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**AUGUST 9-12, 2025**  
LOS ANGELES, CA

# Beyond Bylaws: Multilayer Strategies for Avoiding Governance Pitfalls



# Beyond Bylaws: Multilayer Strategies for Avoiding Governance Pitfalls



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# Room 503

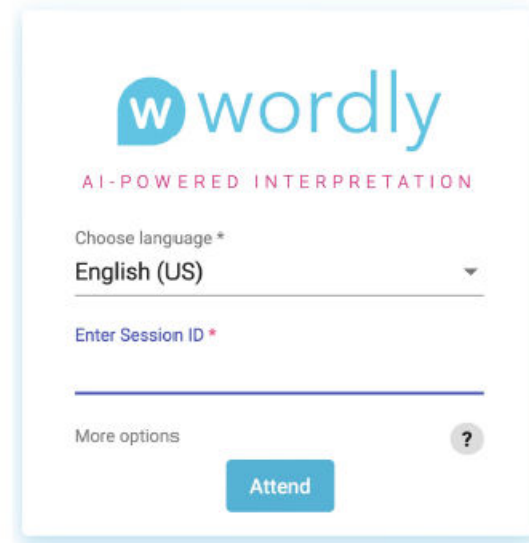
## How to Use Live Translation

### Step 1



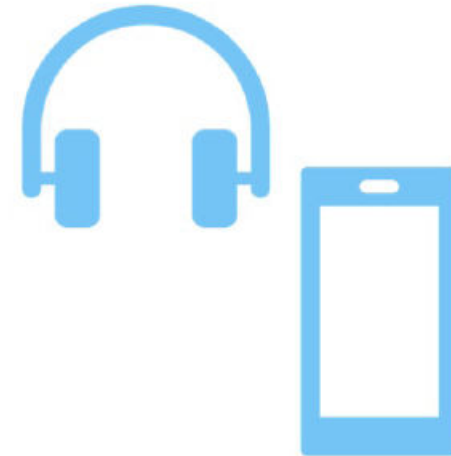
Scan QR Code or Go To:  
<https://attend.wordly.ai/join/TCCN-8236>

### Step 2

A screenshot of the Wordly web interface. At the top is the 'wordly' logo with a blue 'w' icon. Below it is the text 'AI-POWERED INTERPRETATION'. There is a dropdown menu labeled 'Choose language \*' with 'English (US)' selected. Below that is a text input field labeled 'Enter Session ID \*'. At the bottom left is a link 'More options' and at the bottom right is a blue button labeled 'Attend'.

Choose Language  
Click Attend

### Step 3



Read Captions on Device  
Use Headset for Audio

# Overview

- Governance Ecosystem
- The Big Ones: Statutes and Articles
- Bylaws
- Deeper Cuts
- Effective Structure
- Avoiding Conflict
- Problems
- Takeaways



# Learning Objectives

- Explore how multiple levels of governance should overlap and connect in one cohesive system
- Learn to avoid conflicts and confusion between various governing documents
- Develop skills in crafting effective policies, procedures, codes, and other governance instruments

# The Governance Ecosystem

**ec·o·sys·tem**

'ēkō,sistəm

*(In general usage)* a complex network  
or interconnected system



# Hierarchy of Governing Documents



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## State Nonprofit Corporation Law

- Mandatory and default provisions

## Articles of Incorporation

- Purpose, members, IRS-required provisions



# Hierarchy of Governing Documents

## Bylaws

- Framework of governance
- Control of the corporation
- Board of Directors vs. Members
- Quorum and voting thresholds
- Limitations

# BYLAWS ARE LIFE?



# BYLAWS ARE LIFE?



# Common Misuse of Bylaws

- Reactionary provisions
  - Address bad behavior
  - Resolving ambiguities with excess detail
  - Removing Board discretion
- Member engagement tools infused into bylaws
  - Program and governance committees conflated
  - Member rights vs. benefits



# Common Bylaws Flaws

Too Much  
Detail

Little  
Flexibility

Unwieldy  
Structure

Conflicting  
Terms

Governance  
vs. Ops

Outdated

# Hierarchy of Governing Documents

## Policies, Procedures, & Charters

- Purpose-built documents with details
- Plain English
- Simple to adopt and amend
- Support continuity of operations

# Policies, Procedures & Charters

## Leadership

- D&O Elections Procedure
- Committee Charters
- Job Descriptions

## Ethics

- Code of Ethics
- Code of Conduct
- Appeals

## Finance

- Investment Policy
- Member Dues
- Audit Policy

## Legal

- Volunteer Policies
- Intellectual Property



# Bylaws or Policy?

## Considerations:

- Required by law to be in bylaws?
- “In the weeds” or general framework?
- Strategic vs. operational
- Potential for more regular amendments or change?

# Case Study #1 – Membership Structure

## Scenario:

- Bylaws detail multiple categories and tiers of membership
- Some members have a pipeline to “councils” and Board leadership positions
- Bylaws amendments involving membership changes must be approved by members (under CA law)

## Issues:

- Organization wants to eliminate the multi-tiered governance/pathway to the Board, eliminate councils
- Discord within small group of members who would be affected by this change

# Case Study #1 – Membership Structure

## Solution:

- Reformat membership structure in bylaws to create more flexibility and develop standalone, board-developed Membership Policy.
- PR campaign to align members on the need for governance and membership restructuring
- Additional pathways to leadership through Elections Policy.

# Case Study #2 – Reactionary Governance

## Scenario:

- Organization formed in 1990s; minor amendments to bylaws, “in a bubble”
- Policies/procedures not adopted to implement operational pieces of bylaws
- Conflicting language in the bylaws regarding elections and petitions

## Issues:

- Vocal minority of members files lawsuit alleging bylaws have been misapplied in election procedure
- Org has spent six figures (\$\$) defending lawsuit and filing countersuit
- Current leadership and staff attempt to revise bylaws to account for every scenario the litigious members could bring up

# Case Study #2 – Reactionary Governance

## Solution:

- Complete rewrite of bylaws, with PR campaign to members
- Maintain basic structure of elections and petitions (in current bylaws) to appease those who may raise issues, implement Member Petitions Policy
- Propose Nominating Committee (via new charter) to manage elections, implement Elections Policy

# Case Study #3 – Officers and Directors

## Scenario:

- Two officers resigned, including Chair-Elect, following misconduct investigation
- Automatic succession of officers creates third vacancy
- Annual election resulted in single officer winner

## Issues:

- Bylaws provisions on elections conflicted with vacancies provisions
- Little flexibility
- Board proposed additional officer succession rules and election procedures in bylaws, and adding conduct rules to bylaws
- Member rights to run for elected office

# Case Study #3 – Officers and Directors

## Solution:

- Rely on creative, but reasonable, interpretations of bylaws:
  - Existing provision provides for runners-up to be “elected” to vacant offices
  - Because same election procedure used, no members denied opportunity to run
- After dust settles, association needs full bylaws overhaul – remove officer succession, create Elections Policy, provide Board with flexibility and ability to fill vacancies on temporary basis
- Draft and implement Code of Conduct, allow Board flexibility to remove officers for violations



# Crafting an Effective Policy

- Purpose-built for single topic
- Applicable to discrete group of members – i.e. candidates for office, committee volunteers, event attendees
- Complement Board fiduciary duties – conflict of interest policy, investment policy, audit policy
- Protect association – IP and confidential info, liability releases, limit bad behavior, protect industry reputation

# Committee Charters

- Permanent or Ad-Hoc?
- How are committee members selected?
- How long do they serve?
- What is the committee's task?
- Who does committee report its activities to?
- Deliverables?

# Beginning a Governance Overhaul

- Less a “re-write” than a “re-distribution”
- Work in small group – “task force” of Board of Directors
- Start at the top of the hierarchy and work downwards
- Consult legal counsel
- Plan for member approval, if needed
- Understand the political dimension

# Key Takeaways

- Understand the hierarchy of governance documents
- Let each document do its job; avoid creeping details
- Changes in one document can create cascading conflicts
- No reactionary governance
- Standardize nomenclature to increase understanding
- Regular review, with counsel
- Leave room for reasonable interpretation
- Understand the political dimensions

# Questions?

T E N E N B A U M  
L A W G R O U P P L L C



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# Evaluation

