

**EXECUTIVE SUMMARY
OF
LEGAL AUDIT MEMORANDUM**

<u>Issue</u>	<u>Response/Recommendation</u>
Legal Audit Recommendations	<ul style="list-style-type: none"> • Amend and restate Bylaws (consolidate Constitution and Bylaws); • Amend and restate Articles of Incorporation, after review of the same; • Create Key Governance Policies; and • Obtain insurance.
Authority to act on behalf of HTA	The Board of Directors has the authority to act on behalf of HTA.
Validity of process to approve amendment	The process used to amend the constitution and bylaws by the CRC was not valid because (i) a committee cannot recommend to the members any action that requires members' approval, (ii) the CRC altered the voting list in violation of the constitution and bylaws and Arizona law, and (iii) the method used to obtain votes was not proper.
Line item approval by members	The constitution requires that each article needs to be made separately and voted on separately.
Authority to alter voting list	Only the members can alter the list of members eligible to vote by amending the constitution and bylaws to remove the right from certain classes of members. Neither the Board nor a committee of the board has the authority alter the list.
Termed Board Responsibilities	A director shall remain in office until a successor is elected, designated or appointed and qualifies. The board will continue to conduct business until a director's successor is named.
Filing Board Vacancies	The Board can fill a vacancy on the board by a vote of 2/3 of the Board present at a meeting.
Members entitled to a vote	A member is entitled to one (1) vote regardless of type (individual, family or corporate).
Use of proxy voting	The members of HTA may use proxy voting.
Actions if quorum is not met for member meetings	<ul style="list-style-type: none"> • Member outreach campaign; • Meeting via phone and video conference; • use of proxy voting; or • Amend governing documents to remove voting rights (member approval required).

C O N F I D E N T I A L C L I E N T M E M O R A N D U M

TO: Board of Directors, Hindu Temple of Arizona
FROM: Yvonne Moss
DATE: February 6, 2013
RE: Legal Audit Recommendations

The Board of Directors of the Hindu Temple of Arizona (“HTA”) has asked us to review HTA’s compliance with various laws that govern its operations as well as current governance best practices and offer recommendations based upon our review. Additionally, HTA has asked us to address certain issues set forth in Exhibit A to this memorandum. We have reviewed various documents related to HTA’s governance practices. Our specific recommendations are highlighted in bolded text below.

I. Corporate Status and Domicile. HTA was incorporated on March 23, 2000 in the state of Arizona. To remain in good standing, HTA must file an annual report with the Arizona Corporation Commission by April 23rd of each year.

A copy of the articles of incorporation was not provided as part of this review. If HTA would like us to review the articles of incorporation and make recommendations, please provide us with a copy of the articles of incorporation. Alternatively, we can order a copy of the articles of incorporation from the Arizona Corporation Commission. We would review the articles of incorporation to ensure that the purposes of the organization, board composition, dissolution, *etc.* are consistent with the Arizona nonprofit corporation statutes.

II. Governing Documents. A nonprofit corporation is formed by filing articles of incorporation (also referred to as a “certificate of incorporation” or “charter”) with the state. A corporation’s bylaws are viewed by the courts as a contract between the corporation and its members.

In addition to bylaws, HTA also has a constitution. HTA's current Constitution and Bylaws were adopted in 2003. Among other important topics, bylaws usually address the following:

- Board size and structure;
- Board membership criteria;
- Term limits and rotation policies;
- Board meetings and attendance;
- Policy on removing Board members;
- Requirements to obtain board approval of major transactions;
- Offices and officer's duties;
- Indemnification of Board members; and
- Member rights and obligations.

Where the bylaws are silent, Arizona law controls; however, it is not practical to expect Board members to research Arizona law to determine HTA's fundamental governance rules.

Courts will require corporations to act in a manner consistent with their own bylaws, articles of incorporation, and state law. Board members may be held personally liable for actions that are held by a court to be in violation of the corporation's bylaws, articles of incorporation, or state law. While such legal challenges are seldom the result of an investigation by state officials, it is not infrequent that a disgruntled member, will bring (or threaten to bring) a lawsuit alleging improper corporate action.

It is important that HTA's governing documents be complete, compliant with current state law, and indicative of actual practice. Our review of the bylaws has resulted in several recommended changes as follows:

A. Board Structure. HTA's Bylaws refer to both a "Board of Directors" and a "Board of Trustees." Only one board should be responsible for the operations of HTA. We recommend that the bylaws be amended and restated to refer to one board of directors and that the purpose and qualifications for other boards (advisory) or committees be clearly defined.

B. Board Size. HTA's Constitution states that HTA's board shall consist of a President and 14 directors. There is no ideal Board size, although anywhere from 3-13 is commonly believed to be a reasonable and manageable number. The state of Arizona requires a minimum of one board member. We recommend amending and restating the bylaws to all the Board to set the number of members that serve on the Board of Directors, as determined by the

Board from time to time. In addition, we recommend that the Board strive to maintain an uneven number of Board members to ensure a tie breaking vote.

C. Officers. The current Constitution and Bylaws are silent as to whether an officer has to be a member of the Board. Regardless of whether or not an officer is a member of the board; a person holding an officer position is a member of the Executive Committee. We recommend that the Bylaws be amended to clarify whether an officer of the corporation must be a member of the board of directors.

D. Membership Organization. Currently, the Bylaws state that HTA is a membership organization. The individual or entity “members” will have the membership rights set forth in the organization’s bylaws, which include but are not limited to, the right to vote for members of the board or directors and amend the bylaws. We recommend amending the Bylaws to clarify members’ rights and duties to address members’ votes and meetings.

E. Term Limits and Rotation Policies. Currently, members of the Board serve a two year term. Each member may serve two terms. It appears that it was the intent of HTA to have staggered board terms however such intent is not explicitly spelled out in the Bylaws. Staggered board terms will allow HTA to plan for leadership gaps and alleviate uncertainty regarding tenure.

A staggered board would consist of a percentage of board members whose terms are up every year. Staggered Board terms ensure a constant flow of new energy into the board structure while maintaining institutional knowledge. For example, to stagger a 6 person board, the board could be divided into three groups of two board members each. Group 1 would serve an initial one year term; Group 2 would serve an initial two year term; and Group 3 would serve an initial three year term. Following these initial terms, the board members could be reappointed for additional three year terms. Thereafter, approximately one-third of the board members’ terms would end every year.

F. Board Meetings. Arizona law permits voting by unanimous written consent in lieu of a meeting and waiver of notice (of a meeting) with respect to Board meetings and action by the Board. HTA’s Bylaws are silent on these issues. We recommend amending the Bylaws to include such provisions.

III. Recommended Policies and Procedures.

HTA has not provided any policies or procedures for our review. Policies and procedures are the Board's plan for how to run the organization. Policies guide the organization in its daily course of action, and steer the Board as it works to fulfill the organization's mission. Not only do policies provide direction, but they also make it easier for the Board to handle difficult situations, in the most objective and ethical way.

Policies are different from bylaws. Although the two are related, they are created at different times, and used for different purposes. Policies, as distinct from bylaws, focus on an organization's daily operations and practices. The policies address issues related to the Board, but also issues related to finances, conflicts of interest, personnel, donations and more.

Some organizations set dozens of policies and others run fine on just a few. Below is a summary of the key governance policies that we recommend HTA consider implementing in light of our legal audit:

A. Conflict of Interest. A Conflict of Interest Policy is a de facto Internal Revenue Service requirement.

If a member of the governing body is found to have a conflict of interest with respect to a financial transaction, the rebuttable presumption safe-harbor procedure requires that the tax-exempt organization take steps to address the conflict and record those steps in its meeting minutes. Such steps could involve the member with the conflict not participating further in any decision making related to the matter creating the conflict (and leaving the meeting room during discussions and votes on the matter) or stepping down from the governing body. Another option is for the tax-exempt organization to end a business relationship with a business in which the member has a conflict. The situation could also be addressed by utilizing a process in which the tax-exempt organization generates disinterested bids or hires a consultant to examine the terms of the relationship and in light of the analysis determines that the terms of the compensation arrangement are fair and reasonable.

Each director should sign a conflict of interest disclosure annually, and the Board should review the policy annually. If a Board or staff member violates the policy, the organization should consider taking disciplinary steps, such as removal from the Board.

B. Travel and Expense Reimbursement. Non-profit organizations are permitted to pay for or reimburse ordinary and necessary expenses incurred in carrying out their activities,

including the costs of travel by directors. For example, many organizations reimburse directors' expenses (airfare, hotel and meals) to attend an organization Board meeting.

C. Gift Acceptance Policy. A Gift Acceptance Policy defines the types of assets that are acceptable, establishes the gift forms that are acceptable, and defines HTA's role in gift administration. The primary benefit of a Gift Acceptance Policy is to maintain discipline in gift acceptance and administration. Discipline prevents the acceptance of gifts that will cost HTA time, money, and possibly its reputation, by reminding the organization when to say no. Policies also serve to educate the nonprofit organization's staff and Board about critical issues triggered by certain gifts.

D. Records Retention Policy. HTA should set up a system of files and recordkeeping that permits documents of no real value to be destroyed and preserves important documents for an appropriate period of time. Many small organizations delegate a portion of their recordkeeping duties to their accountants, lawyers or consultants. Even so, it is important and legally required to make sure HTA's records are kept in good order. Not only does this help HTA stay organized, but it also demonstrates the Board's accountability during this era of audits and heightened scrutiny.

E. Communicating Policies to Directors. Once HTA has its policies in place, consider providing every Board member with a handbook of HTA's articles, bylaws and policies. Not only can it serve as an orientation for new members, but also as a reference tool throughout their term.

Board handbooks need not be extensive. Typically, Board handbooks consist of a folder or packet of the following materials:

- HTA's mission, vision and values;
- HTA's history;
- Articles of Incorporation;
- Bylaws and policies;
- List of Board members and job descriptions;
- Financial information, such as investment policy and reports, the budget, audit statements and financial procedures;
- Calendar of meetings and key action items;
- Grants and major gifts history; and
- Annual reports.

With a Board handbook to refer to, Directors will stay more informed regarding HTA's policies and will more likely adhere to them. Once policies are in place, the Board should review and, if appropriate, revise policies periodically. For policies to work, they should continue to serve your organization and its mission, rather than your organization simply serving the policies.

IV. Corporate Record/Board Minutes. In keeping corporate record, HTA should consider the following items:

A. Ensure the secretary of the meeting signs the minutes after Board approval. This will help determine the official meeting minutes (as approved by the board, members or a committee) versus unofficial or draft meeting minutes.

B. Ensure that all board, member and committee meeting minutes are placed in the corporate minute book/record.

We have included, for your reference, an e-book we have prepared on taking minutes. It includes sample forms as well as guidelines on what should and should not be recorded in the minutes.

V. Insurance Coverage

We did not review HTA's insurance policies. Notwithstanding, we recommend that HTA obtain general liability/property damage and director's and officer's liability (D&O Liability Insurance), if it does not already have such policies. D&O Liability Insurance provides coverage against "wrongful acts" which might include actual or alleged errors, omissions, misleading statements, and neglect or breach of duty on the part of the board of directors. We recommend that HTA consult with an insurance broker to thoroughly review HTA's insurance needs.

VI. Conclusion. To summarize our recommendations, we recommend that the following changes occur as soon as possible:

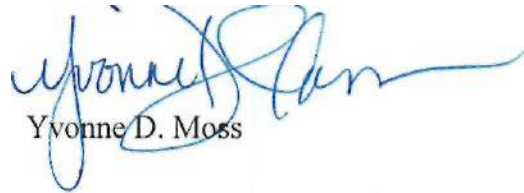
- Amend and restate Bylaws (consolidating Constitution and Bylaws);
- Review Article of Incorporation to determine if they should be amended and restated;
- Create key governance policies; and
- Obtain general liability and D&O insurance, if HTA currently does not have such coverage.

Going forward, we recommend HTA keep proper records of all meetings and create a board handbook for board members to refer to. As HTA grows, we will want to revisit its governance policies to determine whether it makes sense to form various committees, start obtaining audits, etc.

Please call me at 480-428-3391 once you have had a chance to review these recommendations.

Sincerely,

CARTER LAW GROUP, P.C.



Yvonne D. Moss

EXHIBIT A

Below are the specific items that we were asked to address by HTA in the scope of representation and from subsequent correspondence with the Acting President.

I. Who has the authority to act on behalf and bind HTA - the HTA Board that is elected by general members or the committee that was appointed with the approval of general members?

The Board of Directors has the authority to act on behalf of HTA. Pursuant to the Arizona Nonprofit Corporation Act (ANCA), each corporation shall have a board of directors. *ARS 10-3801(A)*. All corporate powers shall be exercised by or under the authority of and the affairs of the corporation shall be managed under the direction of its board of directors. *ARS 10-3801(B)*. HTA's governing documents are consistent with the ANCA. Section 4.5.1 of HTA's Constitution provides that the Board shall have the power to adopt any policies, rules and regulations necessary for the benefit and operation of the HTA.

One power of the board of directors is to appoint committees. *See ARS 10-3825 and Section 4.1.5 of Constitution*. A committee serves at the pleasure of the board of directors. *ARS 10-3825(A)*. Except as set forth in subsection E of ARS 10-3825, a committee of the board shall exercise the authority specified by the board of directors or as set forth in the articles of incorporation or bylaws.

ARS 10-3825(E) states, in pertinent part, that a committee ***shall not*** (a) approve or recommend to the members any action that requires the members' approval or (b) adopt, amend or repeal the bylaws. *ARS 10-3825(E)(2) and (4) (emphasis added)*.

The Constitution Review Committee (CRC) did not have the authority to act on behalf of HTA. From our review of the Board and committee meeting minutes, the CRC did not have the authority to take matters directly to the membership. Instead the CRC was to take all matters back to the Board. However, even if the CRC was granted authority, such authority would violate the ANCA and is thus not valid.

II. Validity of process utilized to approve amendments to the Corporation's governing documents.

The methods used to approve the amendments to the Constitution and Bylaws were not valid. As detailed in other sections of this memorandum, the CRC does not have the authority to bring matters to the members for a vote. Further, the CRC does not have the authority to alter the list of members eligible to vote. Finally, the procedure was not correct.

There are three (3) ways to obtain the membership's approval of matters. Namely, HTA can obtain membership approval by (i) a vote of the members at a meeting, (ii) written consent, or (iii) written ballot. Matters approved by utilizing one of the three methods shall constitute valid acts of the members. Below is a description and legal requirements for each method of obtaining approval of the members pursuant to HTA's governing documents and the ANCA.

A. Meeting of the Members. HTA shall hold an annual meeting of the member (once every calendar year). Additionally, members may convene for a special meeting. A special meeting may be called by either: (a) the Board on its own initiative; or (b) within two months of the receipt of a request by the Secretary for such a meeting, signed by at least 10% of the members. The agenda for the special meeting shall consist of those items mentioned in the notice, not violating the Constitution and Bylaw requirements. *Sections 4.1 and 4.3 of Bylaws*.

Notice shall be sent to all members [entitled to a vote], at least four weeks in advance of any annual or special member meetings. *Section 4.8 of Bylaws*.

The quorum requirement to amend the Bylaws is 25% of the membership. *Section 12 of Bylaws*. The quorum requirement for a constitutional amendment is 2/3 of the members eligible to vote. *Article VII of Constitution*.

A vote of simple majority vote of the members is needed to amend the *Section 12 of Bylaws*. A vote of 2/3 of the members is needed to amend the Constitution. *Article VII of Constitution*.

B. Action by Written Consent. Members can approve an action without a meeting by signing one or more consents describing the action. The members holding the requisite vote power must sign the consent approving the action.

ARS 10-3704(A) provides that the Members can take action without a meeting if the action is approved by members holding at least a majority of voting power unless the articles, bylaws or Arizona statutes require a different amount of voting power. The action shall be evidenced by one or more written consents describing the action taken, signed by those members representing at least the requisite amount of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate record. *ARS 10-3704(A)*.

C. Action by Written Ballot. Members can take action by written ballot if the corporation provides a written ballot to every member entitled to vote on a matter.

ARS 10-3708 permits any action that the corporation may take at any a meeting of the members to be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

A written ballot shall contain the following: (a) set forth each proposed action; and (b) provide an opportunity to vote for or against each proposed action. *ARS 10-3708(B)*.

Approval by written ballot is valid only if: (a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; AND (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. *ARS 10-3708(C)*.

III. Manner of approving amendments via line item vote.

Unless otherwise specified in a corporation's governing documents, amendments may be proposed as a whole (presented as an entire document for approval) or by piecemeal amendments (taking a specific issues or amendments individually). Pursuant to HTA's Constitution, amendments to each article need to made separately and voted on separately. *See Article VII*. HTA's Bylaws are silent as to the method of voting.

VI. Authority of the CRC to modify the list of members eligible to vote on matters presented to the membership.

Only the members of HTA have the authority to modify the list of members that are eligible to vote/member's right to vote. Neither the Board nor a committee of the Board can alter the members that are eligible to vote without amending the Constitution and Bylaws of HTA. Specifically, the "Members" provision of the Constitution and the "Members Entitlements" and "Voting Rights & Eligibility" Sections of the Bylaws need to be amended. *See Article III of Constitution and Sections 2.5 and 2.6 of the Bylaws, respectively.*

Pursuant to the constitution and Bylaws, a vote of the members is required to amend each document. A vote of simple majority vote of the members is needed to amend the Bylaws. Quorum for this purpose is 25% of the membership. *See Section 12 of Bylaws*. A vote of 2/3 of the members is needed to amend the Constitution. The quorum requirement for a constitution amendment is 2/3 of the members eligible to vote. *See Article VII of Constitution*.

Thus, if a member paid their/its membership dues two months prior to a meeting and is at least 18 years of age, such member is entitled to a vote on all matters presented to the membership for a vote. *See Section 3.1 of Constitution and Section 2.6.4 of the Bylaws*.

V. The role and responsibility of a termed board if the election of new board members has not occurred.

A termed director shall continue to hold office until a successor is elected, designated or appointed and qualifies. HTA's governing documents are silent as to what happens if new directors are not elected. However, ARS 10-3804(E) provides that "Despite the expiration of a director's term, a director shall continue to hold office until the director's successor is elected, designated or appointed and qualifies, until the director's resignation or removal or until there is a decrease in the number of directors."

Thus, a termed director shall continue in his/her role until their successor is named. The board of directors will continue to conduct business as usual.

VI. Filing vacancies on the board of directors due to vacancy.

Pursuant to HTA's Bylaws, the Board shall fill a vacancy on the Board (for the remainder of the exiting director's term) by approval of 2/3 of the current Board. *Section 5.5.2 of Bylaws.* The 2/3 vote requirement is of those directors present at a meeting where quorum has been met.

VII. Members entitled to a vote.

Regardless of class or type of membership, a member is entitled to one (1) vote. HTA has seven (7) classes of members. *Section 3.2 of Constitution.* However, there are only three (3) types of memberships. Specifically, the three (3) types of membership are (i) individual, (ii) family, and (iii) corporate. *Section 2.2 of Bylaws.*

However, regardless of size, each type of membership is considered one (1) member. *Section 2.2 of Bylaws.* For example, if a family of four (4) contributes at the Patron class that family is entitled to one (1) vote. Also, a corporate member that has 25 employees is also entitled to one (1). So if there are 100 members present at a meeting of the members; the total number of votes at that meeting is 100.

If HTA would like to give a vote to multiple people of a member (family), the vote would be divided on a pro-rata basis. *ARS 10-3721(B).* Thus, a husband and wife (for example) would each have half a vote which would equal one (1) vote. Again, each member is only entitled to one vote. In order to have fractional voting, as stated above, the Bylaws would have to be amended as they clearly state that a member is entitled to one (1) vote.

VIII. Use of proxy votes by the membership.

HTA's Bylaws do not mention the use of proxy voting by its members. However, proxy voting is permitted by Arizona law unless prohibited or limited by the articles of incorporation or bylaws. *ARS 10-3724(b).*

A member may appoint a proxy to vote or otherwise act for the member by signing an appointment form. *A.R.S. 10-3724(B)*. Such appointment shall be effective on receipt by an officer of the corporation or an agent authorized to tabulate votes. *A.R.S. 10-3724(C)*. A proxy appointment is valid for eleven (11) months, unless the appointment specifies a different time period. *A.R.S. 10-3724(C)*. Proxy appointments are generally revocable by the member's attendance at any meeting or sending a notice of revocation, in writing, signed by the member. *A.R.S. 10-3724(F)*.

If HTA would like to allow its members to use proxy voting, the Bylaws should be amended to include the process and procedures for utilizing proxy voting. HTA may still use proxy voting per the ANCA without amending the Bylaws.

IX. What steps can be taken to hold an AGM if we continue to fail to meet the quorum requirements for the members meeting.

HTA may attempt the following if it continues to have issues with meeting the quorum requirements for the member meeting:

- Conduct a membership outreach campaign (let members know that they have the right to vote; the business is being affected from lack of participation; excitement for member involvement; etc.);
- Make it easier for members to attend meetings (utilize teleconference and video conference or other method where the members can hear and be heard);
- Use of proxy voting for those members that cannot attend the meeting; or
- Amend Bylaws to alter rights of membership (remove voting right). The members will have to vote on it as only members can alter their rights. NOTE, this recommendation should only be used as a last resort measure.