filling such vacancies.
7. Voting by the members, including what number shall constitute a quorum. This may include cumulative voting, voting by bondholders on the basis of the number of bonds held, and other such special provisions, in many states, but not in all. Voting procedures should be carefully detailed.

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8. Meetings for elections and for other than election purposes, including notice and agendas (general and special meetings).
9. Voting qualifications, individually or by groups.
10. Directors' (or trustees') qualifications.
11. Classification of directors (or trustees) into two, three, four, or five classes, each to hold office so that the terms of one class shall expire every year.
12. [Optional] Executive committee of the board of directors to exercise all (or certain) powers of the board between board meetings.
13. Directors' titles, terms of office, times and manner of election, meetings, powers, and duties.
14. Convention and assembly rules (if part of a larger organization).
15. Property holding and transfer.
16. The seal: its adoption, custody, and method of use.
17. Bank depository, and which officers may act for the organization.
18. Bonding of the treasurer and other officers and agents.
19. Fiscal details: fiscal year, regular (at least annual) audits of books.
20. Principal office, and other offices.
21. Books, records, and reports.
22. Amendment methods and rules, for the charter as well as for the bylaws.
23. Principal committees.
24. Dissolution procedures.
25. Disposition of surplus assets on dissolution (following the cy pres doctrine, whereby trust funds go to a similar purpose).

POINTS TO REMEMBER

- Adopt a full set of bylaws soon after organization—but not hastily.
- Tailor your bylaws to your organization's purposes and capabilities and to hard facts. Suit them to your special situation and prospects.
- Do not simply copy another organization's bylaws.
- Do not let amateurs draft the bylaws. An attorney's aid is invaluable.
- Have only a charter and bylaws. Avoid use of a third "constitution." It usually causes confusion.
- Do not try to operate without bylaws.
- The members should control the adoption and amendment of the bylaws—always.
- Give amendment powers to the directors only in minor matters, and with plenty of caution and safeguards.

But do not shackle the directors and then expect good results.

Resolutions are not bylaws.

Use resolutions for temporary problems.

Use bylaws for permanent or recurrent problems.

Keep a resolutions book. Index it.

Provide detailed rules for adoption of amendments.

Avoid amendments when they are not really necessary. Too many amendments lead to confusion.

Remember that outsiders are not bound by what is in the bylaws unless you can prove they had actual knowledge of their contents.

Charter is primary; bylaws are explanatory and regulatory.

Draft your bylaws with care, thoughtfully.

FOOTNOTES TO CHAPTER XIII

¹ Griffith v. Klamath Water Assn., 68 Ore. 402; 137 P. 226; Van Atten v. Modern Brotherhood of America, 131 Iowa 232; 108 N.W. 313; N.Y. Memb. Corp. L. § 20.

² Re Flushing Hospital, 27 N.Y.S.2d 207; affd., 262 A.D. 749; 28 N.Y.S.2d 155; affd. and modified, 288 N.Y. 125; 41 N.E.2d 917; Hornaday v. Goodman, 167 Ga. 555; 146 S.E. 173; State ex rel. Schwab v. Price, 121 Ohio 114; 167 N.E. 366. Secondary to charter: Christal v. Petry, 275 A.D. 550; 90 N.Y.S.2d 620; affd., 301 N.Y. 562.

³ See, Curless v. Watson, 180 Ind. 86; 102 N.E. 497, 499; as to "regulations," generally. See forms of regulations in chapters IV and XIV of this book.

⁴ Fairhope Single Tax Corp. v. Melville, 193 Ala. 289; 69 S. 466, 470. If Constitution and bylaws conflict, constitution governs. Thompson v. Wyandanch Club, 70 Misc. 299; 127 N.Y.S. 195.

⁵ Black's Law Dict. 385 (4th ed., 1951).

⁶ N.Y. Memb. Corp. L. § 20; N.Y. Gen. Corp. L. § 14(5).

⁷ Steen v. Modern Woodmen of America, 296 Ill. 104; 129 N.E. 546; Interstate B. & L. Assn. v. Wooten, 113 Ga. 247; 38 S.E. 738.

⁸ Thus, in N.Y. Memb. Corp. L. § 43, a meeting for such amendment must be called as the statute directs if "the manner of calling the meeting is not prescribed [in the bylaws]."

⁹ N.Y. Gen. Corp. L. § 27; Re Buckley, 183 Misc. 189; 50 N.Y.S.2d 54; Arizona Southwest Bank v. Odum, 38 Ariz. 394; 300 P. 195.

¹⁰ N.Y. Gen. Corp. L. § 27; Rogers v. Hill, 289 U.S. 582; 53 S.Ct. 731; revg., 62 F.2d 1079; Templeman v. Grant, 75 Colo. 519; 227 P. 555. Or by general resolution: Hingston v. Montgomery, 121 Mo. App. 451; 97 S.W. 202.

¹¹ See, Benintendi v. Kenton Hotel, Inc., 181 Misc. 897; 45 N.Y.S.2d 705; affd., 50 N.Y.S.2d 843; modified, 294 N.Y. 112; 60 N.E.2d 254; noted, 45 Columbia L. Rev. 960 (1945); which led to revision of N.Y. Stock Corp. L. § 9 in 1948 and 1949.

¹² Bay City Lumber Co. v. Anderson, 8 Wash.2d 191; 111 P.2d 771; noted, 30 Calif. L. Rev. 195 (1942); Pomeroy v. Westaway, 70 N.Y.S.2d 449; In re Ivey v. Ellington, 42 A.2d 508 (Del.).

¹³ Conley v. Texas Division of United Daughters of the Confederacy, 164 S.W. 24, 26 (Tex. Civ. App.); Ex parte Hague, 104 N.J. Eq. 31; 144 A. 546, 559.

¹⁴ Ex parte Hague, n. 13, above.

¹⁵ Usage: Bay City Lumber Co. v. Anderson, 8 Wash.2d 191; 111 P.2d 771, noted, 30 Calif. L. Rev. 195 (1942); Elliot v. Lindquist, 94 Pittsb. L.J. 295 (1946, Ct. Com. Pl., Alleg. Co., Penna.). Non-usage: Pomeroy v. Westaway, 70 N.Y.S.2d 449. Inconsistent action: Hill v. American Coop. Assn., 195 La. 590; 187 S. 241; noted, 3 La. L. Rev. 235 (1940). Unanimous consent: In re Ivey & Ellington, 42 A.2d 508 (Del.).

¹⁶ In re Ivey & Ellington, n. 15, above.