

Board Basics:

Introduction to Finance and Governance Committees

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D.C. Bar Pro Bono Center – About Us

- We host legal clinics and brief advice services to connect nonprofits with attorneys for low-barrier assistance & education
- We sponsor trainings, webinars, and podcasts on important, real-world legal issues facing nonprofits
- We provide written resources and archived training sessions on our website: <https://www.lawhelp.org/dc/npsb>
- We match nonprofit organizations with pro bono legal counsel
 - Pro bono attorneys help with many different types of legal matters including corporate governance, IRS compliance, employment law, and real estate matters.

- **Board Basics Webinar Series**

- Board Basics - Setting Compensation for Nonprofit Executives
- Board Basics: Whistleblower Policies & Nonprofit Transparency
- Board Basics: Understanding the Role of Board & Advisory Committees
- Board Basics: Managing Conflicts of Interest
- Board Basics: Calling and Conducting Nonprofit Board Meetings
- Board Basics: Keeping Your Story Straight - A Webinar on Taking Minutes
- Board Basics: What a Nonprofit Board Should Know About Meeting in Executive Session
- Board Basics: Does Your Board Need an Executive Committee and What Role Does It Serve?
- Board Basics: Board Voting and Other Board Actions - How to Get It Right

Background:

Committees and the Board

Background: The Board's Role

- Nonprofit corporations are legal entities authorized to carry out the tax-exempt mission of the organization
- 501(c)(3) nonprofits receive a subsidy from the public in the form of tax deductions for donors & tax exemptions for the organization – in return, they are subject to additional operational, oversight-related and reporting reqs
- Nonprofit corporations are required to have a Board of Directors that is responsible for the overall management of the organization & ensuring that the organization is run in the public interest
 - Nonprofit directors are subject to heightened, legally recognized and enforceable duties (“fiduciary duties”) that govern their management of the nonprofit
 - In D.C. we recognize a duty of care, duty of loyalty, duty of obedience, and duty to inform

Background: Delegating Board Duties

- Small/young nonprofits are often governed by “working” boards that perform some or all of the org’s management & admin duties
- As orgs mature and hire staff/contractors, many management duties of the “working” board are delegated to staff; allows the board to focus more on “core” board duties re: governance, strategy, fundraising, policymaking, & oversight
- The board can also create **committees** and delegate to them the performance of specialized tasks/oversight of designated areas; two main types:
 - Board Committees: Have final decision-making authority within their realm of authority (e.g. Executive); only Directors can serve, need full board approval re: creation and staffing
 - Non-Board (Advisory & Ad-Hoc) Committees: Can only generate proposals/recommendations for the full board’s approval *or* perform non-board tasks that could otherwise be delegated to staff
- Whether delegating to staff or to committees, every director on the board continues to have a fiduciary obligation to oversee these operations and to address issues/deficiencies that they discover

Background: Nonprofit Committees

- Your org's bylaws will stipulate whether and how you create committees within the org
 - For more background information about committees and their creation, see [this webinar](#)
- Most bylaws give the board a high degree of flexibility to create and dissolve committees as needed; others may require the existence of certain “standing” committees at all times
- Benefits of creating committees include:
 - Specialization & Focus: Committees have a narrow focus and can leverage the expertise of members with matching skills/professional background
 - Expanded Bandwidth: Committees meet outside of board meetings and, being smaller, are more nimble/responsive to developments within their purview
 - Workload Redistribution: Committees can allow the full board to focus more on core governance duties
 - Broader Engagement: Non-board committees provide an opportunity for non-directors (e.g. staff, non-director volunteers) to become more involved with the organization's leadership
- Capacity to create committees will depend on org size, board size, availability of financial expertise on the Board, & willingness/availability of directors to serve as committee members & chairs

Background: Nonprofit Committees

- Committee basics:
 - A. Charter: A document that lays out additional details about how the committee will be run/operated, expanding on the rules already provided in the Bylaws; will typically address (1) Purpose; (2) Membership (ie. composition, qualifications, and process for selection/appointment); (3) Duties/Responsibilities; and (4) Procedures/Mechanics (ie. meetings, minutes, reports, staff representation, evaluation)
 - B. Chair: The individual who leads the committee; appointment/selection should be addressed either in the bylaws or committee charter; typical duties include (1) serving as main liaison between the committee and full board/between the committee and staff; (2) setting agendas and providing notice of meetings; (3) preparing and disseminating meeting materials; (4) leading meetings; (5) supervising the creation of minutes other records; and (6) keeping the committee and individual members accountable to work plans and assignments
 - C. Work Plan: Annual list of tasks and goals for each committee developed by the committee in collaboration with staff and key officers; should link to a committee calendar/timeline to map out sequence of tasks over the year

Background: Nonprofit Committees

- Today's presentation will focus on two committees that most nonprofits should consider creating when they are ready to develop more specialized bodies of the board: the **Finance** and **Governance** committees

- Other common committees include:
 - Executive
 - Audit
 - Investment
 - Compensation
 - Personnel
 - Communications/PR
 - Facilities
 - Program
 - Membership
 - Development/Fundraising
 - Public Policy
 - Advisory Committees/Councils
 - Ad Hoc Committees

Finance Committees

Financial Governance: The Board's Role

- The Board's Core Finance Functions: Even when delegating finance functions to staff, committees, or third parties, *every* director continues to have fiduciary responsibility to perform oversight and ensure legal compliance. Duties include:
 - Ensure financial sustainability: Review high-level trends affecting the organization's revenue & business plan; explore new revenue streams/strategies; actively engage in fundraising & development efforts; assess financial risks & liabilities
 - Annual budgeting: While budgets can be drafted by staff, board should influence & approve final budget in line with strategic priorities & its own financial risk analysis

Financial Governance: The Board's Role

➤ The Board's Core Finance Functions (cont):

- Receive and review financial reports: Board should be receiving a financial report at least every meeting and, ideally, written reports on at least a monthly basis; investigate trends & issues re: budget-to-actual, revenue, costs, etc.; directors should develop basic financial literacy; staff should explore dashboards and other strategies to present financial information
- Establish financial policies: Draft and implement high-level policies to guide decision-making and safeguard organizational resources (more later)
- Ensure legal compliance: Develop awareness of legal requirements (e.g. today's presentation!) and either delegate or take on compliance responsibilities

Financial Governance: Delegating to a Finance Committee

- As soon as practical, we recommend that boards spin off a Finance Committee to specialize in financial governance
 - Can be either a board or advisory committee; benefits of advisory approach = ensuring that the full board remains engaged in financial oversight/governance & ability to involve non-Directors as voting members
- Delegating these duties to FC allows the full board to take a more strategic & supervisory role, receiving reports from the FC and making/approving major decisions when appropriate
- FC can help research and frame key strategic questions/decisions for the full board – e.g. how to invest surplus funds, how to respond to revenue shortfalls, etc.
 - FC should invest in strategies to present financial information to the full board in accessible, user-friendly formats; consider using visuals, dashboards, etc.

The Finance Committee's Role

- The finance committee takes a leadership role re: the board's financial functions, including:
 - Creating (annual) budgets and (multi-year) financial plans
 - Reviewing/monitoring internal (quarterly & monthly) financial reports
 - Monitoring cashflow & budget-to-actual performance
 - Identifying internal and external financial trends & proposing responses
 - Monitoring investment performance & setting investment/reserve goals (absent separate Investment Committee)
 - Monitoring other key financial metrics
 - Assisting with Form 990 preparation and other financial reports
 - Advising & supporting the org's finance dept/financial operators
 - Drafting, implementing and enforcing financial policies

The Finance Committee's Role

- In smaller orgs with a more “working” board model and no dedicated finance staff, the FC can support or supplement staff in managing more day-to-day financial activities, especially those that involve increased risk/sensitivity; examples include:
 - Preparing internal financial reports & performing internal financial reviews/audits
 - Maintaining local tax exemptions & corporate status
 - Managing & accounting for donor-restricted funds
 - Grant procurement, management, and compliance
 - Monitoring activities with special reporting & compliance requirements (e.g. UBIT-generating, cash assistance/scholarship programs, international activities)
 - Fundraising/charitable solicitation compliance

Finance vs. Audit Committees

- For orgs that do not undergo an audit or have an Audit Committee, the Finance Committee should also be responsible for compliance, risk management & internal controls
 - Not all orgs need to undergo an audit/need to have a separate audit committee
 - No overarching legal req for audits, but reqs may flow from (a) individual grant/contract agreements; (b) state-level charitable solicitation reqs (e.g. VA @ \$1m; MD @ \$750,000); (c) federal grant reqs (blanket requirement for >\$750,000 in federal funds)
- For orgs that do undergo an audit, goal/best practice is to have separate audit and finance committees with as few overlapping members as possible
 - Encourages specialization, spreads workload & creates “checks and balances”, ie. allows the audit committee to objectively scrutinize finance functions/processes & be a more insulated, independent body

Finance vs. Audit Committee Responsibilities

Finance Committee	“Drifting” Responsibilities – Start with Finance/Executive, transfer to Audit	Audit Committee
Assist with annual budgeting creation, in collaboration with staff (if applicable)	Oversees the organization’s system of internal controls (e.g. policies and practices to prevent fraud/financial mismanagement)	Hires, contracts with & oversees the org’s audit firm
Assist with preparation & dissemination of interim financial reports/statements	Assists with drafting Form 990 and other govt reports; engages the board for 990 review and approval	Engages with auditors throughout the audit process
Independently reviews org’s financial performance/situation (e.g. cash flows, budget-to-actuals) and, if applicable, investment performance	Receives and investigates reports/complaints of financial errors, mismanagement, or illegal acts in line with whistleblower policy	Reviews and oversees audited financial statements and audit results
Advises the board re: financial developments & strategic concerns	Assesses & enforces org’s compliance with laws and established policies	Liaises with board and management re: audit results & recommendations
Draft and implement policies related to financial resources & procedures	Engages in risk assessment, mitigation, & insurance acquisition	

Staffing the Finance Committee

- A key benefit of having a FC is that it allows you to focus the time and energy of directors /w financial backgrounds & expertise
- Ensure that members of the finance committee have (1) financial or business administration skills/background and (2) financial independence from the org (ie. no business or family relationships with the nonprofit, its staff, or its vendors/contractors/other affiliates)
- Treasurer is almost always the chair; often 3-6 members
- Finance-focused staff should attend and participate in FC meetings, but should not be voting members; the committee should also have a practice of meeting in executive session when appropriate
- A good opportunity to involve additional non-director volunteers, if you can find them!

Financial Governance: Financial Policies

- In addition to overseeing finances & setting strategy, the Board executes its governance responsibilities by drafting and implementing finance-related policies
- The FC can lead the process of drafting, approving, and implementing financial policies
- Resources: Two “master” compilations of template finance policies – *Nonprofit Fiscal Policies & Procedures: A Template and Guide* (Compass Point), <https://www.compasspoint.org/sites/default/files/documents/Guide%20to%20Fiscal%20Policies%20and%20%20Procedures.pdf>; *Financial Policies & Procedures Manual* (FTM), <https://www.ftmllc.com/files/Sample-Nonprofit-Financial-Policies-and-Procedures-Manual-Resource.pdf>

Financial Governance: Financial Policies

- Common policies managed/overseen by the Finance Committee include:
 - Conflict of Interest
 - Whistleblower
 - Document Retention & Destruction
 - Accounting Manual
 - Internal Controls
 - Gift Acceptance
 - Executive Compensation
 - Reserve, Endowment & Investment Policies

Governance Committees

Intro to the Governance Committee

- The governance committee is focused on the organization's leadership and governance infrastructure – the people, policies, and practices that relate to the org's board, officers, and committees
 - Sometimes also referred to as the Board Development or Nominating committee
- A GC can focus on these critical tasks, especially re: identifying and nominating personnel for leadership positions (a seasonal task that often requires intensive/focused efforts)
- In orgs without a GC, still useful to designate someone the “Chief Governance Officer” (CGO) to focus on governance-related responsibilities
- Specific GC duties can be divided into managing (1) personnel & position candidates, (2) training/evaluation/improvement processes, and (3) the org's governing documents and policies

The Governance Committee's Role

➤ *Personnel & Nominations*

- Identifying, screening, and recruiting candidates to fill incoming board vacancies
- Assessing the composition (re: skills, backgrounds, qualifications, resources, and independence) of the current board and identifying gaps/goals for future recruitment
- Identifying needs, setting goals, and developing recruitment strategies with respect to board diversity and representation/participation of relevant demographics and/or stakeholders (in line with broader strategic objectives re: DEI developed by the full board)
- Identifying and cultivating a leadership pipeline for officer and committee chair positions
- Engaging in CEO recruitment, assessment, compensation-setting, & succession-planning related activities (if not covered by another standing/ad hoc committee)

The Governance Committee's Role

➤ *Training, Evaluation & Improvement*

- Coordinating training and onboarding programs for new directors and committee members
- Planning ongoing “continuing education” for board members
- Overseeing the periodic self-evaluation of the board and all committees & making recommendations for improvement
- Monitoring committee performance and making recommendations re: overall committee structure

➤ *Governing Documents & Policies*

- Developing board manuals, code of ethics, job descriptions & other governance-related policies & platforms (e.g. board portals) to store and disseminate documents
- Reviewing and recommending amendments to the organization’s governing documents (e.g. bylaws, Articles), internal governance policies, committee charters, committee work plans, board manuals, and other documents
- Ensuring that the Board complies with IRS rules/regulations and local nonprofit codes

Personnel & Nominations: Skills Assessment

- Governance committees should ensure that their boards include the fullest possible range of relevant skills/backgrounds/professional capacities – important re: the Board's ability to support staff, make informed decisions and support other specialized committees
- Core skills/background include (1) finance, (2) fundraising, (3) legal, (4) organizational leadership/admin/management, (5) marketing/PR, (6) human resources, (7) technology, (8) government relations, (9) nonprofit governance, (10) understanding of/experience with the nonprofit's clients/constituents and (11) subject matter expertise in the org's areas of focus/concern
- Also important to consider (1) extent of directors' connections with key stakeholders and (2) ability of directors to give or obtain key resources
- The board's annual evaluation process, in combination with a skills matrix or other tools, should capture the extent of existing skills/backgrounds and identify areas in need of targeted recruitment

Personnel & Nominations: DEI

- A nonprofit's DEI commitments should flow from the whole board, but the GC often plays a critical role in implementing and advancing DEI goals
 - Especially true for orgs without standing or ad hoc DEI committees; responsibility for concrete and sustained DEI planning may fall more on the GC
- DEI can involve multiple axes of diversity including race, age, geography, lived experience; involves considerations re: recruitment & retention along with inclusion & advancing an equity lens
- DEI considerations can interface with other governance considerations (e.g. meeting processes; financial expectations/requirements; scope of training & orientation materials)
- DEI is critical for nonprofit boards because diversity fosters:
 - Community Trust & Understanding: Nonprofits are more effective when leadership reflects the communities they serve; these leaders bring insights into the how the organization can best interface with clients/constituents and make it easier for
 - Improved Performance: Teams with diverse backgrounds are more effective, creative & better at problem-solving
 - Importance to Stakeholders: Leadership diversity has become a key consideration for most stakeholders – e.g. funders, donors, third-party evaluators, volunteers, staff & staff candidates, clients/constituents

Training, Evaluation & Improvement

- Governance committees tend to focus heavily on their nominating function, since the process has an external timeline and can be time-sensitive; GCs must be intentional in also pursuing other tasks relating to training, evaluation, and governance improvement
- Re: training, make sure that new directors and committee members learn (1) substantive information about the organization itself and (2) are trained and orientated re: the requirements and expectations of board service
- Re: evaluation, the GC should create processes to assess the board's effectiveness and functionality, generally through surveys and/or interviews; considerations often include (1) composition & size; (2) attendance & engagement; (3) meeting mechanics (e.g. materials, agendas, facilitation of discussions); and (4) ability to secure financial support & resources

Training, Evaluation & Improvement

- In addition to evaluating individual directors and the board as a whole, the GC should also evaluate individual committees the periodically assess the org's overall committee structure
- Common issues re: committee structure include
 - (1) Unclear authority and/or work plans;
 - (2) Overlapping responsibilities with other committees/the full board;
 - (3) Irrelevant/inactive committees;
 - (4) Issues re: committee leadership, processes, or administration; and
 - (5) Opportunity/need for additional board or non-board committees

Questions?

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Nonprofit Resources: <https://www.lawhelp.org/dc/npsb>

“Serving on the Board” resource collection:
<https://www.lawhelp.org/dc/resource/serving-on-the-board-of-directors>