

Nonprofit Chapters and Affiliates: Finding Structures and Relationships That Address Your Challenges and Work Well for Everyone

Thursday, February 4, 2016, 12:30 – 2:00 pm ET

Venable LLP, Washington, DC

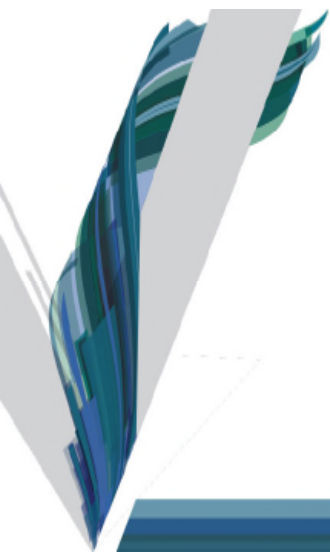
Moderator

Jeffrey S. Tenenbaum, Esq., Partner and
Chair of the Nonprofit Organizations Practice,
Venable LLP

Speakers

George E. Constantine, Esq., Partner and
Co-Chair of the Regulatory Practice Group,
Venable LLP

Paul Stalknecht, President and CEO,
Air Conditioning Contractors of America



Presentation



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- **May 19, 2016:** [Election-Year Activity: How Your Nonprofit Can Be Legally Active in the Political World](#)

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Today's Agenda

- Background about Chapters and Affiliates
 - Why have chapters or affiliates?
 - Trends
- Legal and Tax Framework
 - Separateness vs. control
 - IP, tax, and contractual liabilities
- Practical Strategies
 - Case study for a new chapter structure
 - Other examples
- Conclusion

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Background—Why Have Chapters and Affiliates

- Chapters give local base for:
 - Membership
 - Sponsorship
 - Contributions
- Chapters can be “farm system” for new organization leaders
- Affiliates usually formed for liability and tax reasons
 - E.g., 501(c)(3) establishes 501(c)(4) affiliate for more aggressive lobbying
 - E.g., 501(c)(6) establishes 501(c)(3) affiliate to solicit tax deductible charitable contributions

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Background—Evolution of Chapters and Affiliates

- Every nonprofit is different—size, type, scope—but they are also in many ways fundamentally the same
- Not the '60s, '70s, or '80s, the heyday of local organizations
- World has changed—networking is different
- iPad, iPhone, Internet, chat rooms—the communications of today
- Few want to attend local meetings or participate

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Background—Evolution of Chapters and Affiliates

- Greater emphasis on compliance
 - Discouraging formation of separate entities without strong business case
- Many related foundations, advocacy arms, for-profit subs not reaching potential
- Tax advantages sometimes overstated

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Chapters and Affiliates—Legal and Tax Framework

Reasons to Affiliate

Tax
Restrictions

Fundraising
Opportunities

Maximizing
Resources

Geographic
Focus

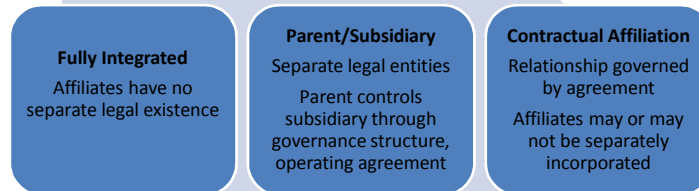
Managing
Liability
Exposure

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Chapters and Affiliates—Legal and Tax Framework

Control/Autonomy Continuum

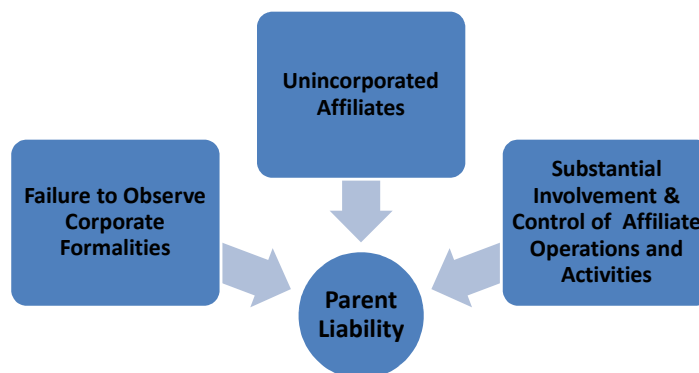


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Chapters and Affiliates—Legal and Tax Framework

Attribution of Liability to Parent (Tort, Contract, etc.)



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Chapters and Affiliates—Legal and Tax Framework

Intellectual Property Ownership and Use

Names & Logos

- Common practice for affiliate name to include parent's name
- Disputes over use of name likely in the event of disaffiliation
- Specify trademark license terms in affiliation agreement and/or bylaws or policies
- Consider trademark registration (U.S. and foreign, if operating internationally)

Publications & Data

- Address ownership and licensing of membership lists, data, and works created by or through affiliates in affiliation agreement or on a project-by-project basis as necessary
- Consider 501(c)(3) tax implications before assigning rights to a non-501(c)(3)

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Chapters and Affiliates—Legal and Tax Framework

Governance-related Challenges

- Fiduciary duties
 - Overlapping directors on parent and affiliate boards
 - Affiliate representatives on parent board
- Common governance structure requirements
 - What works for parent might not be best for affiliate
- Common membership requirements
 - Qualifications
 - Termination
- Managing Affiliate Status
 - Threshold for granting charter
 - Dispute resolution
 - Inactive or probation status
 - Disaffiliation
- Financial management
 - Dues collection arrangements
 - Internal controls at affiliate level

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Chapters and Affiliates—Legal and Tax Framework

Federal Group Tax Exemption

Application Process

Increasingly Lengthy & Expensive Process

Changes May Be Forthcoming

Benefits & Limitations

Substantial Benefit for Subordinates

"General Supervision or Control" Element & Liability Risk

UBIT
Federal Employment Taxes
State & Local Taxes

Compliance

Annual Filings & Automatic Revocation

Monitoring Subordinate Activities

Training

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Chapters and Affiliates—Legal and Tax Framework

501(c)(3) Affiliates of Non-(c)(3) Entities

- Private benefit and private inurement
- Transferring funds and other resources from (c)(3) to non-(c)(3)
 - Grants to non-(c)(3)s
 - Providing fair market value consideration
- Attribution of political and lobbying activities to (c)(3)
 - Shared websites

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Practical Strategies—In General

Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies



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Practical Strategies—A Case Study: ACCA De-Federation

- Years in the making (5 years)
- Identify problems and trends to the Board
- Relate problems to growth/operational impediments
- Keep the Board focused on issues
 - Communicate often

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Case Study—The Board Must Take the Lead

- Find a champion on the Board to lead
 - Person who “gets it” and has backbone, is respected
- Establish ad hoc committee to study issues
- Remind the Board members of their fiduciary responsibilities
 - They serve the national associations interest—not Chapters/States
 - Take emotions and bias out of issues—look at facts/trends

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Case Study—Staff Due Diligence

- Present facts and data (membership trends)
- Present operational issues (multiple dues formulas)
 - 150 different dues formulas for same-size company member
- Explain inability to have national marketing campaign or monthly credit card dues payments
- Present “dirty linen” of chapter actions/inactions
- Impact on ACCA brand name
- Little control over independent Chapter/State corporations

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Case Study—ACCA Structure

- Moved to “one ACCA” concept in 2001
- If any local or State chapter in your zip code area existed, you had to join all tiers of ACCA organization
 - Chapter, State, and National (most of country was at-large)
 - All tiers were independent corporations
 - Set own dues level
- ACCA conducted dues billing
 - Processed payment back to Chapters and State organizations
- Process enabled poor chapters (no value) to exist

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Case Study—Board Ad Hoc Committee – Round One

- Have a cross section of association constituency
- Involve Chapter executives and leaders (local volunteer members)
- Present staff due diligence
- Let the ad hoc committee draw its own conclusions
 - Complex dues formulas
 - Inability to nationally market ACCA
 - ACCA brand name being tarnished
 - No control over Chapter finances, dues, or operations
 - Weak at state advocacy

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Case Study—Ad Hoc Committee Report

- Acknowledged structural impediments
- Recommended a new affiliation agreement be implemented
- But could not determine how to address the most serious flaw—DUES

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Case Study—Board Ad Hoc Committee – Round Two

- Put a band-aid on problems—New Affiliation Agreement
- Staff continued to advise Board of (same) problems
- CEO laid out a strategic plan and challenged board
- Fix federation, fix dues
- Appointed special committee to handle issue

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Case Study—Basic Principles

- **Face Reality**—A problem exists
- **Determine Relevance**—Define purpose/need of organization
- **Find North Star**—Develop direction/strategies to get organization where it needs to be
- **Be Bold**—Have courage to make painful but necessary decisions

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Case Study—Special Committee

- Chaired by highly respected and influential ACCA past chair (woman)
- Committee of ACCA officers
- No Chapters/State association involvement (had their chance)
- Keep emotions and prejudices out
- Make recommendations based on facts and realities
- What was best for ACCA?

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Case Study—Final Board Action

- ***Remind Board members of their fiduciary responsibilities***
 - Made tough but obvious decisions
- Move to open membership
 - Each entity to set and collect own dues
 - Each entity must show its own worth and value
 - Canceled all existing affiliation agreements with Chapters/State affiliates
- Move to MOU with State organization only
 - State advocacy purpose
 - Created designation of Affiliated Contractor Organizations (ACOs)
 - MOU a simple agreement to recognize each other

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Case Study—Communication to Chapters/State Executives

- No easy way to handle or right/wrong approach
- Decided to just be bold and not sugarcoat things
- Board chairman announcement at annual conference (March)
- Shock, anger, resentment
- New structure took place in four (4) months (effective Aug. 1)

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Case Study—Post De-federation

- Dues billing processes separated (some quirks)
- Licensing of name “ACCA” an issue
- New State MOUs signed (some new, some old)
- Some Chapters folded, others strengthened—focus on member values
- ACCA membership marketing streamlined, flat fee or monthly credit card
- Membership has grown, retention steady
- Envy of many other national associations with chapters/state organizations
- The evolution of chapters/state organizations is unavoidable

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Questions?

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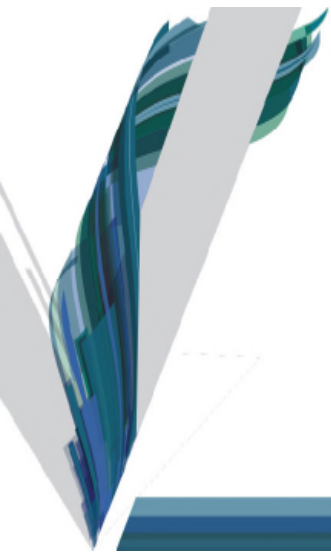
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Speaker Biographies



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Tax Policy
Tax-Exempt Organizations
Wealth Planning
Regulatory

INDUSTRIES

Nonprofit Organizations and Associations
Financial Services

GOVERNMENT EXPERIENCE

Legislative Aide, United States House of Representatives

BAR ADMISSIONS

District of Columbia

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is a highly accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was only a handful of "Leading Lawyers" in the Not-for-Profit category in the prestigious *Legal 500* rankings for the last four years (2012-15). Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2015 recipient of the New York Society of Association Executives' Outstanding Associate Member Award, the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-16 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014 and 2015 editions of *Washington DC Super Lawyers* in the Nonprofit Organizations category. In 2011, he was named as one of Washington, DC's "Legal Elite" by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

REPRESENTATIVE CLIENTS

AARP
Air Conditioning Contractors of America
Airlines for America
American Academy of Physician Assistants
American Alliance of Museums
American Association for the Advancement of Science
American Bar Association
American Cancer Society
American College of Cardiology
American College of Radiology
American Council of Education
American Friends of Yahad in Unum

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

New York Society of Association Executives

American Institute of Architects
American Red Cross
American Society for Microbiology
American Society of Anesthesiologists
American Society of Association Executives
America's Health Insurance Plans
Association for Healthcare Philanthropy
Association for Talent Development
Association of Clinical Research Professionals
Association of Corporate Counsel
Association of Fundraising Professionals
Association of Global Automakers
Association of Private Sector Colleges and Universities
Auto Care Association
Biotechnology Industry Organization
Brookings Institution
Carbon War Room
CFA Institute
The College Board
CompTIA
Council on Foundations
CropLife America
Cruise Lines International Association
Design-Build Institute of America
Erin Brockovich Foundation
Ethics Resource Center
Foundation for the Malcolm Baldrige National Quality Award
Gerontological Society of America
Global Impact
Goodwill Industries International
Graduate Management Admission Council
Habitat for Humanity International
Homeownership Preservation Foundation
Human Rights Campaign
Independent Insurance Agents and Brokers of America
Institute of International Education
International Association of Fire Chiefs
International Sleep Products Association
Jazz at Lincoln Center
LeadingAge
The Leukemia & Lymphoma Society
Lincoln Center for the Performing Arts
Lions Club International
March of Dimes
ment'or BKB Foundation
Money Management International
National Association for the Education of Young Children
National Association of Chain Drug Stores
National Association of College and University Attorneys
National Association of County and City Health Officials
National Association of Manufacturers
National Association of Music Merchants
National Athletic Trainers' Association
National Board of Medical Examiners
National Coalition for Cancer Survivorship
National Coffee Association
National Council of Architectural Registration Boards
National Council of La Raza
National Defense Industrial Association
National Fallen Firefighters Foundation
National Fish and Wildlife Foundation
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse

The Nature Conservancy
NeighborWorks America
New Venture Fund
NTCA - The Rural Broadband Association
Nuclear Energy Institute
Peterson Institute for International Economics
Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Romance Writers of America
Telecommunications Industry Association
Trust for Architectural Easements
The Tyra Banks TZONE Foundation
U.S. Chamber of Commerce
United States Tennis Association
Volunteers of America
Water Environment Federation
Water For People

HONORS

Recipient, New York Society of Association Executives' Outstanding Associate Member Award, 2015

Recognized as "Leading Lawyer" in *Legal 500*, Not-For-Profit, 2012-15

Listed in *The Best Lawyers in America* for Non-Profit/Charities Law (Woodward/White, Inc.), 2012-16

Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014-15

Served as member of the selection panel for the *CEO Update* Association Leadership Awards, 2014-16

Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 700 articles.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 700 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



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George Constantine concentrates his practice exclusively on providing legal counseling to and advocacy for nonprofit organizations, including trade associations, professional societies, advocacy groups, charities, and other entities. He has extensive experience with many of the major legal issues affecting nonprofit organizations, including contracts, tax, antitrust, governance, and political activity matters.

Mr. Constantine has represented Internal Revenue Code § 501(c)(3), 501(c)(4) and 501(c)(6) clients on a number of critical tax-exemption matters, including representing clients that are undergoing Internal Revenue Service examinations challenging their exempt status; he has assisted associations and other nonprofit organizations going through mergers, consolidations, joint ventures, and dissolutions; and he has provided ongoing counseling on numerous transactional and governance matters that are unique to nonprofit organizations.

Mr. Constantine serves on the Legal Section Council of the American Society of Association Executives. In addition, Mr. Constantine is the former Staff Counsel of the American Society of Association Executives (ASAE), the 25,000-member national society for trade and professional association executives. As ASAE's sole staff attorney, he gained in-depth experience with the many legal issues facing associations. He also represented ASAE's interests before Congress and federal agencies. Mr. Constantine co-chairs Venable's Regulatory Practice Group.

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EDUCATION

J.D., University of Maryland School of Law, 1998

Recipient, Order of the Coif law school honors society

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HONORS

Recognized in *Legal 500*, Not-For-Profit, 2012 - 2015

PUBLICATIONS

Mr. Constantine is the author of numerous articles regarding legal issues affecting associations and other nonprofit organizations published by ASAE, the Greater Washington Society of Association Executives, the American Chamber of Commerce Executives, the New York Society of Association Executives, and the Texas Society of Association Executives.

SPEAKING ENGAGEMENTS

Mr. Constantine is a frequent lecturer on association and tax-exemption organization legal topics, including corporate and tax issues.

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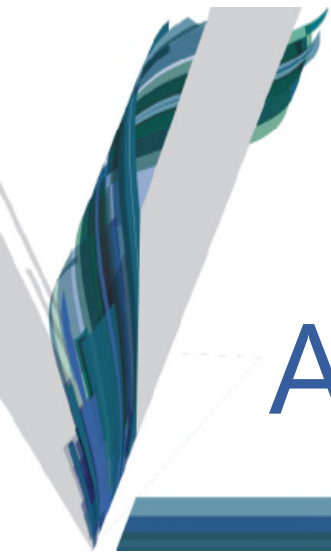
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Paul Stalknecht is president and chief executive officer of the Air Conditioning Contractors of America (ACCA), the nation's leading organization of environmental systems contracting businesses. The ACCA is a non-profit association serving more than 4,000 businesses in the HVACR community. Stalknecht has led the 45-year-old association through a series of unprecedented changes since assuming its top executive role in 2001.

Under Stalknecht's leadership, ACCA has increased its membership by 80%, and annual combined revenues have tripled. Growth has resulted from Stalknecht's focus on providing solid value to the association's contracting membership base; aggressive advocacy at the federal level; expanded educational programs, including innovative distance learning solutions; an open approach to partnering and collaboration between different segments of the industry; and the development of new standards for heating and cooling systems that are bringing the industry to the forefront of technology and energy efficiency. Stalknecht is a member of the U.S. Chamber of Commerce's Association Committee of 100, and *CEO Update*, a leading publication for association executives, has named him one of the top association CEOs in the country.

Prior to joining ACCA, Stalknecht spent thirteen years with the American Trucking Associations (ATA), eventually serving that organization as Senior Vice President for Federation Relations. He began his career with the New Jersey Motor Truck Association, eventually serving that organization as Executive Director for five years before joining ATA.

A New Jersey native, Stalknecht is a graduate of Fairleigh Dickinson University. He lives in Mount Vernon, Virginia, with his wife, Julie. They have five adult children.



Additional Information





WRITING A NEW CHAPTER

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ASSOCIATIONS
NOW
1-2/2016

For an association with a troubled chapter system, the path to resurgence is no walk in the park. It begins with a board of directors both bold in vision and open to all possible solutions.

With so many members and volunteers holding a stake, it may be one of the toughest leadership challenges a board can take on. Here's how three associations have done it.

By Joe Rominiecki



Imagine your association as the human body. The board of directors is the brain, making decisions. The staff is the heart, steady at work. And your network of chapters, components, or special-interest groups is the circulatory system, carrying all your energy out to the surface, where the action happens.

When that system of veins and arteries isn't healthy, it puts a lot of strain on the body. And, just as when the doctor prescribes a full-scale lifestyle change to reduce your risk of heart disease, the call to fix a struggling association chapter system will be both undeniable and supremely imposing.

"You've got to do the obvious sometimes," says Paul Stalknecht, president and CEO of **Air Conditioning Contractors of America** (ACCA), "and sometimes the obvious is a very professionally gutting experience."

Association boards, be warned. Chapter networks in many membership organizations are showing their age, says Peggy Hoffman, president of Mariner Management and Marketing LLC. Hoffman specializes in volunteer management and says she has seen an uptick in associations seeking guidance on chapter governance overhauls in the past five years.

Chapters "were built for the industrial age," Hoffman says. "We're not loyal to organizations anymore. We're not even loyal to our professions. We're loyal to causes and people. And that's not how chapters are built. So we have to rebuild them for the knowledge age."

Easier said than done, but this is what association volunteer leaders signed up for, right?

Look Before You Leap

"It's probably one of the most strategic decisions the board can make and probably one of the most significant, because you're totally changing not only the organization itself. You're also changing the culture within the association community," Stalknecht says.

In March 2015, the ACCA board of directors voted to eliminate the requirement that members join their local chapters and the national organization simultaneously. The move came after several years of deliberations over stagnating membership growth, but ultimately it was the board's decision whether and when to "rip the Band-Aid" off, as one staffer put it.

With so many volunteers invested in an association's chapter operations, the stakes—and emotions—are high. To justify a change to the association's fundamental structure, a board must have both a detailed understanding of its current state—strengths and weaknesses—and a clear vision for where it wants to go.

At the **Alzheimer's Association**, that vision is to match the "steep trajectory" of Alzheimer's in coming years with an expansion of research funding and patient and caregiver support, including a goal to double revenue to \$450 million by 2019. Alzheimer's Association Board President Stewart Putnam calls this the "burning platform" that galvanized

the organization to adapt its chapter structure toward pursuing its vision.

After more than a year of exploring options and gathering input from executives and volunteers at its 81 chapters, the Alzheimer's Association board voted in October 2015 to unify all its chapters under the national organization; chapter staff became national employees and chapter boards were freed of fiduciary duties to focus on local fundraising and program implementation.

But it wasn't reorganization just for the sake of reorganization. "We didn't box ourselves in with a position from the outset," says Putnam. "We said, 'What does the organization need to do if it's going to be as effective as possible and the leader in the Alzheimer's space to really make significant progress against the disease?'"

With that vision in sight, a board will also need a firm grasp of its bylaws and what's required to enact a change, such as a delegate or member vote. And then it must be ready to act in unison and own the decision.

Rules of Engagement

Before reaching any formal decision on a chapter change, however, an association has an informal, but perhaps equally important, decision to make: how to involve the chapters themselves in the process of designing their future.

To Hoffman, the choice is clear. Engage the chapters, and even at-large members, to develop a solution that meets the needs of all stakeholders.

"What we can do in that discovery process by having the chapters involved is we can understand what is truly not working or broken and make sure the system addresses that," she says.

"WE'RE LOYAL TO CAUSES AND PEOPLE. AND THAT'S NOT HOW CHAPTERS ARE BUILT. SO WE HAVE TO REBUILD THEM FOR THE KNOWLEDGE AGE."

Peggy Hoffman

Mariner Management and Marketing LLC





CHAPTER DIAGNOSIS

How do you know when your association's chapter network is in need of repair? Peggy Hoffman, president of Mariner Management and Marketing LLC, advises associations to look at a combination of key metrics and recurring themes in chapter feedback. "The first theme that will show up is a difficulty in getting local volunteer leaders," she says. "If you don't have the leader, you don't have the chapter."

Any one of the symptoms below may be cause for concern, but a combination could signal an absence of chapters in the association's value proposition:

- vacant chapter volunteer positions or positions filled by the same people multiple times
- aging chapter memberships or difficulty in attracting younger members
- no correlation between retention and chapter participation
- declining chapter membership levels and event registrations
- low satisfaction ratings among chapter members or for chapter events
- inability of chapters to complete annual reports or to fill programming slates
- higher growth among at-large national memberships than among members in chapters

These can be pernicious challenges to tackle, but Hoffman says there is always hope to fix any broken system. "There are structures where chapters are part of the problem," she says. "But that doesn't mean the people are part of the problem." —J.R.



This was the path the Alzheimer's Association followed closely. Once the board knew a structural shift was needed, it formed two task forces, one with 14 chapter executives and one with 14 chapter board volunteers. It also surveyed volunteers and staff. Those efforts resulted in two proposals in February 2015: a more integrated version of its existing federation model and a single, unified national model.

The board conducted further listening sessions, and another work group of 14 chapter board members was formed to offer additional input. Meanwhile, Putnam and CEO Harry Johns met with nearly all of the chapters at least once before October, when the Alzheimer's Association delegate assembly met and voted. That nonbinding vote was evenly split among the chapters, but it was enough support for the board to vote later in October to proceed with the unification plan.

ACCA's board, meanwhile, studied its challenges for about three years, during which the board sought input from chapter executives and volunteers on what to do about its complicated membership structure. The association had chapters in about half of the United States, each charging different dues amounts.

In its final six months of deliberations, however, the ACCA board chose to not include chapters in discussions. "They had already done that for the prior two years, and they wanted the board to make the decision based on facts and to take the emotion and politics out of the decision," Stalknecht says.

At the **International Association of Administrative Professionals**, declining membership and outdated, onerous governance requirements led the board to more drastic measures. Complicating matters, says IAAP President and CEO Jay Donohue, CMP, CAE, was that the existing system of 464 chapters had become a liability. "Our data was telling us that the primary reason people left the organization or did not renew after their first year was the chapter experience," he says. IAAP also had a nearly 500-person house of delegates vested with decision-making authority on nearly everything, from dues amounts to policies and procedures.

The board had one point of power in the bylaws, however: It could terminate memberships. Believing the organization was "nearing the state of being obsolete," says Donohue, the IAAP board chose a complete rebuild. It terminated all memberships, adopted a new set of bylaws, and reinstated all members in a single day, installing a new governance structure that replaced existing chapters with a system of "branches" and "local area networks."

It was, to say the least, controversial, and the type of move an association board takes at its own risk. IAAP has thus far survived the transformation, though not without some bruises, but

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Hoffman says she has seen top-down chapter changes to which members have "revolted," sending the association back to the drawing board.

Brace for Impact

The transition process for a chapter change can be challenging, even in the best of cases. "It is important for board and headquarters staff to remember the members are quite a few steps behind," says IAAP Board Member Dawn Becker. "The board had the luxury of skipping the grieving process; the members did not."

In the rollout phase, responsibility belongs to the association staff to execute the transition well. In fact, planning likely must begin well before an official decision is made, as one of the first questions members will ask is "How will this work?"

Chief among tactical concerns is a communications plan. IAAP, for instance, hired a communications consultant to assist. Board members announced the change alongside staff, and they attended town-hall meetings with chapters to answer questions and listen to concerns.

"I would want to make it very clear to my peers in the chapters," says Hoffman, "that the board is watching and has their best interest in mind and that they have given the staff the resources necessary to make this successful. But, if at any time there were concerns that needed to be addressed, the board remains available and ready to talk."

And it helps—at all stages of the process—when board members have their own chapter experience to bring forward, says IAAP Board Chair Wendy Melby. "I think one of the strongest messages we conveyed to the members was that, as board members, we are also IAAP members," she says, "meaning that these changes were also affecting us."

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A recent U.S. Court of Appeals for the Seventh Circuit decision held that the national Girl Scouts organization violated a Wisconsin franchise law when it attempted to take away territory from a local chapter as a part of the national organization's broader plan to reorganize local council boundaries. In this case, *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the United States of America, Inc.*, the Manitou council sought to enjoin the national organization from transferring all of its territory in Wisconsin, arguing that the local Manitou chapter (called a "council") was a "dealer" under Wisconsin law and that such action would be violating the Wisconsin Fair Dealership Law without good cause. While the transfer of all of the Manitou council's territory would not have served to dissolve the Manitou council as an entity, it would have prevented it from representing itself as a Girl Scouts organization and from otherwise using Girl Scouts trademarks, which the Court characterized as a "constructive termination."

Background

The Girl Scouts of the United States of America, Inc. is a nonprofit organization that was founded in 1912 and incorporated in 1950 by an Act of Congress. In 2004, a time when there were over 300 local Girl Scout councils across the country, the national organization determined it would cut back drastically the number of local councils and expand the surviving councils' boundaries. Each council is party to a charter agreement. According to the Court's decision, the agreement with the Manitou council did not permit the national organization to change its territory at the time the national organization attempted to take away the council's territory, though the council had agreed to be subject to a rule that allowed the national organization to have the final say over "all matters concerning jurisdictional lines."

The Court noted that the Manitou council and the national Girl Scouts organization relied heavily on the sale of cookies and other merchandise for fundraising.

Wisconsin Law

The Wisconsin Fair Dealership Law forbids a franchisor from terminating, canceling, failing to renew, or substantially changing "the competitive circumstances of a dealership agreement without good cause." A "dealer" is defined as a "grantee of a dealership" and the applicable "dealership" definition is an agreement that grants "the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services."

The Court's Decision

In response to the Manitou council's lawsuit, the national organization raised several arguments which were each dismissed by the Court, the first of which was that the national organization's first amendment right of free expression would be violated if it wasn't allowed to reorganize. The Court then disagreed with the national organization's argument that the Wisconsin law does not apply to nonprofit entities due to an absence of commercial activities; the Court said that nonprofits often engage in commercial activities and that the Girl

Scouts definitely do, stating that, “[f]rom a commercial standpoint, the Girl Scouts are not readily distinguishable from a Dunkin’ Donuts.” The Court also rejected other arguments from the national organization attempting to show it was exempt from the state law. Ultimately, the Court held that although the national organization’s board of directors had the authority in its chartering agreement with the Manitou council to make final decisions “in all matters concerning jurisdictional lines,” when attempting “to use that authority to terminate the franchise altogether,” the national organization violated the Wisconsin Fair Dealership Law which, as mentioned above, requires “good cause” to terminate a “dealership.”

The Impact of this Decision

While the facts involved in this case are somewhat unique – given how significant and recognizable the Girl Scouts’ cookie sales and other activities are – the decision of the Court was a broad one that could be construed as applying to more traditional nonprofits that may have less visible commercial activities. The contractual relationship between the Girl Scouts and its councils (which the Court viewed as akin to that of “franchisor to franchisee”) appears to be very similar to relationships that associations and other nonprofit organizations have with their state and local chapters and other affiliates. As a result, this decision may pave the way for state dealership and franchise laws to be imposed on nonprofit organizations’ relationships with their chapters and affiliates. Approximately 20 states have dealership or franchise laws that could now come into play for nonprofit organizations across the country.¹

Consequently, nonprofit organizations with chapters should review their organizational structure, charter agreements, and related documentation, as well as state dealership and franchise laws, to determine whether changes to these documents may be necessary or prudent.

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¹Matthew Moloshok, "Constraints Against Termination of Dealers and Franchisees," *The Antitrust Source*, (2005), 5; and ABA Section of Antitrust Law, *Franchise and Dealership Termination Handbook* (2004), App. A.

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