

An Overview of Nonprofit Governance

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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 competing 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 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, 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.

In certain membership organizations, board members may also serve as representatives who advocate on behalf of particular constituencies or membership groups in the governance process. However, this is not an appropriate role for a member of the board of a typical nonprofit organization (see section on legal duties for more information).

The Legal Duties of the Board

In the United States, 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 public service, and each such corporation must have a governing body that oversees and ultimately is legally accountable for 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 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 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 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.

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., personal interests conflict with organizational interests).

Duty of Obedience, which requires obedience to the requirements of applicable laws, rules, and regulations, as well as honoring the terms and conditions of the organization's mission, bylaws, policies and other standards of appropriate behavior.

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. The following summary reflects the list of the board responsibilities articulated by Ingram for BoardSource (formerly, the National Center for Nonprofit Boards; Ingram, 2001).

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 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 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.

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 external independent review process (i.e., an 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 have specific positions (officers) and work units (committees and task forces) that help the board organize and accomplish its work. The typical nonprofit board in the United States is comprised of from twelve to 24 members, and the average board size is 17 members. Boards must meet regularly, but the frequency of meetings 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., 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 involving both the chair and Executive committee in executive performance management.

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, most boards also develop 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 standing committees are specified in the organization's bylaws, which explain their duties and responsibilities.

For boards with elaborate committee systems, the following are among the most common types of committees:

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 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.

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 common for nonprofits to have one or more committees to oversee the organization's system(s) for delivering quality services to clients, and to ensure that these services are provided in a timely and responsible manner. This committee 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. Many boards have too many committees and it has become a trend among some boards to minimize the number of standing committees and use task forces as needed to address issues of strategic importance.