

A Legal Roadmap to More Effective Association Governance

Nisha Thakker, Esq.

Partner

Tenenbaum Law Group PLLC

ESSAE ALA

Friday, February 6, 2026

Introduction

- Who we are
- Who our clients are
- Major areas of focus

Roadmap

- Governance ecosystem
- Common governance pitfalls
- Bylaws vs. policies/procedures

Governance Hierarchy

Hierarchy of Governing Documents



Common Governance Pitfalls

Losing Sight of Your Mission

- Forgetting to fulfill your federal tax-exempt purposes
- Keeping track of the big picture
- Risk of losing federal tax-exempt status
- More isn't necessarily better

Staying Focused

- Many nonprofit organizations, including trade and professional associations, attempt to do too much – far more than their federal tax-exempt purposes allow. Less can be more in your purposes statement!
- Pressure from members, Board members, and others often lead to a nonprofit acting beyond its scope and outside of the legal parameters of a nonprofit.
- Having a regular strategic planning session that results in achievable goals can help nonprofits stay focused and work towards their tax-exempt mission and purposes.
- Expansion and growth should be considered under the lens of the primary purpose of the organization – refer back to your governing documents.

Cutting Through the Noise

- Conflicts of Interest
- Competing Interests
- Micromanagement of Staff by the Board
- Fiduciary Duties

Stale Voices and Perspectives

- Ensure regular turnover on the Board
- Keep focus on diversity in Board and other leadership representation (in the broadest sense of the term)
- Have a defined role for former leadership

That's The Way We've Always Done It

- Many associations fall into the trap of lifetime appointments (“Founders Syndrome”) or lengthy terms for Board members which can put the organization into a programmatic rut.
- New voices representing diverse perspectives are important to ensure an association’s continued success.
- Extended participation for past chairs or other Board leaders can hamstring the organization’s forward progression and get stuck in the “that’s the way we’ve always done it” mentality.
- Many prospective members and sponsors will now look to the diversity of the Board to find a connection.

Bylaws vs. Policies/Procedures

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 Pitfalls

Too Much
Detail

Little
Flexibility

Unwieldy
Structure

Conflicting
Terms

Governance
vs. Ops

Outdated

Too Much Detail/Lack of Flexibility

- 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

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

Conflicting Terms

- Piecemeal amendment processes create confusion
- Details that are better placed in policies may conflict with practice
- Forgetting to check your Articles of Incorporation

Governance vs. Ops

- Are we including information that is day-to-day operations?
- Governance is about high-level direction and framework – not the smaller details
- Language that restricts evolution of the organization

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

Policies and Procedures

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
- Membership 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?

Crafting an Effective Policy

Purpose-built for single topic

Applicable to discrete group of members – e.g., 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?

Key Takeaways

Understand the hierarchy of governance documents

Be aware of common pitfalls and take proactive steps to avoid them

Let each document do its job; avoid creeping details

Changes in one document can create cascading conflicts

No reactionary governance

Encourage and lead with strategic objectives in mind

Questions?

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



Nisha G. Thakker, Esq.
Partner

Tenenbaum Law Group PLLC

601 13th Street,
Washington, DC 20005

202-221-8004

nthakker@TenenbaumLegal.com

www.TenenbaumLegal.com