Board Basics: The Dos and Don’ts of Board Voting

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Today’s webinar

- Duties of directors
- How does voting work?
- Do you have to be physically present at a meeting to vote?
- Alternatives to voting at meetings
- Can the board delegate its decision making authority to a committee?
- Why create committees and what can committees do?
- Who can serve on committees?
What does it mean to be on a board?

- Directors are fiduciaries and they owe a duty of care and loyalty to the organization

- Duty of care requires:
  - Attending board meetings
  - Being informed and making reasonable decisions
  - Familiarizing themselves with matters before the board
Voting Terminology

- Quorum: refers to the number or percentage of board members that need to be present to hold a Board meeting
  - Unless articles or bylaws indicate otherwise, a majority of the Board’s directors must be present in order to establish a quorum.
  - D.C. law allows organizations to set the quorum at less than 50% in its articles of incorporation or bylaws, but cannot be less than 1/3 of directors or less than 2 directors.
  - If a quorum is not present, the Board can still meet and discuss issues, but cannot take any Board action with respect to any matters.
  - Common bylaws provision that if a director has more than two or three unexcused absences in a year, automatically off the Board.
Voting Terminology

- **Majority vote**: vote by more than 50% of the directors present at the meeting
  - Unless the nonprofit code, articles of incorporation or bylaws provide for a greater vote, most votes can be taken by a majority of directors present.

- **Absolute majority vote**: vote by more than 50% of the directors on the Board, not just those present at the meeting. Common example - bylaws require absolute majority for the election of directors and officers.
  - For example, if there are eleven directors in total and nine are present at a meeting, a quorum is present, but the Board can only elect an officer or director if six directors vote yes. Five votes are not sufficient, even though a quorum is present.
Do you have to be physically present to vote?

- Directors must be “present” at meetings to vote on matters before the Board.

- Unless your organization’s bylaws provide otherwise, you can be considered “present” at a meeting, even if you are not physically at the meeting place, by participating electronically. This requires that the director:
  - Hear all of the other directors at the same time
  - Is able to participate in the meeting (for example, the director is able to ask questions, provide input, and cast a vote)

- This could be achieved through:
  - Conference call
  - Video conference/Skype
Can you send an alternate or proxy?

- Because directors must be “present” at meetings to vote, they **cannot**:
  - Use proxies
  - Send an alternate to vote on their place
  - Send their vote by email or paper ballot

- Board members may not delegate to anyone else their responsibility to attend meetings or vote on matters before the board, including other directors

- Only individuals can serve on a Board. A nonprofit cannot have institutional seats. A director cannot send someone else from his/her organization to a meeting
Other ways to facilitate votes

- When an organization cannot take board action at a Board meeting, it can still act:
  - Use Unanimous Consent
  - Create board committees
  - Create advisory committees
Vote by Unanimous Consent of the Directors

- Instead of holding a board meeting, a board can vote on an issue by unanimous consent.

- The consent must:
  - Be in writing
  - State with specificity the action being taken
  - Be signed by every director on the board
    - i.e., if there are nine directors on the Board, the consent must be signed by all nine. It is not sufficient if seven sign, and two do not respond.
    - Electronic signatures are generally acceptable in D.C. and other states, but the signature must be identifiable to a specific individual and to the action being taken
Sample Votes by Unanimous Consent of the Directors

- This would be an acceptable email consent:
  
  I consent to the proposed action to relocate the organization’s offices.
  
  Regina Hopkins
  Assistant Director
  D.C. Bar Pro Bono Center

- This would not be acceptable consent:
  
  Fine by me.
  
  Reg

- Ballot voting is not considered a valid vote, since it fails to meet the requirement of being unanimous. If all directors happen to vote yes, may still not be legal if you fail to state up front that the vote has to be unanimous.
Committees

- The DC Nonprofit Code provides for two types of committees:
  - Board committees
    - A committee composed of only directors
    - The board may delegate some of its fiduciary duties to the committee
    - Examples: finance, audit, compliance, or compensation committees
  - Advisory committees
    - Can be composed of non-directors
    - Do not have the authority to act on behalf of the Board
    - Examples: fundraising, special events, or public relations committees
Why create committees?

Board committees help:
- Divide the Board’s work among the directors into manageable amounts
- Decrease the amount of issues that must come before the full Board
- Directors with special expertise concentrate on the subject matters they know best and to which they can contribute the most

Advisory committees can:
- Help the Board and staff manage their work loads
- Bring expertise to the Board
- Encourage donor, member, and volunteer participation
- Serve to recruit new Board members
How do you create a Board Committee?

- The creation of each committee has to be approved by an absolute majority of the Board, not just by a majority of those present at the Board meeting
  - A Board of eleven directors requires the affirmative vote of six directors
- The resolution creating the committee should specify:
  - The duties and authority of the committee
  - The number of directors to be appointed to the committee; and
  - Its composition (i.e., the finance committee resolution could provide that the treasurer is automatically a member of the finance committee)
- An absolute majority must also approve which directors are appointed to the committee
What can Board Committees do?

- These committees may take actions that would otherwise require Board approval.

- They can exercise the same authority as the Board in their subject area:
  - Ex: the finance committee will typically have the authority to approve changes to the budget, without requiring further Board action.

- For example, the Board could delegate duties to a Board committee including:
  - Selecting the independent auditors for the organization
  - Approving the CEO’s compensation,
  - Approving changes to the annual budget
  - Appointing investment advisors
What can Board committees do?

Some duties cannot be delegated to a Board committee, including the right to:

- Authorize the distribution of the organization’s assets;
- Adopt, amend, or repeal the organization’s articles of incorporation and bylaws;
- Fill vacancies on the Board of Directors or any Board committees; and
- In the case of a membership organization, propose any action to the members that requires the members’ approval
- Dissolve the organization
Advisory Committees

- The Board can create advisory committees
- These committees do not have any of the Board’s powers and responsibilities and serve only as advisors to the directors
- The Board must approve any of the advisory committee’s policy recommendations
- Non-directors, volunteers, or individuals outside of the organization, as well as directors, may serve on advisory committees
- Can help encourage the involvement of donors, members of the community, or experts that may not have the time to serve on the Board
Continuing duties of directors

- Directors must still oversee the work and actions of the committees
  - Board committees are required to take minutes of their meetings, and these should be distributed to the Board

- The directors may rely on the information or recommendation of a committee if it is reasonable to do so
  - ex: the Board should not rely on the financial information provided by the finance committee if the Board knows the committee never met or reviewed the organization’s financial information

- The Board must step in and take action if a committee fails to act in a prudent and diligent manner
Questions?

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