

# The Ten Most Common Bylaw Pitfalls

At one point or another, most associations have to go back to their bylaws for amendments or revisions. Below, association legal expert Jeffrey Tenenbaum points out the most commonly overlooked considerations for associations to keep in mind when they revisit their bylaws.

## **1. Understand your state's nonprofit corporation act.**

A state's nonprofit corporation act supersedes any of the association's bylaws. The nonprofit corporation act may contain a default rule for an area that the bylaws might not address, such as specifying the number needed for a quorum for a vote. In addition, the regulations may have limiting criteria that may restrict what your association is able to do.

## **2. Make sure your bylaws are consistent with other regulatory documents.**

Be sure to double check your bylaws for both internal consistency as well as external consistency (including keeping in line with the articles of incorporation, the state's nonprofit corporation act and any policy or governance manual).

## **3. Be sure to address all of your possible scenarios.**

Sometimes bylaws will have a provision about removing a board member, but leave out any provision covering the replacement. It is important to take the time to walk through all your 'what ifs' to avoid a hole in the bylaws.

## **4. Create bylaws that reflect the appropriate political climate of your association.**

Bylaws should reflect the appropriate balance of power among the members, the board of directors and the executive committee.

## **5. Keep your bylaws current.**

Frequently associations inherit bylaws that have been patch-worked together over time. They end up with antiquated bylaws that are not appropriate for how the association works today. Sometimes the best solution is to scrap your original bylaws and start over.

## **6. Keep your bylaws flexible.**

Some associations write their bylaws like massive policy manuals. This can make it very difficult for the board and the association to move forward. Your association should put the details of their policies into a policy manual leaving the bylaws as a concise and easy to navigate document.

## **7. Coordinate the actions of your bylaw committee with legal advice.**

When rewriting bylaws, almost inevitably, a legal adviser will be able to spot inconsistencies and potential problems. Try to coordinate with legal from the beginning of your process.

## **8. Ensure your purpose clause reflects your association today.**

This is actually a tax exemption issue. The purpose clause, which should be at the top of the bylaws, helps to determine what is a related versus an unrelated purpose activity. Keep in mind that a purposes clause drafted 30 years ago may not reflect your association's activities today.

## **9. Populate your bylaw committee with an accurate cross-section of your Association.**

If the bylaw committee is only comprised of three or four board members they may find some opposition when sending bylaws to the membership. By creating a bylaw committee that reflects your association's population you are less likely to run into this issue.

## **10. Do not make your bylaws too difficult to amend.**

Some bylaws may require amendments to be approved by two-thirds of the membership. Focus on creating

an amendment provision that is not overly difficult to enact and that is appropriate for the politics of your association.