

Guides to Use in Writing Bylaws

Mike Van Roy, National Bylaws Chair, Phi Chi Theta

Writing bylaws, standing rules, and amendments to these is not like writing an English paper or business report. Of course the normal rules of grammar, spelling, punctuation and context apply. However, unlike writing to impress your boss or your teacher you are creating a governing document. You are creating a document that spells out exactly how an organization is to be managed now and in the future. The goal is consistency throughout the document.

The bylaws or standing rules should be written as if a single person wrote the entire document. This is easier said than done. In most cases they are written by a committee or group that changes membership over time. Having said that, using the same language and terminology throughout the document and sticking to an outline goes a long way toward overcoming this problem. Unless there is some higher rule or statute requiring specific language plain English usually works best. I have seen people who normally write very well try to make bylaws an exercise in legalese or put text into the bylaws that looks good at first but years later nobody knows how to interpret what was voted on. We want to avoid this whenever possible.

Below are examples of recent bylaw proposals to use as a *guide* in preparing your proposals. Unless otherwise noted these are all examples that were voted on in 2014.

Strike or **strike out** is to be used when you want to remove existing text. Other words like “remove” or “take out” should not be used when amending bylaws.

Insert is to be used when you want to add new text. Other words like “add” or “add in” should not be used when amending bylaws.

An example of strike out, insert and how to use them in preparing amendments is given below:

Present Form	Proposed Form
SECTION 8. NATIONAL INSURANCE ASSESSMENT FEE. Each local chapter shall be assessed a fee according to its membership as of January 31 of the fiscal year. The fee shall be five dollars (\$5) per active member. The total fee is due to the National Headquarters by March 1 of the fiscal year. The monies collected by this fee shall be used to cover insurance premiums.	SECTION 8. NATIONAL INSURANCE ASSESSMENT FEE. Each local chapter shall be assessed a fee according to its membership as of January 31 of the fiscal year. The fee shall be <u>ten dollars (\$10)</u> per active member. The total fee is due to the National Headquarters by March 1 of the fiscal year. The monies collected by this fee shall be used to cover insurance premiums.

Not all bylaw proposals will require striking out and inserting. Sometimes you may want to strike something and replace it with nothing. Other times you may want to create a new bylaw where one does not currently exist. Here is an example of a strikeout where no new text is added.

Present Form	Proposed Form
b) Approval – Every candidate for membership in a Collegiate Chapter shall be approved scholastically in writing by the office of the school, and shall be regularly elected before being invited to join the Chapter.	Strike this bylaw

Here is an example of inserting new text into an existing bylaw.

Present Form	Proposed Form
2) Candidate Eligibility – Any student fully matriculated in a College or School of Business Administration or specializing in Business and/or Economics in a college or university, is eligible for membership.	2) Candidate Eligibility – Any student fully matriculated in a College or School of Business Administration or Department of Economics or <u>minoring in Business and/or Economics in another School or College</u> is eligible for membership.

You might even want to create an entirely new bylaw where none exists currently.

Present Form	Proposed Form
New Bylaw	SECTION 3(A)(6). <u>Develop, adopt, and implement any necessary policy or procedure to effectively manage Fraternity operations and membership services.</u>

“Strike out” and “insert” are often used when dealing with a small amount of text. If your amendment would otherwise involve multiple strike outs and inserts, it is often better to use **replace**. This is especially if you are rewriting a section instead of tweaking it. You are replacing an entire block of text with something new.

An example of “replace” is given below:

Present Form	Proposed Form
Article VIII, Section 3, Subsection D – Voting By Mail	(New) Article VIII, Section 6 – Electronic Meetings and Voting By Mail
The Executive Council may take votes by mail from its members on any special matter which requires action on behalf of the National Chapter, and the circumstances do not warrant the expense of calling an Executive Council meeting.	<u>The Executive Council, Executive Policy Board and Board of Directors may hold meetings and take votes by electronic means and / or take votes by surface mail from its members on any special matter which requires action and the circumstances do not warrant the expense of calling an in-person meeting.</u>

Note that this example could have been presented as a strike/insert. However, the sentence has been significantly restructured. It is usually less confusing to people if you describe this as a replacement instead of a striking out and inserting.

Sometimes all you want to do is **add** to what is already there. You are not inserting something between two other things so insert should not be used here.

An example of “add” is given below:

Present Form	Proposed Form
<u>C. Vacancies:</u>	<u>C. Vacancies:</u>
<i>(Text that is not changing has been omitted)</i>	<i>(Text that is not changing has been omitted)</i>
A member who serves as Chairman of the Executive Policy Board under this provision; will remain in office until death, resignation, or when replaced by a subsequent, eligible Immediate Past National President.	A member who serves as Chairman of the Executive Policy Board under this provision will remain in office until death, resignation or when replaced by a subsequent, eligible Immediate Past National President.
	<u>An immediate past officer who has not completed the term that officer was elected or appointed to shall not be eligible to</u>

become Chairman of the Executive Policy Board.

Note that the preceding text did not change. We simply added to what was already there.

Caution: It is not enough that the new text you are adding relates to the sentences above it. It must also relate to the Article and Section of what you are amending. Often when people write bylaws there is a mad scramble to get everything down on paper and soon you are writing on something that has nothing to do with the topic at hand. Bylaws are outlines, not essays. If the Article is on Committees and you are documenting how to remove someone from office, you have gone too far.

The danger here is if later on someone needed to look up a specific topic, such as how to remove someone from office, he wouldn't know where to look. He would not think to look under the article on Committees or the section on Nominating Committee or the subsection on Elections. (Even Elections should not be under an article on Committees because it has nothing to do with that topic.) You might even have information on a topic in two otherwise unrelated Articles. What is in one Article might even conflict with what is in the other Article. Too much of that and often the only way to resolve it is to draft replacement bylaws and start over from scratch. That is a huge task to undertake.

Here is an example of relocating text that you want to keep but another article or section is a better fit for it. In this case the text was originally in the section on electing local collegiate and alumni chapter officers but had nothing to do with that topic

.....

Present Form	Proposed Form
ARTICLE X – LOCAL ADMINISTRATION SECTION 3(B). Rights, Powers, And Duties: The officers' rights, powers, and duties of Alumni Chapters shall be the same as for the Collegiate Chapters, except for the right to pledge and initiate members, which is vested only in Collegiate Chapters	ARTICLE X – LOCAL ADMINISTRATION (NEW) SECTION 2(G). Rights, Powers and Duties: The officers' rights, powers, and duties of Alumni Chapters shall be the same as for the Collegiate Chapters, except for the right to pledge and initiate members, which is vested only in Collegiate Chapters

Sometimes the text is fine but the wording of the bylaw title needs to be changed.

.....

Present Form	Proposed Form
ARTICLE VII NATIONAL CHAPTER DUES AND FEES	ARTICLE VII NATIONAL CHAPTER DUES, FEES, <u>SUBSCRIPTIONS AND FINES</u>

Shall is used if you want to mandate that someone do something in the bylaws. “Will” or “must” are not the correct words to use. Unfortunately, in everyday language the word shall has a different meaning than when in bylaws. When you ask someone “Shall I _____?” you are making an offer or a suggestion. In bylaws you are mandating something be done, not making a suggestion. This is a common point of confusion and it is easy to see why. Nevertheless “shall” is the correct word.

The following example from our 2012 bylaw proposals shows why it can be problematic if your bylaws go back and forth between “shall” and “will” or “must”:

Present Form	Proposed Form
SECTION 2 (A) (3). INTENTION.	SECTION 2 (A) (3). INTENTION.
Each candidate must have expressed a firm intention to complete the course and receive a degree	Each candidate shall have expressed a firm intention to complete the course and receive a degree.

Proposed changes

Amend by striking out “must” and inserting “shall.”

Rationale

“Shall” is the bylaws language for something that is mandatory.

Proviso

If adopted, the fifteen other places that the word “must” is used will be changed to “shall.” These places are:

- ARTICLE V, Section 2. C.
- ARTICLE VI, Section 3. B. 3.
- ARTICLE VIII, Section 8.
- ARTICLE IX, Section 2. A.
- ARTICLE IX, Section 2. A. 1.
- ARTICLE IX, Section 2. A. 2.

ARTICLE IX, Section 2. B. 5.

ARTICLE IX, Section 2. C.

ARTICLE X, Section 3. A.

ARTICLE X, Section 3. C.

ARTICLE XI, Section 3.

ARTICLE XI, Section 6.

ARTICLE XI, Section 7.

ARTICLE XIII, Section 3.

ARTICLE XIV, Section 1. paragraph 2.

Someone actually had to go through the bylaws, find every instance of the word “must”, and replace it with the word “shall”. Microsoft Word and similar programs can do this fairly easily. Adobe Acrobat is not quite up to that yet unless you are using one of the professional versions. Even then you would need a Word copy of the bylaws to make the edit and one isn’t always available. There is still the matter of voting on the changes. This is the kind of bylaws change that people don’t like wasting too much time on. They would rather deal with more substantive issues. It is better to not make the mistake in the first place.

May is used if you want the bylaws to grant permission for something but not make it a requirement. “Can” is not supposed to be used in bylaws. As with the shall-will/must issue it is important to use the correct word throughout the bylaws so they do not need to be changed later. Although it is not as pervasive, since bylaws are usually intended to restrict rather than allow, it can still be an issue. Fortunately, you do not run into the issue you do with shall-will/must with “may” having one meaning in one context and a different meaning in another context.

Below is an example also from our 2012 bylaw proposals.

Present Form	Proposed Form
SECTION 3 (A)(2). OTHER CHAPTER MEMBERS.	SECTION 3 (A)(2). OTHER CHAPTER MEMBERS.
If no officer (as specified in Section 3-B-1, above) is able to serve as National	If no officer (as specified in Section 3-B-1, above) is able to serve as National
Delegate, a member of the chapter may be selected to fill the position. However, this can only be done upon approval of the National President based on the recommendation of the chapter's Regional Director.	Delegate, a member of the chapter may be selected to fill the position. However, this <u>may</u> only be done upon approval of the National President based on the recommendation of the chapter's Regional Director.

Proposed changes

Amend by striking out “can” and inserting “may.”

Rationale

“May” is the bylaws language for something that is not mandatory.

Proviso

If adopted, the two other places that the word “can” is used will be changed to “may.” These places are:

ARTICLE VIII, Section 2., D.

ARTICLE VIII, Section 3., B., 6.

Sometimes a change to a bylaw somewhere necessitates changes elsewhere to stay consistent. A minor change somewhere can have ramifications throughout the document. This is often one of the most difficult parts of writing bylaws and even the “experts” get it wrong on occasion. All instances where the bylaws will need to change should be listed in the proposal. This ensures consistency as well as prevents the need to vote on each change individually. Below is an example.

Present Form	Proposed Form
New Bylaw	<u>Prior to any voting matters at a National Chapter Meeting those Alumni-at-Large who are present shall caucus to elect an Alumni-at-Large Delegate. This person shall have all the rights and responsibilities of a National Delegate insofar as possible with the exception that the Alumni-at-Large Delegate shall not have a vote for Regional Director.</u>

Proviso

If this proposal passes then consequential amendments shall be considered adopted to add the Alumni-at-Large Delegate position where the National Delegate position currently exists:

- Article VI - National Chapter
Section 3 - Composition
- Article IX - National Chapter Meetings
Section 1 - Meetings
Subsection B - Representation
- Article IX - National Chapter Meetings
Section 1 - Meetings

Subsection F – Expenses of National Chapter Representatives

- Article IX - National Chapter Meetings
Section 2 – Election of National Officers

Subsection B – Nominations

Paragraph 5- Nominations From The Floor

- Article IX - National Chapter Meetings
Section 2 – Election of National Officers

Subsection D – Emergency Election Procedure