Nonprofit Board Governance:

Interest in nonprofit boards and how they work has grown substantially in recent years, and more and more people are embracing the opportunity to serve on a board. This is good news. But the trend has a challenging side to it, as well. The average person joining the governing board of a nonprofit organization typically has rather little knowledge or understanding of the work to be done by a board or what is expected of them once they join that board. In spite of all the talk about the importance of effective boards and good governance, we find that the majority of people serving on nonprofit boards (including even a significant share of those who have prior board experience) actually have only vague and general notions about the fundamental roles and responsibilities of the board and the work of governance. Board member concern and uncertainty have become stronger with the increasingly strident calls for improved nonprofit accountability and effectiveness. Repeatedly we are asked "Given the changing expectations of funders, the government, and even our constituents, what is our job as a board? And what is it that I am really supposed to do as a member of this board?"

The uncertainty and confusion are understandable. We of the nonprofit sector have not done a good job of preparing people for their work of on boards – partly because every board seems to be a little (or a lot) different from any standard model, and partly because we are so busy that we don't feel that we can afford to take the time to be sure that we're all on the same page. We have become so busy doing the work that we don't take the time to make sure that we understand the work! The lack of shared understanding is amplified by our discomfort with the uncertainty. A good share of the time, a board member with questions assumes that they're the only member of their board who is uncertain – and yet, they're rarely alone in their uncertainty. It is for these members that we offer this reading -- a basic resource on the fundamentals of nonprofit governance and board work.

What is Governance?

Governance is the process of providing strategic leadership to a nonprofit organization. It entails the functions of setting direction, making policy and strategy decisions, overseeing and monitoring organizational performance, and ensuring overall accountability. Nonprofit governance is a political and organizational process involving multiple functions and engaging multiple stakeholders.

The meaning of governance is relatively different for nonprofit and governmental settings. Public sector (government) governance refers to the political process of policy and decision making for communities and political jurisdictions, whereas nonprofit governance refers to the process of providing leadership, direction, and accountability for a specific nongovernmental, not-for-profit organization.

This chapter addresses only the topic of nonprofit governance. In the United States and many other nations, an incorporated nonprofit organization must have a governing board and, as a matter of law, this board constitutes "the organization." It is common for boards to hire staff to actually do the work of the organization, often with support from volunteers.

Nonetheless, it is the governing board that ultimately is accountable for all acts undertaken in the name of the organization, whether or not those acts are formally approved or implemented by the board itself. This accountability exists regardless of the size or nature of the organization and regardless of whether the organization employs staff, and members of nonprofit governing boards must recognize that they have certain legally enforceable duties and obligations by virtue of their membership on the board. (These duties and obligations are relevant only to the official governing board, itself, and do not apply to non-governing bodies such as advisory boards or councils.)

Nonprofit governance is primarily the province of an organization's governing board, often known as a board of directors or board of trustees. However, in larger organizations that employ staff, it is not unusual for others to be a part of the governance process, as well. In particular, it is common for the chief executive or staff officer of the organization to play a very active role.

Governance, strategy, and leadership

Effective governance is integral to the success of the nonprofit organization. Governance is essentially a decision process grounded in the assumption that organizations can cause desired results to occur by choosing appropriate courses of action. Fundamentally, governance and strategic leadership are about making informed organizational choices: choices about why we're here, what we want to accomplish, the best ways to achieve those results, the resources we'll need to do these things and how we will secure them, and how we will know whether we are making a difference. Strategy is the process of selecting among alternative courses of action, using the chosen goals and outcomes as the basis for the selection, and implementing these strategies to achieve these results and outcomes. The process involves gathering information and using it to inform the decision process, with the expectation that effective strategy choices will result in organizational success. Unlike the for-profit world, where these choices are largely grounded in options for making money for someone, nonprofits essentially always begin with a focus on doing good – and making choices about how best to have an impact.

Effective governance and strategy are integral to the sustainability and long-term effectiveness of a nonprofit operating in today's complex and competitive world. To succeed, nonprofits (like all organizations) must continuously renew the link between what they do and the needs and interests of the community they serve. They must ensure that they are providing the services needed and valued by their clients and constituents, and in ways that are consistent with the organization's core values and principles. As the organization serves its clients and the community, governance involves making judgments about how well or poorly the organization is doing and then making choices about how it can be more effective

Boards of directors

The board of directors (sometimes known as the board of trustees or governing board) is the primary group of people entrusted with and accountable for the leadership and governance of the nonprofit corporation. Governance is a central responsibility of the board, yet the typical board's work goes beyond that of governance, alone. For example, it is common for boards and their members to also serve as:

- Ambassadors who build relationships and generate good will;
- Sponsors and representatives who advocate on behalf of the organization;
- Trusted advisors and consultants who offer guidance and serve as sounding boards for the chief executive and staff; and
- Resource developers who help the organization secure essential resources

The Legal Duties of the Board[1]

In the United States and many other nations, the board of directors of a nonprofit corporation has the ultimate responsibility and accountability for the conduct and performance of the organization. Boards regularly delegate the work of the organization to executives, staff, and volunteers, yet they cannot delegate or reassign their responsibility for that work. Nonprofit corporations are entities authorized by a state to be formed for the purpose of engaging in some form of public service, and the law requires that each such corporation must have a governing body that oversees and ultimately is legally accountable for the organization. Acting as a collective, this governing body has both the authority and the accountability for the work of the organization.

Over the past decade, there has been an increase in the attention paid to the legal responsibilities of nonprofit boards and their members. Both federal and state or provincial authorities have placed increased emphasis on the need for nonprofit boards to be accountable for the quality of their governance and oversight of their organizations. The increasingly competitive and demanding environment of nonprofits, including increased competition between nonprofits and for-profit businesses, likely will lead to calls for even more legal accountability. Nonprofit boards have roles that go much beyond the legally required, yet there is no question that boards must be very attentive to the performance of their legal responsibilities.

From a legal perspective, the nonprofit board and its members, individually, have three fundamental duties.

> **Duty of Care,** which is taking the care and exercising the judgment that any reasonable and prudent person would exhibit in the process of making informed decisions, including acting in good faith consistent with what you as a member of the board truly believe is in the best interest of the organization. The law recognizes and accepts that board members may not always be correct in their choices or decisions, but it holds them accountable for being attentive, diligent, and thoughtful in considering and acting on a policy, course of action, or other decision. Active preparation for and participation in board meetings where important decisions are to be made is an integral element of the duty of care.
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> **Duty of Loyalty**, which calls upon the board and its members to consider and act in good faith to advance the interests of the organization. In other words, board members will not authorize or engage in transactions except those in which the best possible outcomes or terms for the organization can be achieved. This standard constrains a board member from participating in board discussions and decisions when they as an individual have a conflict of interest (i.e., their personal interests conflict with organizational interests, or they serve multiple organizations whose interest conflict).
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> **Duty of Obedience,** which requires obedience to the organization's mission, bylaws, and policies, as well as honoring the terms and conditions of other standards of appropriate behavior such as laws, rules, and regulations.

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1 As with any general discussion of legal matters, we must present an important warning and disclaimer. This article is intended only to offer general information and its contents do not constitute legal advice. Boards and members with specific legal questions and concerns should consult legal counsel and the relevant regulatory authorities for definitive information and answers.

Board members are obligated to honor these standards with regard to all decisions and actions of the board, and those who do not may be subject to civil and even criminal sanctions (including sanctions imposed by the Internal Revenue Service of the U.S. government in cases of inappropriate personal benefit).

The Core Responsibilities of the Board

Much has been written on the core responsibilities of the nonprofit board, and no one list is universally applicable to all nonprofit organizations. It is the board’s responsibility to:

1. Determine and articulate the organization's mission, vision, and core values.
2. Recruit and select the organization's chief executive.
3. Support and assess the performance of the organization's chief executive.
4. Ensure that the organization engages in planning for its future.
5. Determine the set of programs that the organization will deliver to implement its strategies and accomplish its goals, and to monitor the performance of these programs to assess their value.
6. Ensure that the organization has financial and other resources adequate to implement its plans.
7. Ensure the effective management and use of the organization's financial and other resources.
8. Enhance the organization's credibility and public image.
9. Ensure organizational integrity and accountability.
10. Assess and develop the board's own effectiveness.

The Fiduciary Responsibility of Boards

Boards and board members often are reminded that they have a "fiduciary responsibility" to the organization and, ultimately, to the larger community within which they serve. At its core, "fiduciary responsibility" is the responsibility to treat the resources of the organization as a trust, and the responsible board will ensure that these resources are utilized in a reasonable, appropriate and legally accountable manner. While the phrase often is used to refer especially to financial resources, it applies to the stewardship of all of the assets and resources of the organization.

In general, the appropriate exercise of fiduciary responsibility includes:

a) Adoption of a set of policies to govern the acquisition and use of financial and other resources;

b) Establishment, on a regular basis (usually annual), of a budget that allocates financial resources to the programs and activities that will accomplish the organization's mission, vision and goals and outcomes (preferably, in alignment with a strategic plan);

c) Development and implementation of an ongoing system for monitoring and holding staff and volunteers accountable for their performance with regard to these policies and budgets;

d) Development and implementation of an ongoing system to monitor, assess, and report on the overall fiscal condition and financial performance of the organization; and

e) Implementation of an independent external review process (such as an independent audit) on a regular basis (usually annual), to assess the organization's fiscal condition and health, including the effectiveness of its systems and policies for the protection and appropriate use of financial resources.

Unfortunately, many boards operate in much less systematic ways to ensure fiduciary accountability, and some become very enmeshed in the details of the organization and its management. In reasonably healthy organizations with competent staff, such “micromanagement” is counterproductive and can create an inability to "see the forest for the trees" (i.e., the board becomes so caught in detail that the important trends and issues are overlooked or obscured), and because it disrupts and alienates the executives and staff who experience the interference.

Typical structures and characteristics of nonprofit boards

Nonprofit boards typically have specific positions (officers) and work units (committees and task forces) that help the board organize and accomplish its work. According to one recent (2004) survey of U.S. nonprofits, the typical nonprofit board is comprised of from twelve to 24 members; the average for all boards was 17 members and the median board size was 15).2 Boards must meet regularly, but the frequency of meetings typically varies from quarterly to bi-monthly to monthly.

Officers

The officers of the typical nonprofit organization are the key leaders for the organization. In most states of the U.S., for example, the law requires that a nonprofit corporation must have certain officers. The most common positions are Board Chair (or President), Vice Chair (or Vice President), Secretary, and Treasurer. The Board Chair is the chief voluntary officer of the organization, and is responsible for organizing and conducting the meetings of the board. Further, it is the chair's responsibility to facilitate the board’s work as a team, and to ensure that meetings and other board activities are conducted in an effective manner. It is common for the Board Chair to oversee the performance of the organization’s chief executive on behalf of the board, although some organizations elaborate the process by assigning the chair to lead a process in conjunction with a committee of the board (often the executive committee) or even the full board.

Committees and Task Forces

Boards engage in much of their work as a full group and, ideally, all members work as a team to accomplish the work of the board. Nonetheless, more than 90% of US nonprofit boards also have created committees and task forces to help the board do its work and these entities are part of the governance system of the organization. For most boards, some of these units are permanent or “standing” structures, while others accomplish a specific task and then disappear. It is increasingly common for boards to refer to the permanent structures as committees and the limited term entities as task forces or ad hoc committees, although some organizations do use the labels interchangeably. While it is common for board committees to be comprised entirely of board members, it is increasingly common to also invite non-board members with unique expertise or knowledge to serve. Often, the key standing committees are specified in the organization’s bylaws document, which should explain their purpose and role(s).

1. **Executive Committee:** This committee is typically comprised of the officers, and sometimes will also include committee chairs or selected other board members. It usually has the authority to act on behalf of the board between meetings and to address organizational emergencies. Some executive committees have the authority to act independently, but many are required to have their actions reviewed and ratified by the full board.

2. **Nominating Committee:** This committee has the responsibility for recruiting candidates for board and committee membership and preparing a “slate” of candidates or nominees for consideration and action by the full board. Some also nominate officers. It is increasingly common to define this committee’s responsibilities to include a year-round cycle of board development activities, including new member orientation, member self-assessment, board self-assessment and

development, and the development of board training programs and retreats. When operating with this enlarged portfolio, such committees often are called Board Development or Governance Committees.

3. **Fund Raising or Development Committee:** This committee usually is responsible for working with staff and board to organize and implement the organization's fund raising events and activities, including the solicitation of major gifts and grants.

4. **Finance Committee:** This committee is responsible for planning, monitoring, and overseeing the organization's use of its financial resources, including developing a budget to allocate the organization's funds. This committee will develop for board action the financial policies the organization requires. Unless the organization has a separate Audit Committee, the Finance Committee also will oversee and review the organization's independent audit or financial review.

5. **Personnel Committee:** This committee usually is responsible for planning, monitoring, and overseeing the organization's use of its human resources (paid and volunteer). This committee will develop needed personnel policies, including policies guiding performance management and supervision, employee compensation and benefits, and handling of grievances.

6. **Program Committee:** It is not unusual for nonprofits to have one or more committees to oversee the organization's system(s) for delivering quality services to clients, and to engage in some form of monitoring and oversight to ensure that these services are provided in a timely and responsible manner. Such committees may handle certain relations with community leaders and interest groups that have key interests in the programs of the organization, as well as planning for program development or refinement to meet future needs.

It is important that committees and task forces do only work that legitimately is the responsibility of the board, and take care that these structures do not interfere with the operations of the organization or interfere with the oversight that should be provided by the full board. Many boards in older organizations have concluded that they have too many committees and it has become a trend among many U.S. nonprofit boards to decrease the number of standing committees and use task forces more frequently to address specific issues of strategic importance as they arise.

The legal roles and responsibilities of the individual board member

Your legal responsibilities as a member of the board of a nonprofit flow directly from the responsibilities of the board as a whole. You, individually, are accountable for honoring the same three fiduciary duties as is the entire board: you individually must exhibit due care, the duty of loyalty, and the duty of obedience on behalf of the organization on whose board you serve (as described in the earlier section). This standard of personal conduct requires active and informed preparation and participation in the conduct of board business, including raising questions and issues that would reasonably be raised by any prudent person. Of course, a board member who does not attend meetings or who attends but does not participate or know what is under consideration does not meet these standards. At best, such members are not helping the organization; at worst they are endangering the organization and the interests of the people it serves. Such members also are at risk of personal civil liability and "intermediate sanctions" should certain kinds of inappropriate organizational or board behavior occur.

It is every board member's responsibility to do their best to help ensure that the board as a whole is performing its legal responsibilities, and individual board members can be held liable as individuals for inappropriate organizational acts. Among the circumstances under which board members have been held personally liable are:

- When the organization has not paid certain taxes, especially payroll taxes.
- The board enters into inappropriate arrangements or contracts with a board member, particularly including conflicts of interest.
- The board has violated employment laws or contracts (a common example: the handling of the termination of an executive director).
- The board has failed to take reasonable steps to protect others from harm in a situation they knew or should have known was potentially dangerous (for example, in addressing dangerous facilities conditions, or in failing to address inappropriate individual behaviors of staff such as harassment or sexual misconduct).

What is a conflict of interest and what am I supposed to do about it?

The phrase "conflict of interest" is often used to describe a problem of legal or ethical concern, yet the nature of this problem often is not well understood. Fundamentally, the issue is about organizational loyalty and fairness, and conflict of interest generally refers to a situation in which a board member (or any other significant decision maker) has interests of his or her own that are -- or likely will be -- in conflict with the best interest of the organization. These may be financial or business interests, for example, such as selling your business's services or products to the organization on whose board you sit. The issue is that you are making a profit (your own interest) instead of ensuring that, from an objective perspective, the organization is getting what is best for its needs (the organization's interest). Because each board member has a duty to place the interest of the organization foremost in any dealings with the organization, the existence of a conflict of interest is a problem.

A common misconception is that board members cannot have conflicts of interest with the organization on whose board they serve. The problem is not with the existence of a conflict -- indeed, many board members are named to a board for the very expertise or business experience that results in such conflicts - but with how it is handled. The board member's obligation when a real or potential conflict exists is to disclose this situation to the board and then avoid participating in both the deliberations and decision making associated with the conflict situation. The board member should not be present at the time the matter is discussed to ensure that neither overt nor subtle pressure is applied (or appears to have been applied -- perceptions of conflict of interest often can be as damaging as an actual conflict).

It is essential for each organization and board to have a conflict of interest policy that makes clear the organization's expectations for such circumstances. Some place their requirements in the bylaws of the organization. These policies or bylaws usually include conduct of both board members and other senior executives and, as noted earlier, are designed to enable the organization to effectively control for and manage the problem. In some organizations, the likelihood of such conflicts existing is great enough that a part of the policy requires annual disclosure of information by members and executives that would flag the potential for such conflicts. This information is shared with leaders of the organization or, in many cases, the entire board, to help members anticipate and proactively manage what might otherwise become a serious problem.

In many part of the world, governmental authorities are taking an increasingly active role in defining and monitoring the work and behavior of nonprofit boards and their members. In the United States, for example, the federal Internal Revenue Service (IRS) has been clear in demanding that board members of nonprofit corporations, at the least, to fulfill all legally-mandated roles and responsibilities associated with being a board member. Therefore, the IRS expects board members and boards to honor in spirit and action the responsibilities that are articulated in the earlier section on Legal Duties and to do so in a timely and forthright manner.

Beyond the legal obligations

Obviously, it is important for every board member to honor their legal responsibilities, but the roles and responsibilities of the individual board member of a typical nonprofit board are more extensive than mere legal compliance. Every board should develop its own set of member expectations that addresses the needs and interests of that specific organization and what it needs from its board. However, the following are among the most typical of responsibilities or expectations that a typical nonprofit is likely to have of its board members.

In general, the typical governing board will expect its board members to:

- Participate actively:
  - Attend all meetings of the board.
  - Serve as a member of one or more of board committees or task forces.
  - Prepare in advance for meetings and other key board activities.
  - Engage in independent and critical thought in all areas of board work.
  - Attend special events and other key organizational activities as requested.
- Be knowledgeable and ensure that they understand:
  - The mission, vision, and overall work and strategic direction of the organization.
  - The bylaws and policies that guide the work of the board.
  - The board's expectations of them as a member of the board.
- Do their homework to ensure that they are appropriately informed about:
  - Issues and matters that will be the subject of board deliberation or decision making.
  - Important issues that are likely to have an impact on the success of the board and organization. Provide active support for the fund raising and other resource development activities of the organization, including:
  - Making a regular personal financial contribution to the organization (at a significant level, according to the member's capacity).
  - Assisting the organization in connecting with those people and organizations that may be able to assist in funding and supporting the organization.
- Serve as an ambassador and advocate on behalf of the organization, including active support for networking and the development of connections with community and other leaders.
- Provide encouragement and active support for the work of the staff and volunteers, taking care that board activities do not interfere with staff roles or functions.
- Serve with honor and integrity:
  - Help enhance the image and credibility of the organization through their work, taking care that their personal behavior reflects well on the work and reputation of the organization.
  - Honor sensitive matters in confidence and with discretion, exhibiting the best of ethical performance.
  - Honor and actively support all board decisions, once they have been made, and treat the content of board deliberations with confidence and discretion.
  - Avoid actual and perceived conflicts of interest, to the greatest degree possible, and exhibit the highest of ethical standards in all personal conduct.
  - and other unethical behavior.

- Support and actively contribute to the board's efforts to work effectively as a team:
- Play an active and constructive role in helping the board do its work, embracing the challenges and opportunities of board work with a positive attitude and energy. o Bring a sense of perspective and humor to the work of the board. o Provide support to fellow board members, and take time to celebrate the successes and accomplishments of the organization and the board.

Conclusion

Governance is a central and essential dimension in the leadership of nonprofit organizations, and the boards of directors that engage in the work of governance are central to the success of the organizations they serve. This chapter provides a basic overview of the nature and scope of a typical nonprofit organization's governance processes, including the basic ways that boards of directors typically will provide the leadership and direction to their organizations, and explains the ways that these roles can have an important impact on the success of the organization. There is no question that, when knowledgeable and motivated volunteers take the time to serve on community and other nonprofit boards, we all benefit. Likewise, serving as a member of a nonprofit organization's board of directors can be one of the most influential and enjoyable roles that any volunteer can play, and the rewards of effective service accrue to both the volunteer and their community. Such service is essential to the future of our civil society.

Source: David Renz – Midwest Center For Nonprofit Leadership