



Nonprofit Governance Training 101 – Live Q&A

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Agenda

- Introduction
- Directors: Roles, Rights, & Responsibilities
- Others Involved in Governance:
 - Officers
 - Committees
 - Members
- Common Challenges & Lessons Learned
- Q&A

Introduction



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What is Nonprofit Governance?

- Nonprofit governance refers to the framework of laws, policies, and practices by which a nonprofit organization is directed and controlled. It encompasses the responsibilities of the board of directors in overseeing the organization's mission, financial integrity, legal compliance, and strategic direction.

Where Does Governance Come From?

- State Law
- Federal Law (e.g., Internal Revenue Code & IRS Regulations)
- Articles of Incorporation
- Bylaws
- Board Policies
- Best Practices

State & Federal Law

State Law

- How many directors
- Term limits
- Number of meetings
- Officer positions
- What committees can do

Internal Revenue Code

- Obtaining and maintaining tax exempt status
- Required filings (i.e., Form 990)
- Review of excess benefits transactions and intermediate sanctions

Articles & Bylaws

Articles

- Must be filed with the state
- Identify purpose of the nonprofit
- Controls what activities board may authorize nonprofit to engage

Bylaws

- Required, but generally not filed with the state
- Internal governance document that sets out the governance structure of nonprofit
- Describes board structure, composition, elections, meetings, quorum, committees, and more

Board Policies

IRS Recommended

- Conflicts of Interest
- Document Retention
- Whistleblower Protection
- Joint Venture

Other Common Policies

- Investment
- Gift Acceptance Policy
- Executive Compensation
- Ethics Policy/Code of Conduct/Job Description

Why Does Corporate Governance Matter?



**Advance
Mission!**

- Protects against liability
- Promotes long-term stability and sustainability
- Enhances accountability, transparency, and ethical conduct
- Increases efficiency and effectiveness of operations for communities served

Directors: Roles, Rights, & Responsibilities



What is Board of Directors?

- The **deliberative** body responsible for
 - Exercising **fiduciary** oversight,
 - Setting **strategic** direction, and
 - Serving as a **generative** space, all to:
 - Advance the mission of the nonprofit

Fiduciary Duties

- Nonprofit directors are required to meet certain standards of conduct (*i.e.*, fiduciary duties)
- Fiduciary duties for nonprofit directors are statutory and based in common law
- Courts use fiduciary duties to determine whether or not a director acted improperly
- Fiduciary duties apply to all board director duties, including committee work

Fiduciary Duties, Include:

- **Duty of Care:** Act with reasonable inquiry and informed judgment, in good faith
- **Duty of Loyalty:** Avoid conflicts, act in best interest of organization
- **Duty of Obedience:** Follow the mission and comply with laws

Common Collective Responsibilities

1. Adopting and amending bylaws
2. Appointing and removing directors
3. Appointing and removing officers, including the CEO, monitoring their performance, and determining compensation
4. Establishing committees and filling committees

Common Collective Responsibilities, Cont'd

4. Overseeing that key policies and procedures are adopted and implemented, such as internal controls that guard the nonprofits fiscal integrity
5. Holding board meetings and overseeing that minutes are taken
6. Overseeing the nonprofits activities, including setting the budget and receiving reporting on budget throughout the fiscal year

Common Individual Responsibilities

- Board meeting attendance
- Reviewing reporting and board packet, in advance
- Involvement in committee and task force work
- Financial support
- Role as ambassador
- Participating in nonprofit activities
- Delegate day-to-day management

Others Involved in Nonprofit Governance



Officers

Types & Responsibilities Vary Widely

- Oversee or engage specific governance or operational activities
- May be employees, volunteers, or a combination of both
- Set by state law, bylaws, committee charters, and sometimes job descriptions/employment documents

Common Officer Positions

- Board Chair/Presidents
- Vice Chairs/Presidents
- Secretary
- Treasurer / CFO
- CEO / Executive Director



Compare Role of Board and Executive Staff, Including CEO

Board of Directors

- To hire, evaluate, & set compensation of CEO (and sometimes also CFO)
- Provide fiduciary oversight
- Set strategic direction
- Serve as generative resource

Chief Executive Officer

- Oversee day-to-day operations, including other employees



Committees

Types & Responsibilities Vary Widely

- Oversee specific governance or operational activities
- May have non-directors
- If non-directors serve on committee, may not exercise authority of the board, i.e., must be advisory
- Can be ad hoc or standing

Common Committees

- Executive
- Development
- Governance
- Finance
- Audit

“Statutory” or “Voting” Members

- Individuals who have certain rights under state law and the nonprofit’s bylaws – but who are not directors –for example:
- Elect and remove directors
- Approve merger, dissolution, or asset sale
- Inspect certain corporate records
- Attend and vote at a “member meeting”
- **NOTE – “statutory members” ≠ honorary-members, contributing members, supporting members (etc.), if there are no voting rights in bylaws or under state law**

Common Challenges: Case Studies



Common Challenges

- A Director of a nonprofit organization is in line at Starbucks, and an employee of the nonprofit taps them on the shoulder and asks to speak. The employee then tells the Director that the Executive Director is extremely difficult to work with. She micromanages. She is verbally abusive. She told employees to change time records. She terminated an employee after she found the employee complained about her. The employee asks the Director to take immediate action.

What is the Individual Director to do?

Common Challenges: CEO Oversight

Lessons Learned

- Conduct regular performance evaluations
- Don't ignore concerns, but take a neutral approach
- Investigate promptly, impartially, and thoroughly
- Protect against retaliation, including by providing guidance and support to CEO during process
- Take corrective action, if needed

Common Challenges

- A nonprofit is looking for a new facility for its operations. The Board Chair, Ben, advises the Board that his for-profit corporation owns real estate that would be perfect for the nonprofit's operations. Ben also advises that the for-profit corporation owns equipment that the nonprofit could use in its operations. Ben explains that he and the Executive Director have already worked out all the details and the contract is ready to sign as soon as the Board approves the transaction.

Can the Board approve the transaction?

Common Challenges: Duty of Loyalty & Conflicts of Interest

Lessons Learned:

- Directors must disclose potential conflicts and cannot vote on matters that they have material interests in
- Transaction must be fair, reasonable, and being entered into for nonprofit's own purpose
- Have written conflict of interest policy
 - Procedures for managing conflicts
 - Procedures for regular review and disclosure
 - Procedures for oversight and compliance

Common Challenges

- The Board has a very preliminary discussion about potential litigation from a former employee. At dinner with friends, Director John mentions that he has been very stressed recently because a former employee may be suing the nonprofit. Director John shares some details about the situation with his friends.

Is John fulfilling his role as a Board member?

Duty of Loyalty – Confidentiality

Lessons Learned

- All Board deliberations are confidential
- Additional privacy protections extend to personnel and client matters
- No right to “individually” access confidential information
- Listen to constituency, etc. but do not agree or promise anything
- Once decision made, Board speaks with one voice

Questions & Answers

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