

GUIDE FOR BOARD OF DIRECTORS — SECTION 16.020 — OF GRAND LODGE STATUTES



Benevolent and Protective
ORDER OF ELKS
of the USA

Issued by the Committee on Judiciary



Elks Care — Elks Share

Introduction

This guide has been prepared to assist Members of Local Lodges who serve on existing Local Lodge Boards of Directors to understand their duties and responsibilities under Grand Lodge Statute (GLS) 16.020 and related authorities of the Order.

It should be noted that any corporation must also be in compliance with applicable state law requirements which are beyond the purview of the Committee on Judiciary and should be addressed with an attorney or other person knowledgeable in that area of the law.



Background.

The Members of Lodges in our Order have traditionally had the right to determine which type of entity their Lodge will exist as, most typically an unincorporated association or a corporation. For Lodges choosing to incorporate, they are subject to the provisions of GLS 16.020. For Lodges choosing to be unincorporated, they will sometimes establish a separate but related corporation to take title to real property or for some other purpose, which would be subject to the provisions of GLS 16.030.

The purpose of a corporation can be found in its articles of incorporation, charter, or corporate By-Laws, and is also commonly reflected in its name: Lodge corporations have names like “(name) Elks Lodge No. _____”, while separate corporations often have names like “(name) Elks Hall Association, Inc.” Under traditional legal principles, corporations typically have Members who elect Directors to serve as its leaders, with additional provisions for the selection of corporate Officers, either by the Directors or in some other manner as provided in the corporate By-Laws or in our case the laws of the Order. For many years the laws of the Order made it optional whether there was a requirement that there be a Board of Directors for an incorporated Lodge, but, in recognition of state law requirements that require every corporation to have some form of constituted leadership, at the 2011 Grand Lodge convention a resolution was adopted by the delegates that changed the word “may” to “shall” in GLS 16.020, which made it mandatory that an incorporated Lodge must have a Board of Directors, and that such group would succeed to the duties of the elected Lodge Trustees under GLS 12.070.

This change generated considerable discussion and uncertainty which this guide has been created to try to address. It is not intended to address separate corporations that are subject to the provisions of GLS 16.030.



What Can or Should the Board Do?

The provisions now being mandatory for any incorporated Lodge, the Members of the Board are obligated to do the following:

- (1) The Area Member of the Committee on Judiciary must approve any proposed Articles, By-Laws, Amendments and other corporate documents before they are adopted or submitted to any state authority. The purpose of the approval is not that the Area Member is acting as an attorney for the Lodge but rather to verify there has been compliance with the laws of the Order. The Lodge has responsibility for seeking an attorney or other adviser to handle the formalities and other legal requirements of establishing, modifying or dissolving any corporation. In addition to any state law requirements, the procedure to establish a Lodge corporation is set forth in GLS 16.020 and should be reviewed if such an entity is being considered. Any amendments must comply with applicable provisions of the corporate By-Laws.
- (2) All Members in good standing of the Lodge shall be Members of the corporation, and retain ultimate control over the actions of the corporation.
- (3) At each annual Lodge election in February the Members of the Lodge elect Lodge officers for the succeeding year. By virtue of that election, the four new chair officers and Lodge Trustees shall comprise the Board of Directors of the corporation.
- (4) Following installation, the Members of each new Board shall elect a Chairman and Secretary from among themselves to preside and to keep a record of actions taken at their meetings.
- (5) The officers of the corporation shall be the officers of the Lodge, holding the same titles or positions they have in the Lodge, meaning that the Exalted Ruler, Lodge Secretary, Lodge Treasurer and Trustees serve as the President, Secretary, Treasurer and Trustees/Directors of the corporation.
- (6) In general terms, the Board makes decisions concerning the activities of the corporation at regular or specially called meetings for which required notice is given to all Members and at which a quorum is present, with the corporate Officers

being tasked with carrying out those decisions provided they are within the scope of responsibility of the Board. The Chair as a Member of the Board may make motions, debate and vote in all matters, not only those in which his or her vote would be determinative of an issue. The Chair may not refuse to consider items of business being proposed by a Member of the Board.

- (7) The Chairman of the Board must attend District Deputy clinics, but if the Chairman is either the Exalted Ruler or Esteemed Leading Knight (who must attend in any event) then another Member of the Board must be designated to attend as well.
- (8) The Board controls the property, funds and investments of the Lodge, but subject to the approval of the Members. The Board may not spend money without approval of the Members, and even if certain amounts were approved as part of the Lodge budget any actual expenditure of such amounts must still be brought to the Members for approval. The Board acts at the direction of the Membership, and is not independent of it. The Board must be aware of the permitting requirement under GLS 16.050 in which permission must be obtained from the Board of Grand Trustees for actions of qualifying amounts or duration.
- (9) The Board must present a detailed and segregated budget to the Members for approval not later than the last meeting in April. This is again not an authorization to spend money, but a framework for spending for the coming year to maintain discipline and a sound financial condition. Budgets should not be taken lightly, as they are a road map for the financial success of a Lodge for the coming year.
- (10) The Board as such has no authority over the operation of the club facility, which is under the control of the House Committee (or Managing Body) as provided under GLS 16.040. While the Members of the Lodge have ultimate control over many aspects of the club operation, the House Committee has exclusive authority over the pricing of goods and services and club employment relationships, this in large part because the House Committee has a separate budget to be approved by the Members that it is responsible for.



- (11) Depending in some cases on how budgets are structured, the Board approves and oversees facility rental arrangements, with the proceeds thereof to typically be part of the Lodge operating budget, all the while being mindful of the requirements of GLS 14.130 that limit the use of the club facilities so as to maintain a private club environment.
- (12) Conduct an annual inventory of Lodge property to assess areas needing improvement as well as to maintain schedules for insurance coverage. Consider annually videotaping the facility to document the existence of Lodge property should there be a subsequent catastrophic loss.
- (13) The Board must hold monthly meetings, with notice to the Members of the Lodge so they can attend if desired. Minutes must be taken and once approved be made available for review by Members of the Lodge. Minutes of meetings are generally not effective until approved by the Board; until that happens they are of no import and remain under the jurisdiction and control of the Board.
- (14) In the event the Lodge By-Laws provide that the Lodge Trustees are to be the managing body of the club, then the elected Lodge Trustees and not the Board of Directors shall serve in that position.
- (15) It is important to note that the Board is a separate entity from any other office or Committee its Members may serve on; decisions by one body should not be attributed to any other body, meetings of the several entities should be held separately, and separate minutes of each group's activities should be kept.

- (16) Establish and maintain an Accident Prevention Program, with one Member of the Board being designated as its Manager.
- (17) The Board has little control over hiring and firing; the paid officers are provided for through the budget and Lodge By-Laws, and within budgeted amounts the office staff are under the control of the Lodge Secretary and the club employees are under the control of the House Committee. In cases of other personnel, such as gardeners or Lodge employees other than in the office, the Board would have jurisdiction but again subject to the ultimate control of the Membership.
- (18) The Board must cooperate with and not impede or obstruct the activities of the Auditing and Accounting committee.
- (19) The Board has a responsibility to monitor revenues and expenditures for budgetary compliance. Although they have no statutory authority to sign checks in place of the Lodge Treasurer (or alternate signer if authorized in the By-Laws and as provided in GLS 12.060), practices may be implemented for signers in addition to a required signer as part of a Lodge check and balance system.
- (20) While hopefully conscientious of their responsibility to monitor Lodge activities, the Board must be mindful that other officers have their own statutory duties and responsibilities that may not be violated or abridged. The Lodge Secretary has a duty to maintain security in the maintenance of Lodge records and while review of records should be made reasonably available the demand for production or surrender of documents should not be made.



How Does GLS 16.020 Relate to GLS 12.070?

For purposes of clarity, the elected Trustees of a Lodge are commonly referred to as its *Board of Trustees*, while the Members of the Board of a Lodge incorporated under GLS 16.020 are referred to as its *Board of Directors*. If a Lodge is incorporated, then under the provisions of both GLS 16.020 and 12.070 it is stated that the Board of Directors takes over all of the duties that the Board of Trustees would have in an unincorporated Lodge. Further, the Members of a Lodge can assign to the Board of Directors other duties in addition to those found in GLS 12.070 provided they do not violate any law of the Order, such try to take a statutory duty away from one officer and given to another.

Implementing a Board of Directors.

No special action is needed to amend a Lodge's By-Laws to implement a Board of Directors in an incorporated Lodge. The standard Lodge By-Laws includes a provision in Article V Section 7 that assigns the duties under GLS 12.070 to its Board of Trustees, or if the Lodge is incorporated then automatically to its Board of Directors. Nothing more is needed than to announce a change is being made, call an organizing meeting of the Members of the corporate Board, and move on from there.

The list contained in this guide is not necessarily inclusive, but reflects an interpretation of statutory authority as expanded by questions frequently received by Members of the Committee on Judiciary. Members of the Board should always bear in mind that they are agents of the Members of the Lodge and must always act in their best interest and at their direction. In all matters, the Members of the Lodge have final authority over what the Board does.

If you have questions or have suggestions for areas of improvement please contact your Area Member of the Committee.

Fraternally,

THE COMMITTEE ON JUDICIARY

SELECTED REFERENCES*(Current as of July, 2014)*

Section 12.070. The Board of Trustees, or the Board of Directors if the Lodge is incorporated under Section 16.020, (herein called “the Board”), after each annual installation shall meet and organize by electing a Chairman and Secretary who shall be Members of the Board. The Chairman of the Board shall attend all District Deputy Clinics unless excused for good cause by the District Deputy, provided, however, in the event the Exalted Ruler or Esteemed Leading Knight is the Chairman, then one other Member of the Board shall be designated by the Board and required to attend all District Deputy Clinics. The Board, subject to control by the Lodge, shall have the following powers: *(a)* control of the funds, investments and real and personal property of the Lodge, not otherwise provided by law, and shall receive and collect the income and rents therefrom, *(b)* execute all leases, contracts or other papers when ordered by the Lodge. The Board shall not have authority for listing of Lodge real estate for sale and/or entering into any sales contract prior to approval of such action by a majority vote of the Lodge. The Board shall hold at least one regular meeting each month and needed special meetings called by the Chairman. They shall keep minutes of each meeting of the Board. If the Lodge is not incorporated, the Exalted Ruler shall be given the same notice of all meetings of the Board, and in the same manner, as is given to the other Members of the Board. It shall also keep a record of investments made under direction of the Lodge, which shall show original cost, the due dates and amount of interest or profit on investments, the date and amounts of deposits made by it and date and amounts of drafts drawn from the bank by order of the Lodge.

It shall purchase all supplies ordered by the Lodge, and all papers, books and stationery needed by the Officers for the performance of their duties. It shall hold the bonds of the Officers, and shall present a monthly written report of its transactions at the first regular meetings each month. It shall establish an Accident Prevention Program, with one Member designated as Accident Prevention

Manager, to continually review and implement a policy, in concert with Grand Lodge and State Association programs, to protect the Lodge from claims for accidents and injuries. It shall perform other duties as may be required by the Laws of the Order and By-Laws of the Lodge.

The Board shall present a segregated budget not later than the final regular meeting of the Lodge in April, making appropriations for each of the several objects for which the Lodge must or may provide out of monies known to be in possession of the Lodge or estimated to come into it during the ensuing Lodge year. A budget either in its original or modified form must be adopted by the Lodge at the meeting or at the next regular meeting. After the budget has been adopted, all expenditures during the Lodge year must be kept within the limits of the appropriations made. When a proposal is made for an expenditure in excess of the adopted budget, the proposal shall be promptly referred to the Board for consideration and written recommendation at the next regular Lodge meeting. The proposal may be adopted by not less than a two-thirds vote of the Members present at a regular meeting. The budget may include an item for contingent purposes to cover emergencies and expenditures therefrom may be approved by a vote of two-thirds of the Members present at a regular meeting. Unexpended appropriations at the end of the Lodge year shall be available for appropriation in the budget for the next Lodge year. In Lodges where a Budget Committee is required by the By-Laws the budget shall be prepared by that Committee. The Committee shall report to the Lodge by the final regular meeting in April.

Section 16.020. A Lodge may incorporate under the laws of the state or territory wherein it is located. The Articles of Incorporation must be approved by the Committee on Judiciary prior to filing with the state authority.

A proposal to incorporate a Lodge shall be made in writing and filed with the Lodge Secretary. At the first Lodge meeting after the receipt of the proposal the Exalted Ruler shall fix a date for a vote on

the proposal which is not less than two (2) nor more than eight (8) weeks thereafter. The Secretary shall mail a notice of the proposal to each Member at his last known address. The notice shall be mailed at least ten (10) days prior to the date on which the vote is to be taken. A majority vote of those attending will bind the Lodge unless the Statutes of that State require a different number in which event the State law shall govern.

Whenever a Lodge shall incorporate, the voluntary association shall merge into the corporation.

When a Lodge votes to incorporate it shall pass a resolution authorizing and directing the proper Officers of the Lodge to convey all of its property, real and personal, held in trust or otherwise, to the new corporation and the passage of the resolution shall be a condition precedent to its incorporation.

It is the purpose and intent hereof to enable any Lodge by incorporating to own and operate its Home, embracing both Lodge and Club, without altering or impairing in any manner the character of the Lodge as set forth from time to time by the Grand Lodge.

The Officers and Committees of all Lodges, whether incorporated or not, shall be designated by the same names or titles and shall possess the same functions and powers, as now obtain, or as may from time to time be provided by the Grand Lodge. The Chief or Presiding Officer of such corporation shall be the Exalted Ruler of the Lodge and shall be designated as such in the corporation and all other Officers of the corporation shall be the respective Officers of the Lodge and shall be known by their respective Lodge titles. All Lodge Members in good standing shall be Members of the corporation. An incorporated Lodge shall make provision for a Board of Directors which shall be designated in accordance with the requirements of the corporation laws of the State or Territory in which such Lodge is situated and which shall be composed of the four Chair Officers of the Lodge and the Trustees, and which shall be vested with the powers and duties conferred upon the Board of Trustees by the Laws of the Order, including, but not limited to, Section 12.070.

The incorporation of a Lodge shall not alter or change the fact that the Lodge shall be governed and controlled by the Members thereof, whether shareholders or not, in contradistinction to the usual method of incorporation ownership and control by its stockholders or shareholders.

The names of the elective Officers of the Lodge may be used and employed as petitioners in procuring such Charter.

The kinds and amount of stock, or other securities to be issued, shall depend upon the requirements and exigencies of each individual corporation, and the local laws and conditions governing the same, all subject to the Laws of the Order and the approval of the Chairman of the Committee on Judiciary.

The name and style of said corporation shall include the full name of the particular Lodge so incorporating, to-wit: "_____ Lodge No. _____, Benevolent and Protective Order of Elks of the United States of America."

This Section is not obligatory upon Lodges where the incorporation laws of the state irreconcilably conflict herewith, nor shall this Section be construed to require the reincorporation of Lodges incorporated prior to 1914.

Section 16.030. The Lodge may, if it chooses, form a separate corporation for any club, home real property or other facility owned by the Lodge. Membership in the corporation shall at all times consist of the elective officers (including Trustees) of the Lodge, together with four (4) additional persons who are Members of the Lodge. These four additional Members shall be elected by the remaining Corporate Members and shall be Members for one year periods.

All corporate powers shall be exercised by a Board of Directors, to be seven (7) in number, who shall be corporate Members, and who shall serve for one year, and until their successors are elected and qualify.

The Corporate Officers shall be elected from the Board of Directors and shall consist of a President, Vice President, Secretary

and Treasurer, to be elected annually by the Board of Directors. The President and Secretary shall not hold more than one office in the corporation.

The books and records of such corporation shall at all times be subject to inspection by the Grand Lodge of the Order.

It shall be the duty of the corporation to present to the Lodge for approval, not later than the final regular Lodge meeting in April, a separate and comprehensive budget for the proposed operation of the corporation. The corporation shall also submit a monthly written report to the Lodge showing the financial condition of the corporation and the condition of the budget relating to the same.

Upon dissolution of a separate corporation, all property owned, held or controlled by it shall be transferred and distributed by its Board of Directors to the Lodge or other non-profit organization, fund, corporation or trust forming a part of or controlled by the Benevolent and Protective Order of Elks of the United States of America.

No Articles of Incorporation or By-Laws or any amendment thereto of a separate corporation shall take effect unless submitted to and approved by the Committee on Judiciary.

A separate corporation shall be subject to and comply with the provisions of Section 16.050 in all matters applicable thereto and the Laws of the Order.



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