Governance for Nonprofits

From Little Leagues to Big Universities

A Summary Of Organizational Governance Issues and Principles
For Directors of Nonprofit Organizations

SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

SOCIETY OF CORPORATE SECRETARIES & GOVERNANCE PROFESSIONALS

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SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

September 2007

Dear Reader,

The Society is pleased to issue this updated edition of our *Governance for Nonprofits* monograph. As someone who has been fortunate enough to serve on the boards of directors of a pair of nonprofits, I can personally attest to the usefulness of this wonderful guide.

I would like to thank our editorial committee on this monograph: Cherie Sorokin and Walt Gangl headed up this effort, and Iris Aberbach, Karl Barnickol, Don Hager and Bob Seaman all made substantial contributions to it.

This monograph is not a legal treatise. Not all applicable laws are referenced and cited, and any that have been cited may not apply to your organization. This manual is not attempting to set forth a set of perfect practices for nonprofit governance. It does, however, reflect the general practices used by the members of the authoring committee through their many years of nonprofit service.

The committee hopes that this monograph will be a "living" document, open to new ideas that readers may wish to share. Please direct any comments to me at the Society's National Office.

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The test of our worth is the service we render.

Theodore Roosevelt

Service is the rent that you pay for room on this earth.

Shirley Chisholm

INTRODUCTION

Service as a director of a nonprofit organization can be invigorating and challenging, offering you the potential to use your expertise and leadership skills in support of the arts, education, health, religion, community service and numerous other good causes. But, how effective your service is and how personally satisfying depends a lot on the nature of the organization, how well run it is, and your own understanding of exactly why you've been asked to join the board. Whether you are considering joining a nonprofit board, or have already joined one, this booklet is designed to help you understand not only the implications of embarking on nonprofit board service, but also how good governance can make a significant difference to any organization.

Nonprofits in the United States include a great variety of organizations formed under specific federal and state laws for certain non-commercial (i.e., not profit-oriented) purposes. These organizations are generally exempt from income and certain other taxes they might otherwise pay. The financial strength of each organization is typically dependent on donations or gifts, although some organizations may also receive fees for services provided, and/or earnings on endowments. Each organization will have a particular mission as its central focus (e.g., arts, health, religion, education, science), but the size and nature of organizations within this sector varies greatly, ranging from huge organizations with vast endowments which, at least in theory, would allow them to live on forever, to tiny organizations that are barely viable and must constantly worry about their own existence.

The role of the governing body, or board, of nonprofit organizations also varies greatly. In some cases the board will be an operating board, that is, one that actually does most of the work of the organization with little or no paid staff assistance. In other cases, the board is a governing board, with general oversight responsibility and the day-to-day operations left to a professional paid staff. Understanding this difference can be critical to your enjoyment of board service and to your effectiveness as a director.

As in the commercial sector, good governance has become an issue of increasing importance to nonprofits. Many nonprofits have learned that an effective, strong board can be critical to the successful pursuit of their mission. To their dismay, many have also learned that the opposite is true. Well-publicized failures in governance have not only threatened the trust people have in such organizations but, in some cases, even their very existence. Furthermore, the size and importance of nonprofits in the U.S. economy is leading state and federal governments and agencies to impose, or think about imposing, governance-related legislation and regulations on the nonprofit sector. Foundations and other funders of nonprofits also are considering governance practices in their grant-making processes. Being aware of legal requirements and governance best practices not only helps to reduce the risk of personal liability as a director, but can make the difference between an organization that is effective in accomplishing its mission and one that is not.

The Society of Corporate Secretaries and Governance Professionals hopes this publication will be a useful guide to issues that may confront you as a director of a nonprofit and assist you in making your board service truly effective.

GOVERNANCE DOCUMENTS

Charter: For nonprofit *corporations*, the "charter" is typically filed with the secretary of state, and may be called a "certificate of incorporation," "articles of organization," or other such name, depending on your state's nomenclature. This charter is a prerequisite for official status as a nonprofit corporation. This document sets out the "constitution" of the organization. Changes to the charter require a formal amendment approved by the board or the members. Many states require annual reports to maintain the charter in effect.

For nonprofit groups organized as *trusts*, the primary governance document is the trust instrument, which may be called a "declaration of trust" or similar name. In most cases, the organization will also have periodic filing/reporting obligations.

Bylaws: For nonprofit corporations, bylaws outline the basic operating rules for the organization. They spell out how the board is structured and governed. Typically, they include rules pertaining to directors, officers, board committees, meetings, voting and indemnification.

Code of Conduct: Codes of conduct can help to define what the organization expects of board members and the board as a whole, and what the board expects of the management team. They can be particularly useful in helping directors avoid real or perceived conflicts of interest. They can also serve as useful guides for dealing with sensitive information, with members and other constituents, with outside organizations and with the press.

Mission Statement: A mission statement may be the most important of a nonprofit's governing documents. It defines the organization's purpose and directs its future. It helps management, the board, and volunteers focus on the stated goals, and helps to educate others about the organization. The process of developing or updating a mission statement can be time consuming, but it will help focus the organization's energies on what is really important.

Corporate Governance Guidelines: Creating written guidelines for governance in one document can be useful in setting forth clear "rules of the road" for governing the organization.

BOARD OF DIRECTORS/TRUSTEES

Basic Board Responsibilities

Some nonprofits are organized as nonprofit corporations with a board of directors, others as trusts or foundations with boards of trustees. Whatever their name, these governing bodies have similar responsibilities. Their function depends on the size and goals of the organization. The larger the organization and the greater the professional staff, the less "hands on" the board will be. However, directors or trustees of smaller organizations may, by necessity, find themselves more involved in the day-to-day operations.

Basic board responsibilities* include:

1. Determining the organization's mission and purpose.
2. Selecting the chief executive.
3. Providing proper financial oversight.
4. Ensuring adequate resources.
5. Ensuring legal and ethical integrity and maintaining accountability.
6. Ensuring effective organizational planning.
7. Recruiting and orienting new board members and assessing the board's own performance.
8. Enhancing the organization's public standing.
9. Determining, monitoring and strengthening the organization's programs and services.
10. Supporting the chief executive and assessing his or her performance.

These responsibilities are largely discharged through meetings of the board and its committees, during which there are group discussions, and the adoption of resolutions passed by directors present at the meetings. The concept that directors act as a body is important to keep in mind in joining a board. Individual directors generally have no authority to bind the organization or take action on its behalf unless they have been given delegated authority from the board. That said, some of the work of the board may be accomplished outside of board or committee meetings. Many boards expect that directors will serve as advocates for the organization throughout the community. Board members may be asked to represent the organization in public meetings. And, in order to act effectively as a director, it may also be necessary for individual directors to meet outside of board meetings with managers, employees, clients, donors, other board members, and other constituents.

Legal Obligations of the Board

In conducting the business of an organization, directors have certain legal obligations. Failure to observe these obligations may subject nonprofit directors to liability. It's a mistake to believe you can't be sued just because you are a volunteer director serving an organization with a great cause.

*From Ten Basic Responsibilities of Nonprofit Boards, by Richard T. Ingram (Washington, DC: BoardSource, revised 2003)

a. Duty of Care and Duty of Loyalty

Directors of for-profit and nonprofit institutions have the same two basic legal obligations:

Duty of Care. The duty of care requires directors to exercise the care, diligence and skill that an ordinary, prudent person would exhibit under similar circumstances. For directors, this means, at the least, understanding and paying attention to the substantive matters brought before the board, attending meetings, asking questions, challenging assumptions, following up on issues that may not have been resolved, consulting with experts if needed, reading and understanding materials and reports given to the board.

Duty of Loyalty. The duty of loyalty requires pursuit of the organization's best interest, avoidance of self dealing and conflicts of interests, as well as disclosure of potential conflicts and obtaining prior board approval of any transactions or situations that might be considered self-dealing or a conflict. For example, it would be a breach of the duty of loyalty for a director, or another organization with which the director is affiliated, to profit financially from a transaction with your nonprofit organization, unless all the facts surrounding the transaction had been disclosed to the board and the board approves the transaction as in the interest of the organization in advance. Many boards have formal conflict of interest policies and codes of conduct to help directors understand when a situation might be considered a conflict. The duty of loyalty includes **a duty of confidentiality**, a duty not to speak about board matters to non-board members unless authorized. For nonprofits, the duty of loyalty also includes **the duty of obedience** which requires directors to act in accordance with the organization's charter and bylaws and in furtherance of its mission.

As noted above, breaches of the duty of care or duty of loyalty can result in personal liability for directors, although some states have legislatively limited the liability of volunteer directors in some circumstances, and some organizations have Directors and Officers' Liability Insurance that may protect directors from personal financial liability in certain situations. However, aside from helping to avoid liability, paying attention to the duty of care and duty of loyalty helps prevent organizational crises as well negative publicity which might raise the question, "Where was the board?" in large, banner headlines.

b. Federal and State Laws

Specific federal and state laws also may place responsibilities on directors of nonprofits. In addition, good corporate governance practices in the for-profit world are migrating to the nonprofit arena. For example, the Sarbanes-Oxley Act of 2002 set new standards of governance for publicly traded companies in the wake of Enron and other notorious scandals. While most provisions of "SOX" do not directly apply to nonprofits or their directors, trustees or officers, SOX is still important to nonprofits, even with limited legal connection. Many commentators now recommend that nonprofits adopt the generally applicable governance principles embodied in SOX. The concepts embodied in SOX are fast becoming the standard by which the governance of all organizations will be judged.

Furthermore, two provisions of SOX, those protecting "whistleblowers" and penalizing the destruction of documents, *are applicable* to nonprofits. These provisions require organizations to have a process to protect whistleblowers and to establish policies for the retention of documents and to prevent their destruction in certain circumstances. (The

Society's website — www.governanceprofessionals.org — has a link to the text of Sarbanes Oxley and various articles about it.)

In considering how the governance of the nonprofit you serve measures up to SOX standards, ask yourself the following questions:

- Are the directors independent of the management?
- Do the directors—or their family members—have a financial interest in the organization (such as vendors or professional consultants to the organization would have) that creates a conflict of interest? If there are any potentially conflicted directors, is a majority of the board free of conflicts and fully independent?
- Does the board meet regularly, including in executive session without the presence of management?
- Does the board have a finance committee and an audit committee or a full board process for reviewing the financial statements, evaluating internal controls, and interacting with the independent auditors?
- Does the board have a compensation committee or a full board process for regularly evaluating the performance of senior staff and setting their compensation?
- Does the board have a nominating/governance committee or a full board process for identifying new directors?
- Is there an ethics code or code of conduct for the directors and the employees? Do the directors have a way to evaluate compliance with that code? Is there an annual certificate of compliance required?
- Is there an organizational policy to protect whistleblowers?
- Is there a written document retention/destruction policy for the organization and how often is it reviewed?

If you can answer positively to these questions, your organization has gone a long way toward protecting directors against personal liability.

Some nonprofit organizations have for-profit subsidiaries. Federal and state laws place a number of restrictions on such organizations and may limit the interaction between the nonprofit and the for-profit subsidiary, creating additional governance and compliance complexities for boards of both the for-profit and nonprofit organizations charged with ensuring such restrictions are followed. Some states have laws that place particular and quite specific governance requirements on nonprofit organizations once they reach a certain size.

c. Tax Regulations

Tax exemption is not automatic for nonprofit organizations. Organizations that wish to obtain federal tax-exempt status must file for approval with the IRS. There are various types of exempt organizations recognized in the Internal Revenue Code. Charitable organizations typically apply to the IRS to qualify as 501(c)(3) organizations, and, upon approval, receive a letter from the IRS confirming this status. Assurance that the organization has this letter is important to donors because it is the basis on which they can claim a tax deduction on their income tax for a donation.

Although 501(c)(3) organizations are exempt from paying income tax, they must nonetheless file an annual return with the IRS—a Form 990. While the IRS does not directly regulate corporate governance, the information on the Form 990 enables the IRS to watch for evidence of excessive compensation of the staff or transactions which create a conflict of interest, either of which can be the basis for the IRS to withdraw the exempt status or impose other penalties. New applicants for 501(c)(3) letters should consider developing a conflict of interest policy consistent with the IRS' model that can be included with the application.

The IRS has also published a staff discussion draft of good governance practices for charitable organizations. While not technically part of the IRS rules for nonprofits, it indicates those governance practices which are important to the IRS when it has an organization under review. This IRS draft discusses a nonprofit's mission statement, code of ethics, due diligence, duty of loyalty, transparency, fundraising policy, financial audits, compensation practices and document retention policy. (The Society's website — www.governanceprofessionals.org — has a link to the IRS document.)

Exemptions from state taxes, such as sales taxes, are available in many states, but the rules and procedures necessary to obtain these exemptions vary from state to state. Nonprofit organizations typically work with professionals for help in establishing and maintaining their federal and state tax-exempt status.

Personal Qualities of Effective Board Members

a. Fundamental Characteristics

Great boards don't just happen. It takes a lot of work to make a board effective. That work begins with selection of individual board members who, regardless of the type of organization, have certain fundamental characteristics:

- Vision and Leadership: the ability to see the big picture, and to help create and, if necessary, re-set strategy and policy to help the organization achieve its mission.
- Advocacy, Stewardship and Integrity: the ability to serve and promote the interests and goals of the organization without forgetting the interests of the public and the organization's intended beneficiaries.
- Knowledge: the willingness to become thoroughly familiar with the mission and how the organization actually carries out the mission day-to-day through its organizational structure and operations.

- Personal Commitment and Diligence: the willingness to take the necessary time and make the necessary effort to fulfill director responsibilities, including understanding strategic, financial and operational issues facing the organization, asking questions and following up as needed, engaging personally with the organization, whether through financial support, advocacy, networking, personal service, or other personal support activities, and staying current on sound governance principles and working to apply them to the organization.
- Collegiality: the ability to work well with others and to show respect for the ideas and views of fellow board members and staff; the understanding that boards operate as a body.

Beyond these fundamental characteristics, nonprofit boards typically seek directors with particular backgrounds or types of expertise, financial capacity, positions in the community, or access to key constituents or professionals that can be helpful to the organization. In recent years there is a trend for boards to seek individuals representing specific ethnic or minority groups, or women, so that the board has an ethnically or gender diverse membership. One effective way to help make sure that boards are sourcing directors who meet the needs of the organization is for the board, or nominating committee, to create and maintain written criteria for board membership focusing on key characteristics being sought and, in addition, to conduct an annual review of the strengths and weaknesses of the existing board so that future recruiting can focus on the organization's needs. (The Society website — www.governanceprofessionals.org — has samples of written criteria that have been developed by some nonprofit boards.)

Having a good understanding of a board's criteria for membership, and the specific reasons why the organization has selected you as a director, can go a long way in helping you determine whether service on a particular board is right for you. Don't be afraid to ask! This is particularly true with respect to financial commitment expectations, or for operating boards, anticipated time commitments. Understanding these matters at the outset can help keep embarrassing situations from arising as a result of mutual expectations not being met.

Similarly, understanding the board dynamic, how board members work together and with staff, is an important topic to explore in advance of joining a board. In the nonprofit world, founders of an organization may still be involved and cast a long shadow over board deliberations. Sometimes organizations may be in a period where there is a disconnect or distrust between the board and current management. Sometimes the sheer size and diversity of members on a board may make communication and consensus difficult. Sometimes the number of "old guard" board members may inhibit participation by new members. Occasionally, lack of staff may limit time and attention that are given to directors or to board matters by management. While none of these issues may be enough to discourage you from joining the board of an organization you care about, understanding how things are can make it easier for you to understand the nature of the task facing the board in achieving good governance.

b. Personal Commitment

Your own ability to be effective as a director is another factor to take into account in considering board service. Expertise, reputation, financial donations and support may have played a role in your being asked to join a board. They alone do not make you a good director. Although there is no magic formula for being a good director, there are a number of actions and practices which are generally considered to represent excellence in board service, including the following:

- Understanding the mission of your organization and helping to keep it current and relevant.
- Becoming familiar with the organization's basic governance documents.
- Staying current on governance trends.
- Staying current on business and societal issues that may affect the operation or mission of the organization.
- Attending board and committee meetings regularly.
- Actively contributing to the work of the board and the organization.
- Reading board and committee materials in advance.
- Asking questions at meetings on issues you don't understand.
- Offering suggestions and comments in a positive manner.
- Avoiding micromanaging or nit-picking.
- Being respectful of the management team and other directors.
- Being collegial; refraining from dominating meetings or personalizing debate.
- Supporting the chair in efforts to keep meetings moving.
- Keeping questions and comments relevant.
- Knowing key staff and their roles, but refraining from contacting lower level staff without advising the executive director.
- Meeting periodically with the executive director.
- Getting to know the other board members.
- Supporting the organization financially.
- Attending functions of the organization in the community.
- Helping raise funds from others for the organization.
- Being an advocate for the organization in your community.
- Engaging others in the work of the organization.
- Keeping alert for warning signs of potential trouble—disaffected directors, arrogant or ineffectual executive director, sloppy reports, lack of forward momentum, poor accounting, shortage of funds, etc.
- When you have concerns about the organization or board or staff, raising them with sensitivity to the appropriate person (board or committee chair or executive director) and working to correct the problems.
- Knowing when it's time for you to rotate off the board in order to help keep the board fresh and viable.

Comparing your performance against these actions and practices will give you a good idea of whether the organization you serve will consider you a valued and effective director.

Board Structure and Operations

The size and sophistication of the organization and the size and function of the board (i.e. governing/oversight board or operating/hands-on board) tend to determine how often a board meets and whether a majority of the work is done at board meetings or through committees of the board.

In the corporate for-profit arena, the trend has been to reduce the size of boards to allow for greater discussion and interchange and to increase efficiency and accountability. However, in the nonprofit world, particularly with respect to educational and arts organizations where directors play a major role in fundraising and the desire to engage a wide variety of constituencies is common, it is not unusual to have boards with 30 or more members, and sometimes as many as 75-100 members. Boards of this size clearly must rely on committees to do much of the work on behalf of the board, either with delegated authority to act on behalf of the board, or with a mandate to present well-vetted recommendations to the board to facilitate full board action.

Committees vary with the needs of each organization. Smaller boards may not need committees and may perform many of the functions mentioned below at the board level itself. However, fairly typical standing committees (i.e., committees which stay in existence year after year) would include:

- The Executive Committee—empowered to act between board meetings if necessary, and sometimes with specifically delegated authority to act in particular areas on behalf of the full board. The make-up of executive committees will vary with the organization, but many such committees are made up of the board officers and committee chairs.

- The Finance Committee—typically assigned to provide detailed review of financial statements and issues, including budget, accounting, tax and investment issues, and, if there is no separate audit committee, audit issues.

- The Nominating/Governance Committee—typically charged with finding and recommending new directors for board approval, but sometimes also charged with recommending officer and committee appointments, establishing criteria for board service, reviewing performance of existing directors, and providing orientation for new directors. Some nonprofit nominating committees have taken on the additional role of reviewing and making recommendations on governance issues and otherwise playing a leadership role in shaping the nonprofit's corporate governance.

- The Development Committee—typically oversees the fund raising process of the organization.

Larger boards and organizations may also have additional committees, such as:

- The Audit Committee—responsible for oversight of the independent audit process and for overseeing the financial integrity and finance/accounting controls of the organization. The trend is for members of audit committees to be "independent" board members (i.e., with no significant financial or other relationship to the organization), and to have substantial financial expertise (i.e., experience in reading financial statements and at least one member with an understanding of accounting principles and practices). Audit committees and their membership may be legislatively mandated in certain states for organizations of a certain size.

- Personnel Committee—typically charged with overseeing the development of compensation and benefit programs and guidelines for any paid staff. In some cases, this committee actually approves salaries of the top executives, reviews their expenses, and oversees their formal evaluation. Committee or board approval of the executive/managing director's (i.e. CEO-equivalent) salary and expenses may be legislatively mandated in certain states for organizations of a certain size.

- Investment Committee—responsible for oversight of the investment of funds, typically endowment funds, of the organization and for creating or recommending investment policies.

In addition to standing committees, many boards create ad hoc committees for particular, short term projects. Typical examples would include a strategic planning committee when the organization's strategic plan needs updating, or a facilities committee when new premises are needed, or a search committee when a new executive director is sought.

Regardless of the role of standing or ad hoc committees, their effectiveness can be improved by making sure that each one understands its mandate. An excellent way to achieve this is to create written charters for each committee. Some organizations include these charters in their bylaws. (The Society has sample charters.) Effective staffing of committees by management can also help committees function more efficiently.

Committees also need to report all their activities to the full board, so that body is aware of their work. Depending on the size of the board, or the tradition of the organization, reports can be oral or written.

Nonprofit boards frequently add non-board members to committees, either to broaden the expertise of the committee or to provide an opportunity for getting to know potential board candidates before nominating them for a director role. State law varies on whether such non-director members can actually participate as voting members.

Effective Meetings

Effective meetings can mean the difference between an engaged, effective board and one that doesn't accomplish much. Running effective meetings is the role of the chair, whether of the board or of a committee. This is an art, in many ways dependent on the interpersonal skills of the chair. However, there are certain basics which can help:

- Written agendas focus everyone on the matters to be covered and aid the chair in keeping the meeting on schedule. Agendas are typically developed jointly by the chair and the executive director (or in the case of committees, the staff person assigned to support the committee chair).
- Limiting agenda items helps allow for adequate discussion.
- Focusing principally on strategic and forward-looking issues, rather than reviewing past history, helps keep meetings interesting for board and committee members, and makes the discussion more useful to the organization.
- Providing regular opportunities for discussion of the work of the organization and offering directors key insights into substantive issues allows directors to learn more and to feel more connected to the organization.
- Using executive summaries and cover memos to help guide board and committee members through financial statements or other reports can help focus attention on important issues and eliminate confusion and the need for time consuming questions.
- Using written reports rather than oral reports from committees can be an effective way to deliver a great deal of information without taking much time at board meetings.
- Gathering routine, general business items all together at either the end or beginning of the meeting (sometimes referred to as the 'consent agenda') allows the board or committee to act quickly and all at once on matters that don't require much discussion.
- Having draft resolutions prepared in advance and distributed to directors prior to a vote helps insure that everyone clearly understands what action is being requested.
- Maintaining order, not allowing small side discussions, or dominance of discussion by a small group, helps keep everyone focused and the meeting moving.
- Establishing a culture of open discussion, respect for all views, and free exchange of information, helps ensure that all views are heard and no one is intimidated.
- Holding regularly scheduled executive sessions (where some or all members of staff are excused from the meeting) provides an opportunity for directors to ask questions or raise issues they might not feel as free to do in the presence of management and can help ensure that such concerns are surfaced and addressed in a timely manner.
- Documenting actions of the board in concise, written minutes not only facilitates tracking of board actions, but also provides a useful mechanism for keeping directors who could not attend a prior meeting informed and up-to-date on board deliberations, particularly if draft minutes are sent out promptly following a meeting.

- Meetings between the chair and the executive director promptly after a board meeting to discuss what went well, what needs to be improved, and what follow up is needed, helps create both improvement and continuity from meeting to meeting.

Sample meeting rules and sample meeting agendas are provided later in this booklet, along with some tips on the writing of minutes.

Building and Maintaining an Effective Board

Effective boards come in many forms, but they generally have several things in common: They understand the business or mission of the organization; they help move the organization's business or mission forward; and they understand and operate in accordance with legal and fiduciary responsibilities. Increasingly, nonprofit boards are adapting governance practices from the for-profit arena to help them maintain or improve their effectiveness. While good governance practices cannot absolutely assure board or organizational effectiveness, they certainly can help make it more likely than not that the affairs of an organization are well-managed.

Dysfunctional or ineffective boards are usually easy to spot. Typically they are characterized by one or more of the following:

- The board does not have, or does not abide by, a regular meeting schedule.
- At board meetings nothing much happens, and many board members don't attend or are disaffected.
- Directors don't understand the mission or business of the organization and aren't passionate about either.
- Directors don't understand the financial underpinnings of the organization.
- Directors attempt to micromanage the staff.
- There's a lack of trust and confidence between the board and management.
- Directors or management speak disrespectfully of others on the board and/or of management.
- Directors or management speak publicly, without permission, about confidential board matters.
- A few directors dominate meetings.
- Directors don't understand basic governance principles.
- The organization is floundering.

To help gauge the effectiveness of a board on which you serve or are thinking of joining, try asking the following governance-related questions:

BOARD EVALUATION

YES NO

☐ ☐ Does the board get enough information of the right kinds, at the right time, from the right members of management?

☐ ☐ Does the board have an effective director-orientation program?

☐ ☐ Does the board have active committees composed of a small, effective number of members to tackle audit, development/fund-raising, finance, governance, nomination, personnel, program and other key matters?

☐ ☐ Does the board rotate committee members and chairs at appropriate intervals?

☐ ☐ Are meetings conducted effectively, with appropriate frequency, on time and according to well-thought-out agendas circulated in advance?

☐ ☐ Are meetings characterized by open communication and diligent questions discussed in a collegial manner?

☐ ☐ Does the board meet regularly in private apart from the executive director and other managers?

☐ ☐ Are the board's actions motivated by and designed in furtherance of the organization's mission?

☐ ☐ Does the board periodically review the organization's mission statement and implementation strategy?

☐ ☐ Does the board act as if it is accountable to contributors and beneficiaries?

☐ ☐ Does the board communicate effectively on a regular basis with its stakeholders, contributors and beneficiaries?

☐ ☐ Does the board establish goals for the chief executive and review his or her effectiveness and performance on at least an annual basis?

☐ ☐ Does the board have effective processes and structures to evaluate, communicate with and counsel the chief executive?

☐ ☐ Does the board have guidelines for managers clearly specifying their authority?

☐ ☐ Does the board micromanage the organization's operations or, at the other extreme, does it ignore them and let management handle everything with little board oversight?

☐ ☐ Has the board reviewed the operation's significant legal exposures and assessed the organization's legal compliance processes and record?

☐ ☐ Does the board have effective audit and financial oversight processes?

☐ ☐ Does the board review and adopt the organization's capital and operating budgets?

☐ ☐ Does the board have clear and effective procedures on handling funds, contributions and assets?

☐ ☐ Does the board have effective standards and procedures to minimize and disclose potential conflicts of interest?

☐ ☐ Does the board governance and nominating committee regularly assess board practices and structures for effectiveness; evaluate current directors and counsel those whose performance is less than ideal; and continually look for talented potential new directors?

☐ ☐ Does the board have an appropriate level of turnover in its membership -- new members and ideas balanced with experience and continuity?

If you end up with a number of "no" answers, it may be time to suggest a board-effectiveness study. Conducting regular board-effectiveness studies can keep boards from drifting into dysfunctional behavior, help cure them if they are already there, and also help increase the effectiveness of already effective boards. Furthermore, the effectiveness of boards and the implementation of good governance practices are now both of great interest to funders of nonprofit organizations, making it ever more essential for nonprofits to focus on strengthening their governance and their board effectiveness. A board-effectiveness survey:

- Polls the board on a number of issues related to the effective operation of the board, focusing on both substance and process.
- Provides a base line for looking at how the board itself believes it is doing, and for comparing board practices to those of other boards and to governance trends.
- Becomes a starting point for making adjustments and improvements.

The process is relatively simple: A series of questions is developed by the director appointed to lead the project, with input from management and other directors, and if desired with assistance from an outside consultant. Questions typically range from the level of "housekeeping" (e.g., time, place and length of meetings) to the more substantive (e.g., what do you think are the critical issues facing the organization in the next two years?). These questions are used as the basis for eliciting information from directors, although it is common for the answers to bring up issues beyond the questions asked. More detailed and representative results will be obtained by using face-to-face interviews rather than written responses to questions and by interviewing as many of the full board as possible, although that process can be quite time consuming. In addition, responses must be summarized in a format that will be useful to the board and also protect the confidentiality of those who participated.

Once results are summarized, they are shared with the board and a process created for follow-up and adjustments to board procedures and organization. Most effectiveness surveys will not be self-executing, but require changes in how committees or the board operate, who is on the board, what is expected of board members, etc. Issues raised in the survey may need to be worked on by a variety of board committees. But the effort can be well worth it if it improves the effectiveness of the board.

Even without a board-effectiveness study, there are a number of steps which can help improve board effectiveness, including one or more of the following:

- Make a board committee responsible for governance issues:
    - Possibilities include the executive committee, nominating committee, or a separate governance committee.

- At least once a year, have the committee responsible for governance:
    - Look at external trends in governance.
    - Compare trends to board practices.
    - Recommend adjustments as needed.
    - Inform the board about its legal/governance responsibilities.

- Review articles of incorporation, bylaws, committee charters, the board's own governance guidelines and key policies to make sure:
  - They meet changing governance and legal requirements/standards.
  - The organization actually conducts its affairs in accordance with those documents.

- Create a written document outlining expectations or responsibilities of directors:
  - Be specific, especially about time and money expectations.
  - Have the full board approve it so all directors know exactly what is expected.
  - Use this in recruiting new directors.

- Define other roles:
  - Define the role of the board—is it an operating board, a governing board, does it set strategy, hire/fire the CEO, review finances, approve budgets, etc. Write it down!
  - Create written job descriptions for executive management.
  - Create written job description for the board chair/president.
  - Create written charters for board committees.

- Define what you are looking for in board members:
  - Be rigorous in seeking board members who meet these criteria.
  - Determine an optimum size for the board and do not allow it to become too large or too small.
  - But save a little room to be opportunistic.

- Review who is on the board in comparison to what you need/are looking for:
  - What background and skills do they have?
  - How engaged are they—time, money, attendance, etc.?
  - How do they compare to what you need?

- Establish a process for meeting with directors to re-engage those not meeting expectations or to prepare them to leave the board.

- Consider establishing term limits to ensure that there is always "new blood" on the board.

- Create active dialog with management so the board stays informed:
  - About the accomplishment of the organization's mission and day-to-day operations—what's happening: good and bad.
  - About the organization's financial situation—compare budget to actual performance, conduct tutorials on how to read/understand financial statements (don't take financial expertise for granted).
  - About the organization's competition.
  - About the organization's strategy.
  - About executive management's "dreams."

- Keep board members engaged—make sure meetings give them something they can't get except for being on your board and participating in board meetings.

- Keep committees meaningful and helpful:
    - Review the need for each standing and ad hoc committee annually. Is the charter still viable, is the committee actually doing what it is supposed to, is it helpful to the board or to management, or a drain on resources?
    - Establish committee goals annually and have committees report on what was accomplished by year-end.
    - Rotate committee members to avoid entrenched thinking and to spread expertise.

- Establish a board orientation process for new directors and a "board book" to help them get up to speed quickly. Such an orientation might include:
    - Meetings with key staff to understand the role of their departments and strategic issues facing the organization.
    - Meetings with the chair of the board and committee chairs.
    - Delivery of a book containing key organizational documents, such as the organization's charter, bylaws, mission statement, annual tax report, code of conduct or conflict of interest policy, other critical board policies, any written expectations of directors, contact information for other directors and key staff, and perhaps a "glossary" of terms and acronyms used in the organization that outsiders might not know.

Do all these ideas sound too daunting? Well, building and maintaining an effective board is not a process that happens overnight. It requires leadership from both the executive director and the chair, or another member of the board. The good news is that building an effective board can be done in stages. If your organization is not ready for some of the effectiveness practices described above, start with one or two—perhaps strengthening agendas so they focus on strategic, important issues based on both director and staff input, or strengthening the board based on clear criteria developed jointly with the board. With leadership from the chair or another senior director and executive director it's relatively easy to bring the board into the process of improving governance over time. Without such leadership, nothing much is likely to improve.

Making Board Service Fulfilling

As suggested at the beginning of this document, board service on nonprofits can be fulfilling and engaging, or the opposite.

Following is a checklist which summarizes a number of the issues that you may want to consider in reviewing directorship opportunities or in examining your role as a director of a nonprofit. This checklist is not necessarily all inclusive, but reflecting on the issues raised in this checklist can help you determine whether you want to join a particular board or, if you are already on the board, whether there are important issues that may need to be addressed either personally or organizationally.

Checklist for Directors of Nonprofits

1. Do you know why you were asked, or are being recruited, to serve on the board and what the board's expectations of you are, including any financial support or time commitment obligations?
2. Are you committed to being a good director and helping advance not only the mission of the organization, but the governance of the organization?
3. Do you have a copy of the organization's charter, bylaws and mission statement, and have you read them? Does the board periodically review these documents to make sure they are current with changes in law or practice, or strategy?
4. Is there a code of conduct for directors and do you have a copy? Do you understand your responsibility under the code and know who is responsible for enforcement of the code?
5. Is there a conflicts of interest policy (either in a code of conduct or a separate document)? Do you understand your responsibilities under the policy and know who is responsible for enforcement of the policy?
6. Does the organization provide Directors and Officers' Insurance?
7. Do you and other directors have copies of other critical board policies and are you aware of other policies that may be legally required for your organization (such as a document retention policy, or whistleblower policy)?
8. Who in the organization is responsible for filing tax forms related to the organization's nonprofit status and who reviews those forms?
9. Are financial performance and budget documents understandable and regularly monitored by the board or a committee of the board?
10. Are financial statements audited?
11. Are there policies in place to monitor donor designations on donations to the organization and who monitors compliance with them?
12. Do you know who else is on the board and how to contact other members?
13. Are you and other directors engaged in the work of the board and the organization?
14. How well do you and other directors understand the mission of the organization?
15. Do you and other directors preserve the confidentiality of material and information given or presented to the board?
16. Is the board functioning effectively, with regular well-attended and well-run meetings addressing important issues?
17. Does the board periodically review its own effectiveness?
18. Is the board up-to-date in its governance practices and, specifically, has the board considered the applicability to the organization of principles contained in Sarbanes Oxley and other governance legislation?
19. Do you and other directors understand your legal obligations as directors, including the duty of care and duty of loyalty, and the fact that board must act as a body, not through individual directors?
20. Do committees function well and serve the current needs of the organization?

21. Is there a well-understood process for recruiting new directors, with established criteria for seeking particular directors?
22. Is there a well-understood process for development and succession of officers of the board?
23. Is there a board orientation program or manual?
24. Is there a well-understood process for management development and succession planning?
25. Are key staff members formally evaluated by the chief executive and those evaluations shared with the board?
26. Are key staff salaries and expenditures approved by the chief executive and reviewed by the board or a committee of the board?

Aside from making sure there is a good fit between your expectations and those of the organization, considering the governance practices of the organization may also help you understand how well the organization functions and accomplishes its mission and how effective your service as a director may be. Given the great differences in size, strength, and missions of nonprofits, not all governance principles common in the for-profit arena will make sense for nonprofits. However, we hope that the principles and ideas identified in this document provide you and the organization you serve with food for thought and a roadmap for improving governance to the benefit of both.

GUIDES AND TIPS

The following materials include meeting procedures and guides for writing minutes not specifically covered earlier.

In addition to the issues identified in this pamphlet, the Society maintains a list of resources on nonprofit board service on its website, www.governanceprofessionals.org, which may help you understand both the benefits and risks of nonprofit board service.

SAMPLE MEETING RULES

Following is a much abridged version of Robert's Rules as they might be adapted for nonprofit meetings. Their goal is to promote a balance of fairness and efficiency. Tailor them to fit your own culture. Meetings should be fair so that people who have a point to make are given an opportunity. Meetings should be efficient so that time is spent on discussion relevant to the matter at hand.

Discussion

Only members and guests recognized by the chair may speak.

Motions & Voting

Only members of the board who are present at the meeting may vote. Before an item can be voted, there must be a quorum as well as a motion and a second from two different members of the board. Discussion may precede or follow these motions, or both, depending on how closely the organization follows Robert's Rules. After discussion and motions, one of four things can happen:

- There can be a vote on the motion.
- The motion may be amended (second required), discussion on the amendment may follow and a vote taken on the amendment. If the amendment passes, the motion automatically passes. If the amendment fails, the motion still stands and can be discussed until voted.
- The motion can be tabled (second required). There can be no discussion on a motion to table--a vote must be taken immediately. If the vote is to table, no further discussion can take place on the motion.
- There may be no action on the motion---therefore it becomes old business at a future meeting.

Motions must be clear and concise. A motion to "improve fund-raising" would be vague and discussions could meander. However, a motion to "sponsor a benefit golf tournament" is specific and could be effectively discussed and acted on.

To help clarify exactly what is being voted upon, it is useful to distribute written draft resolutions spelling out the desired action. There is no prescribed form for a resolution. Traditionally, many start out with a series of "whereas" clauses indicating the background or reasons for the proposed action, but such clauses are not required. The most important thing to keep in mind in drafting resolutions is clarity.

Committees

Make general board meetings more productive by use of committees and rely on committee reports as a basis for action. The idea is for committees to sort through minutiae and come forward with a well-developed proposal for the whole board to consider. Committee reports can be oral or written. Written reports, distributed in advance of the meeting, tend to save time at the meeting. Bylaws of some organizations may require that the board vote to accept committee reports of certain committees.

Disagreements

The chair of the meeting is responsible for maintaining order. On procedural questions, the chair's ruling is determinative and final.

Executive Sessions

Executive sessions are generally for the purpose of discussing sensitive issues, such as personnel matters, outside the presence of non-board members. They also provide a forum to help ensure board members feel free to raise any issues they are concerned about but which they might feel awkward raising in the presence of staff. If the executive director is a member of the board, he or she must consent to being asked to leave the meeting. While minutes are not generally kept of executive sessions, it can be helpful for the chair to report the discussion in general terms to the executive director, particularly if the discussion raised major concerns or issues of continuing interest to the board. Such communication can also reduce stress and the sense of being excluded that may arise for an executive director who is excused from a portion of the meeting. Holding executive sessions regularly also minimizes the stress or alarm to the organization that can be occur if such sessions are called only sporadically or only when a real crisis arises.

AGENDA SUGGESTIONS

Possible Order of Business - [Per Agenda Circulated in Advance]

Common Order of Business

I. Opening of meeting and introductions (Chair)

II. Approval of minutes of previous meeting (Secretary)

III. Reports and discussion, i.e. chair calls for reports from the treasurer, executive director, development committee, or program committee

IV. Old business to be brought up (Chair)
  - A. Unfinished business from previous meetings
  - B. Motions that were tabled from previous meetings

V. New business - motions to be made for voting by the board (Chair)

VI. Executive Session (Chair)

VII. Adjournment (Chair)

Alternative Order of Business

I. Opening of meeting and introductions (Chair)
II. Comments from chair or executive director
III. Discussion of strategic issues (Executive Director)
IV. Review of financial performance (Treasurer or CFO)
V. General business/Consent Items (i.e., no significant discussion needed)
  - a. Minutes of previous meeting
  - b. Written committee reports
  - c. General business resolutions

VI. Executive Session (Chair)
VII. Adjournment (Chair)

TIPS FOR BASIC MINUTES AND COMMITTEE REPORTS

1. **Minutes**: The purpose of minutes and reports is to document what was done (i.e., what action was taken), not what was said.

   a. Minutes are not intended to be a verbatim report.

   b. It's okay to re-organize comments—e.g., if a relevant comment comes at the end of meeting related to an item in the beginning of the meeting, you can report it with the discussion at the beginning.

   c. Describe what topics were covered rather than trying to summarize what was actually said. For example: "The committee discussed the size of the staff in relation to available space, future staff needs and the possibility of reconfiguring space, the feasibility of renting additional space or of implementing telecommuting." Avoid characterizations and adjectives, either favorable or unfavorable. Stick to facts and stay away from opinions.

   d. Remember, boards and committees take action as a group. It is usually not important to "name names" in summarizing discussions. However, minutes typically start off with a list of directors who were present and those who were absent.

   e. When action is taken it is typical to indicate what was basis for the action—e.g., after discussion, after review of material, after the presentation, etc.

   f. When reporting action taken, be as specific as possible. If a resolution is needed, try to have it drafted before the meeting, though sometimes it may be necessary to draft the specific wording after the fact.

   g. It's okay to be repetitious in style. Minutes are meant to be a record, not literature.

   h. In general, shorter or medium length minutes are likely to generate less legal risk than very detailed long-form minutes, especially if counsel is not involved in reviewing them.

   i. Consider using headings for each section to help you decide if something is really worth mentioning. E.g., if you have a heading followed by an offhand remark or very short discussion, it may not be worth even including as a separate topic.

   j. You can also append committee reports or presentation documents as attachments to minutes if it helps the reader of the minutes. This isn't generally done for regular reports such as finance or committee reports—though you certainly could re-circulate such reports if it helps. There is a big legal difference between appending a report to the minutes, which makes it part of the minutes, and just re-circulating a report to help people remember something or learn what was said if they weren't there.

k. Executive Sessions are not generally minuted, although sometimes it can be helpful to list the general topic discussed.

l. Try to write minutes as soon as practicable after a meeting—at least an initial draft. Adopting this practice makes it much easier to remember key points.

2. **Reports.** In drafting reports of meetings, try not to reinvent the wheel. If possible, just shorten the minutes and take out what isn't relevant for a report…e.g., no need to list attendance, no need to list specific comings and goings, no need to include a call to order or adjournment, etc.

3. **Record Keeping**. Minutes, including those of committees, are typically kept in a notebook or a folder titled Minutes, organized by date of meeting. It can also be helpful to keep a separate list or index of resolutions adopted and, particularly, of policies adopted, so they are easier to find in the future when someone may ask for them. Once minutes are approved, most secretaries dispose of any handwritten notes or tapes that were used to create them. The approved minutes are the official record and it can be confusing, and inadvisable from a legal standpoint, to keep prior drafts or handwritten notes.