

A Primer on Membership in Nonprofit Organizations

Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

MANP contracted with Robert H. Levin, Attorney at Law (www.roblevin.net), to draft this whitepaper, which is provided solely for informational purposes, and no one should rely on it as legal advice. You are strongly encouraged to consult a qualified attorney for advice on any particular situation.

Purpose

- ▶ To clarify the difference between casual usage of the word “member” and the legal definition
- ▶ To help nonprofits determine if membership in the legal sense is appropriate for their organizations

Membership in Nonprofit Organizations

In my decade of working with Maine nonprofits, I have come across all manner of questions and confusion concerning membership. Do we have members? Should we have members? What does it mean to have members? Can we switch from a membership organization to a non-membership organization? Allow me to take a moment of your time to address a few of these options.

One key distinction to appreciate from the outset is that the term “member” has a specific definition under the Maine Nonprofit Corporation Act, as well as a more colloquial usage that may be different for certain organizations. Under the Nonprofit Corporation Act, a member is a person (either an individual or an entity) “having membership rights... in accordance with the provisions of its articles of incorporation or bylaws.” Thus, to determine if an organization has “legal members,” as I shall call them, one consults the articles and bylaws. Hopefully, these two documents are in sync on the issue, although occasionally an organization’s articles will discuss members but the bylaws will not, or vice versa. (Also note that “members” are different from “directors.” A Maine nonprofit corporation must always have a board comprised of at least three directors. But it may or may not have legal members. Creating some confusion, a director is sometimes referred to as a member of the board, but this is a casual usage and is different from a legal member of the

corporation.)

At the same time, there are many organizations that do not have legal members (i.e., their articles and bylaws do not call for members), but that nevertheless refer to their donors as “members.” This practice is perfectly acceptable, and can be an effective fundraising strategy by building a sense of ongoing identity with donors. However, the distinction between “legal members” should be kept clear, so as to avoid confusion internally or with those members.

For an existing organization, it is critical to know whether it has legal members because the Nonprofit Corporation Act grants them certain rights, such as access to records and the calling of meetings. Typically, but not always, articles of incorporation and bylaws give legal members the right to elect board directors. Occasionally, legal members also have rights to approve certain key decisions. Furthermore, the Nonprofit Corporation Act requires a corporation to keep accurate membership records, which is essential as a practical matter because in the event of a membership vote, it is necessary to know how many members constitute a quorum and/or a majority. These calculations become impossible if no one can figure out how many members exist in the first place.

As a general matter, when I am helping a nonprofit corporation start up from scratch I usually recommend not establishing legal members unless there is a good reason to do so. For example, certain founders want to purposefully cultivate a grass-roots base of supporters who will play a role in decision making; legal membership makes sense in this context. But barring this exceptional circumstance, as a matter of simplicity, the fewer moving parts to an organization, the lighter the administrative burden and the less of a chance that something can go wrong. As a non-membership organization, there are only two key arms to the organization, the board and the staff. The principal arguments in favor of membership are that members make an organization more democratic and broad-based, and provide an additional check on a potential rogue board. Although this argument has merit, I have generally found that having members adds a third arm whose advantages often do not outweigh the drawbacks.

It is not uncommon for an organization to have been established with legal members years ago, without much thought given to the matter. Often, in the hustle and bustle of things, the membership aspect has withered away and the organization is no longer following its burdensome, albeit well-intentioned, articles and bylaws provisions on membership. A Board in this position can do one of three things: It can amend the articles and bylaws so as to become a non-membership organization (although usually this step requires the vote of the members, so can be easier said than done). It can change its practices so as to start complying with the membership provisions. A third and perilous option is to ignore the issue, and hope no one notices or cares.