

PRESIDENT'S POWER TO OVERTURN BOARD

By Donald C. Collins

Q Should a president be able to overturn a board decision? What are the pros and cons?

A Presidents can't overturn board decisions. However, presidents have to make decisions and take actions in the moment. The nature of many organizations can make it difficult for the president to always know what the board's will is.

We generally expect boards to express their will in their bylaws. The bylaws are an association's governing document. They are the law of the land so to speak.

The bylaws are the biggest constraint on presidential power. A president cannot take actions that are not authorized by his or her group's bylaws. Unfortunately, this constraint is only as good as the bylaws. Flaws in bylaws open the door for presidents to take actions that are not clearly right or wrong. At the wrong time and in the wrong place, bylaw uncertainty can lead to disputes, controversy, flawed elections, assignment issues, hearings and even litigation.

A lot can go wrong with bylaws. They can be out of date. They can be unclear. They can contradict other parts of the bylaws. They could simply be out of line with longstanding association customs. Even more confusing, some bylaws have exceptions, and some allow for optional — or discretionary — acts. Exceptions and discretion may be necessary, but they create one more area where presidents and boards can have disputes.

Flawed bylaws can lead even the most well-intended association presidents to take actions that can be challenged

internally and in court. The only way an association can protect the board and the president is to monitor the bylaws to see if they're working, being followed, and in need of any modifications.

Bylaw flaws are not limited to poorly run associations. Well-run associations can overcome bylaw flaws by airing the flaws, correcting the flaws through the amendment process, and curing any flawed board actions by holding special meetings to ratify — or cure — any procedurally flawed actions.

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Association flaws are not limited to flaws in the bylaws. Presidents can also run afoul of board actions that are not in bylaws. Associations often have committees, advisory actions, guidelines and policies. An association has to make it clear where these fit in the structure of the association or people could build fiefdoms, ranging from the assigner who answers only to himself to the treasurer who isn't monitored to committees and committee members who operate independently from the board.

Without a proper structure, fiefdoms formed by unelected association representatives could lead an association to have both an elected leadership and various unelected groups that are all-powerful in certain areas

of management. Without proper management, presidents, the board and the unelected people who have built fiefdoms could have conflicts that create legal and administrative problems.

The well-run association must strive for managerial clarity. The president, the board and the members must know what the managerial structure is. The board and president have to spend time communicating with members to reduce confusion.

A lack of clarity and member confusion leads to disputes, increasing the chance of litigation. The way to manage this problem is ... to manage it. The board must monitor committees, take reports, and review policies. It is management that prevents associations from spiraling out of control, and it is management that prevents president vs. board power struggles. It is management that prevents presidents from having to deal with the chaos of an unregulated association.

It is not enough for a modern association to note that the president serves the board. It must create an environment where the president, the board, committee members, and the membership have clarity on the association's managerial structure. This clarity combined with monitoring of the structure and modification where needed allows presidents to operate in an environment where they can follow bylaws and board instructions without confusion as to what those bylaws and board instructions really mean.

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