

Steel Erectors Association of America, Inc.

Justification for Amendments to Bylaws

And

Synopsis of Suggested Amendments to Bylaws

Overview

Bylaws, along with the Articles of Incorporation of an entity together form a roadmap for governance. Corporations are governed by state law. The Steel Erectors Association of America, Inc. (“SEAA”) is a nonprofit corporation organized under the laws of the State of North Carolina. Such laws provide minimum and default standards if the Articles of Incorporation or Bylaws of a corporation are silent on an issue and sometimes provide a commonly followed rule on a matter. However, using such rules as a baseline, a corporation can build into its Bylaws specific decisions on certain governance matters.

Bylaws for a nonprofit corporation should be helpful to members and a Board of Directors, provide guidance on common matters, spell out liability protections and define the relationships that form the power structure for the corporation. By comparison, a for-profit business corporation is controlled by the largest stockholders.

Amendments to Bylaws are a serious matter, should be made carefully and not often. For this reason, detailed policies and procedures and matters more appropriate for a membership manual, that may be changed more often than the Bylaws, should not be in the Bylaws. Such detailed matters can be referenced in the Bylaws or just exist as companion documents.

The “Amended and Restated Bylaws of the Steel Erectors Association of America, Inc.”, (June 27, 2022), are presented for consideration to the Board of Directors of SEAA in draft form. This version of the Bylaws has been discussed at length with the Board Task force charged with this assignment, and drafted by this author with significant input from the Task Force members and from Pete Gum, Executive Director. Stephen Safran, Esq. and Landis Barber, Esq. of the Safran Law Offices provided consultation on North Carolina law.

Once the Bylaws are voted upon by the Board of Directors for recommendation to the membership of SEAA, the Bylaws will be sent to the members for official adoption.

Justification for Amending the Bylaws

The Bylaws of SEAA were last amended in 2016. Since that time, certain changes have been made to North Carolina nonprofit law; changes that should be helpful to nonprofit corporations and that should be reflected in their Bylaws. The amendments presented here incorporate those changes in the law, are intended to reflect how the governance of SEAA actually operates, to simplify governance and to incorporate best and common practices.

Synopsis of Suggested Amendments to Bylaws

The main changes between the March, 2016 Bylaws of SEAA and the June 27, 2022 Amended and Restated Bylaws of SEAA are these:

1. Throughout, and except in referring to the title of SEAA, the word “association” has been replaced with the word, “corporation.” SEAA, is a corporate structure per North Carolina law. A corporate structure of “association” can have different legal connotations than those of a corporation. A corporation has more liability protection for those who govern it than an association. SEAA can be called anything, but when referring to its corporate structure in Bylaws, contracts and filings, the defining word, “corporation” should be used.
2. Items that appeared to be detailed policies or procedures in the current Bylaws were removed in the Amended and Restated Bylaws. It is recommended that certain matters, such as conflict of interest, be covered by policy instead. Policies can be changed more often and with less governance complexity than Bylaws. Throughout, there is mention of a “Membership Manual.” It is recommended that detail on membership fees, application forms, etc. be placed in a Membership Manual to be used more like a set of procedures, again, for ease of changing detail as often as is needed. The Membership Manual should also be user friendly to new and aspiring members.
3. An index was added, for ease of reading and use. The index includes hyperlinks to each **Article** and **Section** of the amended and restated Bylaws.
4. The Bylaws are entitled “Amended and Restated Bylaws...”. With this title, it is clear that the “new” Bylaws replace and supersede the “old” Bylaws in their entirety.
5. **Article I** deals with the general nature of the corporation. Many details, such as the location of the principal office of the corporation are kept vague on purpose: so those details can be changed without a change to the Bylaws.
6. In **Article I** the manner of giving notice was applied to all instances in which notice must be given except, where it is noted later on in the Bylaws, in a few instances where a different notice is required under the Articles of Incorporation, the Bylaws or the law. The detail in this **Article I**, **Section 7** is from the North Carolina Nonprofit Corporation Act, (the “N.C.N.C.A.”, which is referred to numerous times in these amended and restated Bylaws.
7. A provision for electronic transactions was added to **Article I** as is allowed under the N.C.N.C.A.
8. The “purpose statement” was left out of **Article I**, as this is a legal pronouncement that belongs in the Articles of Incorporation. Changing the purpose statement in the Articles requires a special kind of vote. It cannot be changed as easily as the Bylaws can be changed.
9. **Article II** deals with all things related to the voting members of the corporation. Primarily, and unless the corporation decrees otherwise, the voting members elect the Board, remove Board members when necessary and approve the Bylaws pursuant to recommendations from the Board, and vote on certain significant other fundamental changes, like major changes to the Articles of Incorporation, or merger or dissolution of the corporation. Generally, all other matters are delegated to the Board of Directors. Although there were some changes to wording in the sections of this **Article II**, most of the member concepts remained the same. The wording was changed in many sections to allow for clarity in comparing the role of the members to the role of the Directors. Detail on how a member can be terminated was added. Under the law, the process for termination must be “fair” and **Section 7** of this **Article II** describes a typical type of fair process. Under the amended and restated Bylaws, a two-thirds (2/3) vote of Directors at a duly convened meeting is necessary to suspend or expel a member. Updates in the law allowed for the changes in how member meetings can be held and in how actions can be taken without a meeting. It is suggested that the percentage of members necessary to call a meeting

of the members be reduced to five percent (5%) of the active voting members in good standing, in order to ensure that a quorum can be reached for a meeting of the members. The categories of voting members were changed to reflect the times and now consist of Industry Members, (both on and off-site), Associate Members and General Members.

10. Sections were also added to **Article II** to address the use of the corporation name, logo, color and fonts, the manner and the timing of the Annual Meeting of members, the conduct of member meetings and the financial liability of members. Issues such as voting lists and proxy voting (available for members only) are reflective of the N.C.N.C.A.
11. **Section 18 of Article II** indicates an important change to allow for member action on a matter outside of holding an actual meeting of the **members**, by electronic means or ballot.
12. **Article III** deals with all matters involving the Directors of the corporation. This **Article** is significantly different from the section on Directors in the current Bylaws. In general, in the Amended and Restated Bylaws, the number of Industry, Associate and General Directors on the Board of Directors is now reflective of the number of members in each category.
13. In **Section 2 of Article III**, It is suggested that the number of Directors, after a period of transition, be no more than nineteen (19). In general, six (6) directors will be elected each year for a three (3) year term, staggering the terms, and the Immediate Past-President will be appointed for one (1) year, bringing the total number of Directors to nineteen (19). This should be an easy number of Board members to elect and from which to establish quorum to hold a meeting. The three (3) year term exists under the current Bylaws, There are no limits on the number of terms that a Director can be re-elected to or to serve. A new Director will be elected, or in the case of the Immediate Past-President, appointed, in or near April of each year and begin to serve on July 1 of that same year. This strategy is expected to be consistent with the fiscal year of the corporation. The corporation's Executive Director and its Counsel shall continue to serve on the Board of Directors (*ex officio*) without a vote.
14. **Sections 3 – 6 of Article III** are all either new or revised to be consistent with current law and to add important governance information.
15. An Annual Meeting of the Board is not necessary under the law, but this concept was carried over from the current Bylaws in **Section 7 of Article III**. The Annual Meeting of the Directors is here used as an opportunity to elect Officers from among the newly re-constituted Board in or near April of each year to begin on July 1 of that same year. To allow for the consistency of nineteen (19) Board Directors, from which Officers are chosen, Officers will serve a one (1) year term, but may be re-elected for consecutive terms.
16. **Sections 11-14 of Article III** describe what is allowable as committees under the law, and goes into detail on the composition, membership and duties of each standing committee. The only standing committees noted at this time are the Executive, Nominating and Finance Committee. There is quite a bit of new detail for the Nominating Committee. Nominations for Directors and Officers can come from the Nominating Committee and for Directors, from petition of members via the Nominating Committee. Nominations for Officers can also come from the floor at the Board annual meeting for election of Officers. The Board can add additional committees, especially *ad hoc* committees.
17. **Section 16 of Article III** provides an expansion to the current concept of action of the Directors without a meeting. The methodology for Directors is different than the methodology for members.

18. **Section 17** of **Article III** clarifies that the presiding officer of Board meetings is the President of the Board and goes on to show a hierarchy of those who can chair a meeting in the absence of the President or other Officer.
19. Most of the remainder of **Article III** details conflict of interest avoidance matters and important information about immunity and liability protections that should be mentioned in Bylaws.
20. **Article IV** details all matters concerning Officers and adds an important section on standards of conduct for Officers. It is suggested that the term of office for an Officer be one (1) year with the possibility to serve a consecutive one (1) year term. Since Officers are also Directors, a one (1) year term works better than a two (2) year term when linked to a Director serving a three (3) year term. There will be two (2) Vice Presidents; one (1) for Industry and one (1) for Associate/General members. There is an important change in **Section 5**, indicating that if a vacancy occurs in the office of Immediate Past-President, the President may appoint a replacement from among all of the past presidents of the corporation. Removal of an Officer requires a two-thirds (2/3) vote of Directors.
21. **Article V** carries over the concept of disqualification from the current Bylaws.
22. **Article VI** clarifies the position, reporting and compensation establishment for the corporation's Executive Director, to be in line with industry norms. This position was given its own **Article VI** in the amended and re-stated Bylaws. This is a section that is often overlooked in Bylaws, but often proves to be important in establishing the role of the Executive Director vis-a-vis the Board. The SEAA Executive Director is named as an *ex officio* Board Director without a vote, as has been the case to date
23. **Article VII** expands upon indemnification from the current Bylaws and contains important language.
24. **Article VIII** provides a different strategy for Bylaws amendments. Because SEAA is a member-driven organization, the Board first approves recommendation of amended Bylaws to the members and the members supply final approval. The current Bylaws will have to be amended per the rules under the current Bylaws. After the June 27, 2022 Bylaws are approved, the next revision will follow the June 27, 2022 rules for such amendment. The Board recommendation and the final member approval of amended Bylaws should be signed and dated by the Secretary of the corporation, then added to the corporation's records.

Susan A. Ott, Esq.

Owen Law Group, LLC

6-27-22