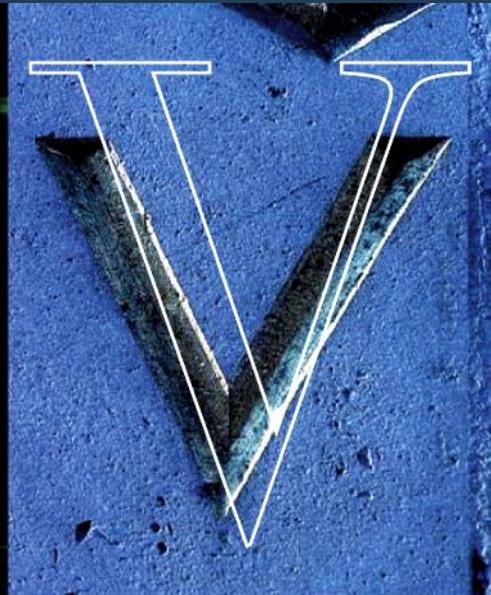
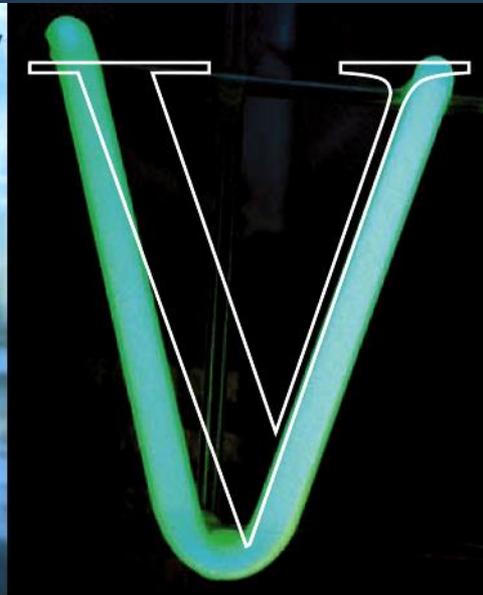
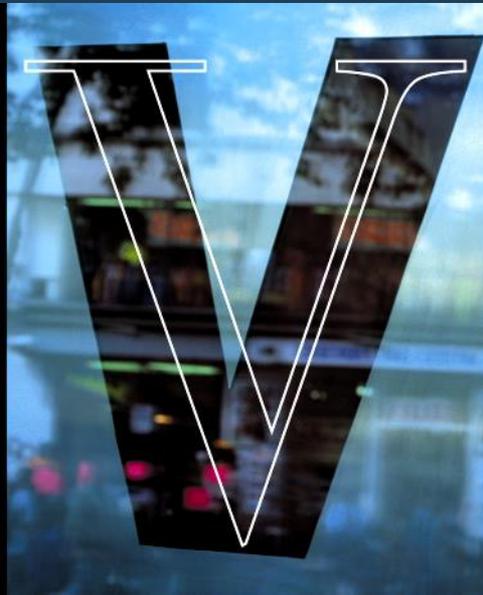
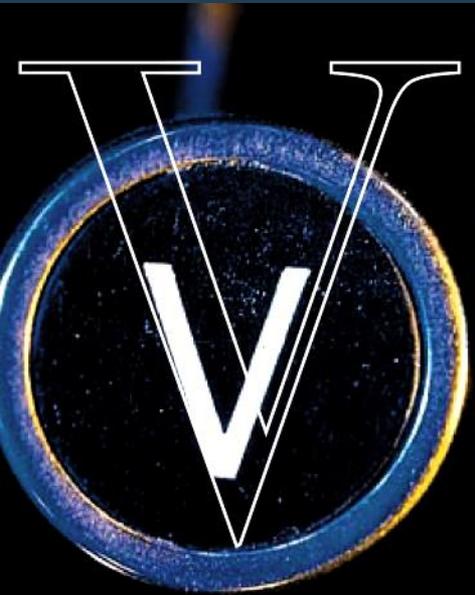


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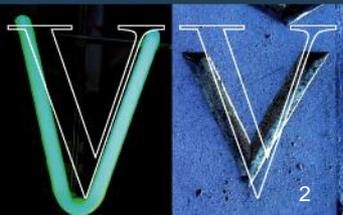
Ensuring the proper role of the board: hardwiring good governance into board bylaws

Caryn Pass, Presenter
Venable LLP
September 2016



general overview

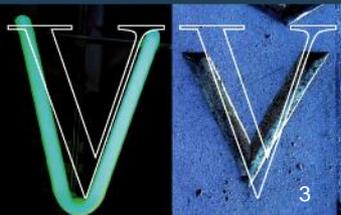
- Use by-laws to hardwire good governance
 - Can be used in both good and bad situations to ensure boards act appropriately
- Drafted consistent with Association culture and mission
 - transparent vs not transparent
- Must consider State Law when drafting By-laws
 - Non profit laws govern by-laws
 - **What state governs?**
 - **Where is the association incorporated?**
 - **Does association operate in different state?**
 - Failure to comply with state laws may invalidate the bylaws
 - If not addressed in by-laws will fall back to state law or Roberts rules



Top legal issues: board actions

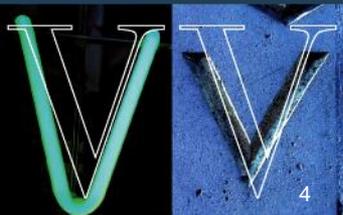
- Breach of fiduciary duty
- Confidentiality
- Actions outside of scope of duty
- Governance documents
 - By-laws
 - Conflict of interest
 - Charter/Articles of Incorporation
 - Whistle Blower
 - Document Ret/Destruction
- Intermediate Sanctions
- Committees for risk management oversight
 - Executive committee
 - Governance committee
 - Audit committee

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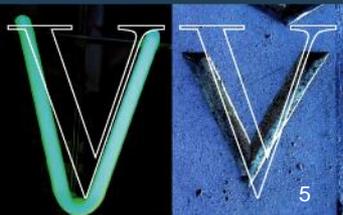
Confirm Status of Establishment Documents

- Articles of Incorporation and Charter
 - Establishes Association as legal entity
 - Do you know where your articles are?
 - Review regularly
 - Check state filing
 - Document consistent with board modifications
 - Correct Name
 - Correct description i.e. does it include accreditation, non profit vs for profit school members
- Charter or articles in “forfeiture”
 - Actions of board invalid, board acts without authority
 - Association name can be taken by other entity
- Confirm current status of 501 (c)(3) status



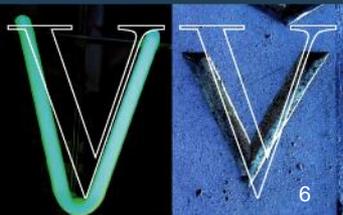
Board's fiduciary duty

- Authority to bind Association
 - who can sign and amount limits for multiple signatures
 - what goes before board/finance committee
- Audit and 990 completion
 - how is 990 presented to board
 - how is audit presented to board
- Retirement plans and oversight
- Review of budget
 - passing balance budget
- Assuming debt



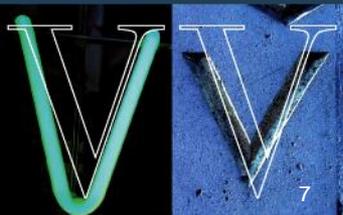
Board's confidentiality obligation

- Deliberations and exchange of views
 - process requires full and honest discussion
 - chilling effect if question of confidentiality
- Board must:
 - speak with one voice; appear unified
 - support board decision or leave board
- Avoid “public” discussions outside board meetings
- Breach of confidentiality
 - negative impact on decision (appearance of uncertainty)
 - **personal liability (cause damage to association)**
 - negative reaction by community (withdrawal from membership)



Actions outside of scope of duty

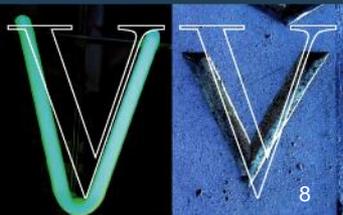
- Board's responsibility
 - establishes policy; creates strategic plan for Association
 - makes larger policy decisions
 - **supports executive director**
- Administration's responsibility
 - responsible for daily operations of Association
 - implements boards policy
- Board operating in administration's arena
 - legal claims by ED
 - prevents ED from performing job
 - legal claims by employees
 - trustees spoke in behalf of administration
 - retaliation for failure to appease trustee
 - **MEMBERS CHALLENGING DECISIONS**



Intermediate sanctions

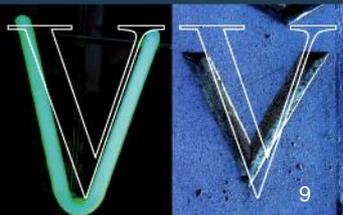
- Method for review of compensation of ED
- Avoid payment of excess benefit
- Board establish compensation committee or designees
- Compensation committee
 - ensures members have no conflict of interest
 - selects comparable Associations
 - collects comparable remuneration of similarly situated professionals (more than just salary)
 - considers information
 - establishes remuneration
 - documents process
- Presentation to board
 - general vs detail

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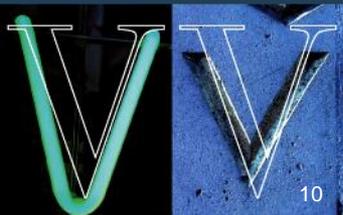
By-laws - general

- Review regularly to ensure compliance
 - Board’s actions must be consistent with by-laws
 - Failure to comply with by-laws invalidates boards’ actions
 - proxy vote not provided for in by-laws
 - e-mail notification of board meetings
- Use by-laws as good governance foundation
 - Consider how board wants to act as an entity
 - What is the board’s culture
 - transparency?
 - commitment to diversity?
 - ability to address issues?
 - level of “democracy”?
 - expectations of board service?



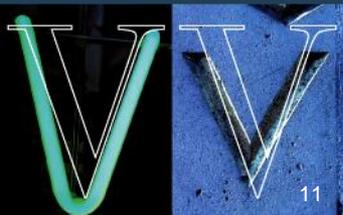
Section on ED

- Executive sessions
 - Standing session at end of each board meeting
 - With/without ED
- Section related to ED
 - Selection and review
 - Method for establishing compensation
 - Intermediate sanctions obligations
 - 990 presentation to board
 - Method and votes needed for removal
 - CHECK YOUR CONTRACT
- Does the ED have a vote



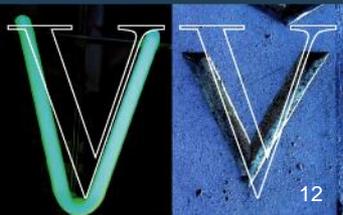
Selection of board members

- Trustees vs. Directors
- Number of Trustees on Board
- Selection of board members
 - Fixed skills or open spots
 - Design for needs of board
 - Who selects the candidates
 - Governance Committee, board in general or community
 - Level of ED participation
 - Can community make suggestions?
 - Interview process and vetting
 - Is there an interview process, who performs
 - Presentation to the board
- Make up of board
 - Heads? CFO's? Other Association ED? Parents?



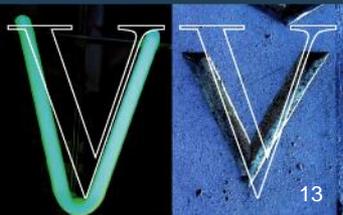
Voting and term limits

- Voting for board members
 - Trustees? Members?
 - Slate vs. individual nominees
 - Nominations of trustees at time of vote
 - Percentage vote needed
- Rotating terms
 - % of trustees that roll off each year
- Term limits of trustees
 - Years per term
 - # of terms can serve
 - Break between terms
 - Honorary trustees



Committees

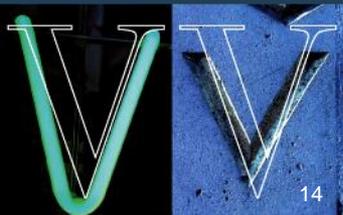
- Committees
 - What committees established
 - Creation of new committee?
 - Who can establish, what is needed to establish
 - Role of each committee
- Executive committee
 - Decisions between meetings
 - Regular meetings
 - With ED
 - Creation of agenda
 - Plans for the year
- ED's committee
 - Evaluation of ED
 - Compensation of ED



Governance Committttee

- Who appoints the committee
- Same system as other committees?
- Former chair transitions to Committee Chair
- Role and responsibilities
 - Selection of trustees
 - Selection of officers
 - Review of trustees
 - Removal of trustees
 - receives and investigates complaints, reports to board, makes recommendation
 - TRUSTEE LEAVES DURING DELIBERATION

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Review of Concerns Involving Board Members

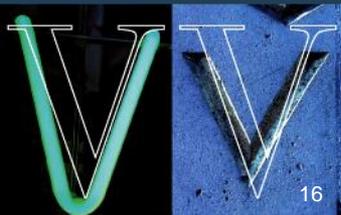
The Board Governance Committee is responsible for the review of allegations made against individual Board members. Members with reasonable belief that a fellow Board member has acted in a manner which would serve as the basis for removal may file a complaint with the Board Governance Committee. The Board Governance Committee shall conduct a careful and complete investigation of the complaint. Should the Board Governance Committee conclude that no violation occurred, the findings shall be reported to the Board. Should the Board Governance Committee determine that a violation took place; the Board Governance Committee shall report the findings to the Executive Committee and recommend appropriate action up to and including possible removal from the Board. The Executive Committee shall report the Governance Committee's findings and recommendation to the Board. The report shall take place in Executive Session. The Board shall consider the findings and recommendations of the Board Governance Committee and determine what, if any, additional action is appropriate under the circumstances. At the discretion of the Board, the Member under review may be required to leave the meeting during discussions of the matter and may be permitted to appear before the Board to address the complaint against him/her.

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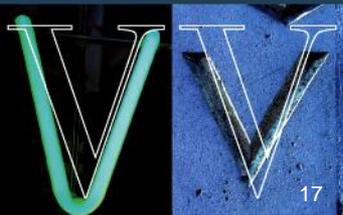
Removal of Board Members

Any Board Member, including Ex Officio members, Elected Trustees, and Trustees Emeriti, may be removed from the Board with or without cause upon recommendation of the Executive Committee and/or the Board Governance Committee, at any meeting of the Board, by an affirmative vote of two-thirds of the Elected Trustees. The vote for removal shall take place in Executive Session. The Board Member under consideration for removal may be dismissed from the Executive Session during the discussion and or deliberation of the recommendation. The Member under review may be permitted to appear before the Board to present his/her objection to the recommendation. For the purposes of this Section, "cause" shall mean any of the following: (1) absences from Board meetings two or more times within a 12-month period; (2) breach of the Member's fiduciary duty to the School; (3) repeated failure to carry out assigned responsibilities from the Board of Trustees or a Committee of the Board; (4) conduct which is determined by the Board Governance Committee to be: i) detrimental to the reputation, mission, or operation of the School; ii) detrimental to the Board of Trustees; iii) in violation of the obligation to maintain the confidences of the Board; iv) in violation of the Board's Conflict of Interests policy; or, v) contrary to a Member's obligation to adhere to his/her duty of loyalty, obedience and care. Item (4) of this section shall include conduct by the Member and the conduct of persons associated with the Member who have interaction or affiliation with the School by nature of their relationship to the Member.



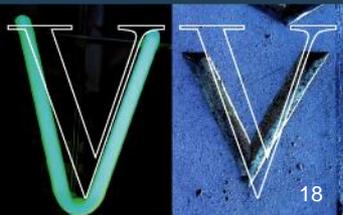
Leadership

- Board chair
 - Chair
 - unlimited vs. fixed term
 - 2 or 3 years? 1 year with renewal?
 - Who selects? Board, Governance committee?
 - Succession planning
 - Vice chair becomes chair?
- Other officers
 - What positions exist?
 - Secretary, vice chair, treasurer,
 - Term limits?
 - Does term suspend during service
 - Can term extend if in leadership role



Votes, attendance & notice

- Percentage of votes needed for various decisions
 - What decisions are most vs. least important
 - Votes for:
 - removing trustee, employing and terminating ED
 - Not established default to state law or Robert's rules
- Attendance
 - Meeting by phone or skype
 - Consequence of not attendance
- How are votes allowed
 - By proxy, Email Votes
- Meeting Notice to trustees
 - By email, letter, phone
 - Emergency meeting rules
- Emergency Meetings



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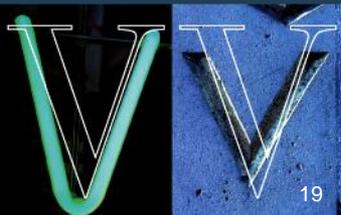
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