Governance Gaffes: Managing Governance Risks

> "The best way to find yourself is to lose yourself in the service of others."
> – Mahatma Gandhi

Perhaps one of the most rewarding ways to find yourself through volunteer service is to join a nonprofit's governing board. Board members are said to bring "wealth, wisdom and work" to the organizations they serve, but they can also pose risk to the health of their organizations. Follow the five steps below to manage common governance risks and ensure that your board benefits your mission rather than stepping out of bounds.

Clarify Board Member Roles

Some organizations enlist individuals for board service without illustrating a thorough or accurate picture of board member roles and responsibilities. This misstep can result in a new board member's confusion and dissatisfaction with their role, or in the individual delivering unhelpful or underwhelming service to the nonprofit.

Before bringing new directors on board, spend time communicating your organization's expectations for individual board contributors, and ensure that board candidates fully understand the reality of the role. Educate board candidates and new board members about:

- Fulfilling the "Twelve Principles of Governance that Power Exceptional Boards" (source: Board Source), and fulfilling the board's fundamental legal duties:
    - **Duty of Care:** Each board member has a legal responsibility to participate actively in making decisions on behalf of the organization and to exercise his or her best judgment while doing so.
    - **Duty of Loyalty:** Each board member must put the interests of the organization before their personal and professional interests when acting on behalf of the organization in a decision-making capacity.
    - **Duty of Obedience:** Board members bear the legal responsibility of ensuring that the organization complies with the applicable federal, state, and local laws, and adheres to its mission.
- The board's governance framework and bylaws
- The realm of the board's responsibility compared to that of the CEO and staff
- Expectations for CEO oversight, committee service, fundraising, training, board recruitment, and any other major initiatives a board member is required to participate in

To communicate board member roles and responsibilities, create and share formal role descriptions, committee charters, and a board code of conduct. Clarify your expectations of board members both during board meetings and between meetings. Communicating clearly about your organization's needs and expectations will enable you to engage the best possible candidates for board service.

Sample Board Code of Conduct

Source: [Nonprofit Risk Management Center]

I will:

- Listen carefully to my fellow board members.
- Represent and support the decisions of the board, including in instances where I voted against a particular decision/action.
- Recognize that all authority is vested in the board as a whole and not with individual members.

I will not:

- Be critical, in or outside of a board meeting, of other board members or their opinions.
- Use my service on the board for my personal advantage.
- Discuss the confidential proceedings of the board outside a board or committee meeting.
- Promise—prior to a board meeting—how I will vote on any issue being brought before the board.
- Interfere with the duties of the CEO or undermine the authority of the CEO.

Manage Interpersonal Conflict

The sample code of conduct (above) alludes to the myriad interpersonal issues board members might face, including conflict, criticism, and even pettiness. While conflict amongst board members is natural, unmanaged conflict can result in poorly made decisions, wasted time, and interpersonal issues trumping the needs of the nonprofit.

Before initiating conversations that have the potential to become heated, board or committee chairs can share a reminder for those present to respect the group's code of conduct and expectations for productive, peaceful dialogue. Also remind board members that disagreement is often desirable. Candid dialogue is a healthy, necessary component of board service, which can be managed professionally and respectfully to ensure that dialogue isn't derailed by personal drama.

Managing conflict between an organization's board and CEO is crucial for effective performance as well. Explore the Nonprofit Risk Management Center's tips for treating tension in board-CEO partnerships in the article, "**Clash of the Titans: Managing Board and CEO Conflicts.**"

Plan for CEO Succession

Nonprofit boards often fail to plan in advance to manage the disruptive event of a CEO departure, even though CEO turnover is not a risk, but an eventual certainty. When your CEO announces his or her departure—or must suddenly depart due to personal reasons or poor performance—being stuck without a succession plan could leave your organization exposed to real risks like:

- Disruption of the organization’s progress toward its strategic and tactical goals
- Concern and confusion from staff and external stakeholders, resulting in reduced productivity or rocky relationships
- Turmoil in the board room or amongst senior staff
- Failure to fulfill critical CEO duties in the interim

CEO succession planning is a key responsibility of any nonprofit board, but it does not necessarily encompass identifying a specific successor. A more feasible and fruitful approach to succession planning is to outline the process a board of directors will follow when it comes time to search for a successor.

Learn how to set the stage and develop a CEO succession plan for your organization by reading the Nonprofit Risk Management Center resource, “**Avoid Transition Trauma with a CEO Succession Plan**.”

Learn about other risk management issues related to the CEO role, like how to establish **productive board-CEO partnerships** and how to set **appropriate compensation** for a CEO.

Identify and Manage Conflicts of Interest

According to Venable LLP’s article, “**Top 10 Legal Risk Facing Nonprofit Boards**,” “In recent years, awareness of conflicts of interest in the nonprofit sector has been especially high, with watchdog organizations, the IRS (via the Form 990), and even Congress aggressively monitoring nonprofit governance practices for any hint of abuse. Nonprofits that fail to manage conflicts of interest run the risk of losing public confidence…”

Conflicts of interest (COIs) present potential risk to an organization because they might result in the prioritization of personal interests over organizational interests. Potential COIs must be identified and explored because serious COIs can potentially involve fraud, legal violations, or violations of a board’s fiduciary duties. Even a perceived conflict could bring reputation risk to an organization and cause stakeholders to feel concern over the leadership’s transparency and integrity.

To best manage conflicts of interest:

- Recognize that not all conflicts involve ethical missteps; conflicts can arise any time an individual team member’s personal interests could potentially conflict with the organization’s interests
- Accept that not all conflicts are inherently bad; some are acceptable or are in the organization’s best interest
- Establish a COI disclosure form, and a COI policy that lays out procedures for managing potential conflicts; define the COI review process and possible actions the board might take to reject any transaction or activity that presents an unacceptable COI
- Ensure that your board regularly completes the COI disclosure process and remains informed about all potential conflicts
- When reviewing potential COIs, focus on fostering productive board dialogue and determining whether or not the identified COIs are acceptable for the organization, or if they present undue risk or ethics issues

Learn more about managing COIs and review a sample COI disclosure form in the Nonprofit Risk Management Center’s article, “**COI: Candor Or Inhibition? Managing Conflicts of Interest**.”

Foster Substantive Service

A common concern of nonprofit CEOs is whether or not boards of directors are sufficiently engaged in fulfilling their duties and in advancing the missions of their organizations. A common concern of board members is whether they themselves are doing a good job. Most nonprofit team members enthusiastically want to see their boards succeed, but delivering impact to an organization can be difficult when governance process are not conducive to substantive service.

The Stanford Social Innovation Review article, "A Better Board Will Make You Better," shares helpful philosophies about board member engagement:

"If board members don't engage directly and deeply in the substantive work of an organization, then board meetings will degenerate into a staff-driven, pre-baked exercise. (Allow us to unveil a nasty secret of the nonprofit world: Staff members often like it that way.)"

"…be willing to ask stupid questions at board meetings. And keep asking stupid questions until you figure out what the "smart" questions are… There's nothing wrong with causing a good discussion to break out in the middle of a board meeting!"

Empower your board to deliver more substantive service by following these simple practices of good governance:

- Design board meeting agendas to conduct the most important—and most challenging—business first, when minds are fresh and sharp
- Provide thought-provoking pre-reads to board members in advance of meetings, to prepare the board to engage more deeply during meetings
- Strive for generative dialogue during board meetings rather than staff show-and-tells
- Ensure that the board receives a timely and relevant flow of information, enabling them to make informed decisions
- Strive for productive working relationships—not friendships—between individual board members, and between board members and the CEO
- Invite board members to share ideas for how governance policies and processes can be continuously improved
- Conduct board self-evaluations to hold board members accountable to their service goals

Continue pushing your board to perform by exploring other resources from the Nonprofit Risk Management Center:

- Not So Great Governance? Resolve to Reinvent the Board
- Is Your Board an Asset or a Liability?