

September 6, 2017

TO: Board of Directors
FROM: Heller An Shapiro; Kevin Goldberg, Fletcher, Heald & Hildreth
RE: Bylaws Review

Background:

ArtStream's Bylaws were last revised March 12, 2013. An amendment changing the terms from 2 years to three years was approved October 6, 2016 (Addendum attached). Updating the Bylaws allows us to clarify how the board operates and brings us one step closer to applying for the Maryland Standards of Excellence accreditation.

Proposal:

ArtStream's legal counsel proposes options for several amendments. After discussion of the options at the September 6, 2017 meeting, the Bylaws will be revised according to the Board's recommendations, and additional wording changes and edits will be made. A vote for amendment can be taken at the November 16, 2017 meeting. Additional discussion with legal counsel is also available.

BYLAWS OPTIONS FOR AMENDMENT

ARTICLE IV. BOARD OF DIRECTORS

Proposal: Add a new section on the powers of the Board:

Option A:

The business and affairs of ArtStream shall be managed by its Board of Directors. The Board of Directors shall have all powers and responsibilities conferred upon the Board of Directors of a nonprofit corporation by the State of Maryland, as now or hereinafter amended, except as such powers or responsibilities may be limited by the Articles of Incorporation or these Bylaws.

Option B:

The business and affairs of ArtStream shall be managed under the direction of its Board of Directors, which shall determine matters of policy in accordance with the provisions of the Articles of Incorporation, these Bylaws and the State of Maryland. The Board of Directors may delegate the management of the activities of ArtStream to any person or persons, management company or committee however composed, provided ArtStream's affairs shall be managed, and all corporate powers shall be exercised under the ultimate direction of the Board of Directors.

Rationale: This is a new section designed to clarify the Board's powers and responsibilities.

ARTICLE IV. SECTION 4.05. REMOVAL

Proposal: Add more specifics about how a Director may be removed.

CURRENT BYLAWS: Section 4.05. Removal. A director may be removed, without cause, as determined by a two-thirds vote of the Board present at any meeting at which there is a quorum. In addition, any member of the Board of Directors may be removed for a substantial cause by the majority vote of the Board present at any meeting at which there is a quorum. Substantial cause shall include failure to participate in the activities of the Board of Directors as evidenced by the failure to attend at least three (3) consecutive meetings by the Board of Directors.

Option A:

A director may be removed, without cause, as determined by a two-thirds vote of the Board present at any meeting at which there is a quorum. In addition, any member of the Board of Directors may be removed for a substantial cause by the majority vote of the Board of Directors. A vote for removal may occur at any meeting of the Board of Directors convened in compliance with these bylaws, provided that written notice of the intention to consider removal of such Director has been included in the notice of the meeting. No Director shall be removed without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

Option B:

The Board of Directors may remove any Director, with or without cause, at the annual or special meeting by the affirmative vote of two-thirds of the members present at the meeting, provided a quorum is present. The notice of the meeting at which the removal of a Director is to be considered must state that one of the purposes of the meeting is to vote on the removal of the Director.

The Board of Directors, by the affirmative vote of a majority of the Board of Directors then in office, may remove a Director who: (1) has been declared of unsound mind; (2) has been convicted of a felony; (3) has been found by a final court order to have breached a duty as a Director; or (4) has missed three (3) or more meetings in any twelve-month period without being excused.

Rationale: This would clarify how and why a Board member may be removed from office. Guidelines help the Board make these decisions objectively.

SECTION IV. 4.07. COMPOSITION

Proposal: Add a new statement regarding nondiscrimination.

Option A:

The Board elects individuals of any race, color, national and ethnic origin, gender or creed to the Board. It does not discriminate on the basis of race, color, disability, national

or ethnic origin, or gender in its review and election of candidates for election to the Board.

OPTION B:

The Board of Directors shall, at all times, be composed of persons dedicated to the mission of ArtStream, possessing the skills to govern ArtStream and inclusive of the diversity of the community being served, taking into account race, gender, economic status, age, subject matter expertise, and other factors.

Rationale: Maryland Nonprofits Standards of Excellence recommends that organizations have a policy of nondiscrimination. It is not needed legally in the Bylaws. Whichever policy the Board adopts can be amended to cover employees and volunteers in a Personnel Policy manual.

ARTICLE V. ELECTED OFFICERS OF THE CORPORATION.

Proposal: Add new section describing the Board's role in managing the Executive Director.

OPTION A:

- (a) In addition to the other Officers of ArtStream specified in these Bylaws, the Board of Directors may appoint an Executive Director. The Executive Director shall be the chief executive Officer of ArtStream and report to the Board of Directors. The Executive Director shall, subject to the direction of the Board, (1) be responsible for general supervision of the business and affairs of ArtStream, (2) be responsible for providing leadership and direction to ArtStream and (3) establish and maintain management systems needed to ensure and report on the implementation of policies established by the Board of Directors.
- (b) The Executive Director, who shall serve at the will of the Board, shall be appointed by a majority of the Directors of ArtStream then in office. The Executive Director may be removed, with or without cause, by a majority of the Directors. The Executive Director shall report to the Board and between Board meetings to the Chair.
- (c) In the event that the current Executive Director is unable to fulfill his or her duties for an extended period of time, the Board may appoint an acting Executive Director whose responsibilities and authority shall terminate upon the return of the Executive Director

OPTION B:

The Board of Directors shall have the authority to appoint an Executive Director. The Executive Director reports to and serves at the pleasure of the Board of Directors. The executive director shall be responsible for the day-to-day operation of ArtStream and its headquarters office, which responsibilities include supervising staff, responding to press and other non-member inquiries, maintaining regular books of account, and signing and executing all contracts and other instruments or obligations in the name of the association, and such other duties and responsibilities as the Board of Directors deems necessary.

Rationale: Clearly define the Board's role in hiring the Executive Director and define roles/responsibilities for each.

ARTICLE VI. MEETINGS. SECTION 6.03. SPECIAL MEETINGS

Proposal: Specify how many Directors are needed to call a special meeting of the Board.

CURRENT BYLAWS: Section 6.03. Special Meetings. Special meetings of the Board shall be held at any time and at any place when called by the Chairperson or by at least three Directors. Business transacted at special meetings shall be confined to the purposes of the meeting stated in the notice of the meeting.

Option A:

Special meetings of the Board shall be held at any time and at any place when called by the Chairperson or by at least three Directors or twenty-five percent (25%) of the Board, whichever is greater. Business transacted at special meetings shall be confined to the purposes of the meeting stated in the notice of the meeting.

Option B:

Special meetings of the Board shall be held at any time and at any place when called by the Chairperson or by at least three Directors or twenty percent (20%) of the Board, whichever is greater. Business transacted at special meetings shall be confined to the purposes of the meeting stated in the notice of the meeting.

Rationale: This should be enough people to make sure a special meeting is called with good reason, and not so many people that the standard is too difficult to meet.

ARTICLE VI. MEETINGS. SECTION 6.04. NOTICE OF MEETINGS.

Proposal: Add new section to define how many people are needed to take an action in writing without a meeting.

OPTION A:

Any action which may be properly taken by the Board of Directors assembled in a meeting may also be taken without a meeting, if unanimous consent in writing setting forth the action taken is signed by all of the Directors entitled to vote with respect to the action. Such consent shall have the same force and effect as a vote of the Directors assembled and shall be filed with the minutes.

OPTION B:

Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting, if a unanimous written consent that sets forth the action to be taken is signed by each Director of the Board of Directors and filed with the minutes of proceedings of the Board of Directors.

OPTION C:

Any action required or permitted by the articles of incorporation or bylaws, or the laws of the State of Maryland, to be taken at a meeting of the Directors of ArtStream, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by two thirds of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be described as such.

Rationale: This defines how action can be taken via a mail vote when necessary. So far we have not had difficulty getting 100% of the Board to take action in writing between meetings. These votes were validated by a quorum at Board meetings and are legally binding in Maryland, but without a policy in the Bylaws, these mail votes were in violation of our Bylaws. As the Board grows, getting 100% consensus in a timely way could become more challenging. However, there should also be a balance between expedience and consensus.

ARTICLE XV. AMENDMENTS

Proposal: Change the “simple majority” to allow a 2/3 vote to amend the bylaws.

CURRENT BYLAWS: ARTICLE XV. AMENDMENTS

These bylaws may be amended by a simple majority of the Board of Directors present and entitled to vote at a meeting at which a quorum is present. Any proposed amendment(s) must be submitted to the Directors in writing with written notice of the meeting to decide on the proposed amendment(s) at least ten (10) days prior to the meeting date.

OPTION A:

These bylaws may be amended by two thirds (2/3) vote of the Board of Directors present and entitled to vote at a meeting at which a quorum is present. Any proposed amendment(s) must be submitted to the Directors in writing with written notice of the meeting to decide on the proposed amendment(s) at least ten (10) days prior to the meeting date.

Rationale: Since a majority is required for all other decisions, the final amendment decision can be completed by a 2/3 majority. Given the 10-day notice period, all Board members would have an opportunity to weigh in prior to the vote, even if they cannot attend the actual vote.

ADDENDUM From the October 6, 2016 Board Meeting Minutes

BYLAWS AMENDMENTS

Board members reviewed the following proposals for amendments to the March 12, 2013 Bylaws:

ARTICLE IV. Section 4.04. Term. ~~The initial Board members shall be divided into two approximately equal groups, one-half (1/2) of the members to serve for an initial term of one (1) year and one-half (1/2) to serve an initial term of two (2) years or until a successor is duly elected.~~ No person shall serve more than ~~three (3)~~ two (2) consecutive full terms on the Board of Directors. Persons serving an initial term of less than ~~two (2)~~ three (3) years may serve for ~~two (2)~~ one (1) additional ~~two~~ three (3) year term. After serving the maximum time allowed, a person may again serve after being off the Board of Directors for one year.

ARTICLE V. Section 5.02. Term. Officers shall serve a term of ~~two (2)~~ one (1) year and until their successors are elected, or until they are removed for cause.

ARTICLE V. Section 5.08. The Duties of the Secretary. The Secretary shall keep or cause to be kept, accurate minutes of the Board's meetings, see that all notices are duly given in accordance with the provisions of these Bylaws or as required, ~~by custodian of ArtStream's records, keep a register of the post office address of each Board member,~~ and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Chair or by the Board.

ARTICLE V. Section 5.09. The Duties of the Treasurer. The Treasurer ~~oversee the deposit of funds of ArtStream into the proper accounts; the reconciliation of all receipts and disbursements from such account or accounts; assure the bookkeeper is keeping accurate records of the finances of ArtStream; prepare a financial accounting for each Board meeting; and oversee all end of the year accounting~~ shall oversee the implementation of the Financial and Investment Policies and the performance of an annual audit by a certified public accountant; assure that all federal and state tax reports are filed; and, further, shall report on the financial condition of ArtStream at all regular meetings of the Board of Directors and at all other times as determined by the President of the Board.

Board members agreed to remove the Board Officers from the actual business management of ArtStream. Members discussed implementing three, three-year terms. It was agreed that outgoing Board members' service is valuable on committees or advisory boards, so two, three-year terms will work best.

A motion was made to approve the Bylaws Amendments as written. The motion carried without dissent.