

Avoiding Association Bylaw and Governance Pitfalls

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Jeffrey S. Tenenbaum, Esq.

Managing Partner

Nisha G. Thakker, Esq.

Partner

Tenenbaum Law Group PLLC



Governance Hierarchy

- State Nonprofit Corporation Law
- Articles of Incorporation
- Bylaws
- Policies and Procedures

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Inconsistent with the Applicable State Nonprofit Corporation Law

- Out-of-date language that is not enforceable
- Recent revisions to many state nonprofit corporation laws allow for greater flexibility – but generally only if your Bylaws expressly allow for it
- Getting stuck with statutory default language

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Too Much Detail

- Bylaws should allow an association to remain flexible
- Overly detailed Bylaws restrict the association from being nimble
- Reserve the detail for policies and procedures, which are generally easier to amend

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Unwieldy Governance Structure

- Large board of directors
- Overinvolvement of previous leaders (e.g., past Presidents)
- Too many layers of governance and approval processes
- High voting thresholds for members and directors/boards

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Out-of-Date

- No longer reflective of the practices of the association
- Includes practices that are not followed
- Inconsistently applied to the management of the association



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Bylaws Amendment Process

- Create a Bylaws task force (not a standing committee)
- Review your purposes clause
- Work with experienced association legal counsel
- Be flexible

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Bylaws Task Force

- Representative of the current membership of the association
- Individuals who have diverse backgrounds
- Individuals who are well respected in the association
- Previous committee or leadership experience

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Purposes Clause

- Consistent with your Articles of Incorporation and IRS tax-exemption application and IRS Forms 990
- Reflective of the current purposes of the association; things change over time; be sure it is broad enough (can affect the application of UBIT)

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Working with Legal Counsel

- Keep legal counsel involved from the beginning, working hand-in-hand with the Bylaws task force
- Advise on current best practices and common pitfalls
- Familiarity with state nonprofit corporation laws and tax-exempt associations

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Be Flexible

- Range for board size
- Give the board flexibility to add officers, committees, etc.
- Include options for meetings and voting actions
- Do not include unrealistic quorum or voting requirements and processes
- Don't make it too difficult to amend the Bylaws (or the Articles of Incorporation)

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Voting Actions

- High quorum and voting thresholds can hinder your ability to act
- Differences between board action and membership action
- Allow the board to act quickly in emergencies (“emergency powers”)
- Consider unanimous written consent and ballot voting, including by electronic means

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Quorum and Voting Thresholds

- Failure to include quorum requirements then defaults to the state nonprofit corporation statute
- State default requirements tend to be much higher than necessary
- Set realistic quorum and voting thresholds (for both board and membership meetings and voting outside of a meeting)

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Policies Outside of Bylaws

- Bylaws should not include the policies of the association
- Membership criteria
- Membership dues amounts
- Elections
- Other policies

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Policies and Procedures

- The board sets policies and procedures; a membership vote should not be required for amendments
- A change in election processes, membership dues, or membership criteria should not require membership vote
- Separate policies and procedures (outside of Bylaws) allow the association to remain nimble

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Questions?

Jeffrey S. Tenenbaum, Esq.

Managing Partner

jtenenbaum@TenenbaumLegal.com

Nisha G. Thakker, Esq.

Partner

nthakker@TenenbaumLegal.com

www.TenenbaumLegal.com

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