

Best Practices in Nonprofit Board Management

DISCLAIMER: This information is not intended as legal advice. Please consult with your nonprofit's legal advisor if you have any questions on how state regulations affect your nonprofit.

What are the basic responsibilities of a board and the legal duties of board members?

- The board is legally responsible for the operation of the nonprofit organization for which it serves. In fact, individual members can even be held personally liable for improper conduct if they breach their duties. So, pay careful attention to the law and board duties.
- Doing so will help your organization minimize risk and ensure your organization is the best it can be.

Standards of Conduct

Under the law, each board member must meet certain standards of conduct. These standards are typically described as duty of care, duty of loyalty, and duty of obedience.

Standards of Conduct

- **Duty of Care**

Board member must exercise “reasonable care” when he or she makes a decision for the organization. In this case, “reasonable” is what a prudent person in a similar situation might do.

- **Duty of Loyalty**

Board member must never use information gained through his or her position for personal gain. This means each member must always act in the best interest of the organization.

- **Duty of Obedience**

Board member must be faithful to the organization’s mission. This means he or she cannot act in a way that is inconsistent with the organization’s goals.

Board Responsibilities

In addition to standards of conduct, as a governing body, the board has a responsibility to support management and staff, and ensure operations run smoothly and in accordance with the law.

Board Responsibilities

Following, are 10 responsibilities of nonprofit boards:

1. Establish mission and purpose.
2. Select and hire the executive director.
3. Support and evaluate the executive director.
4. Set policies and ensure effective planning.
5. Monitor and strengthen programs and services.
6. Ensure adequate financial resources.
7. Protect assets and provide proper financial oversight.
8. Build a competent board.
9. Ensure legal and ethical integrity.
10. Enhance the organization's public standing.

Source: Ten Basic Responsibilities of Nonprofit Boards, Second Edition, by Richard T. Ingram (BoardSource 2009).

Laws and Guidelines Governing Boards

In 2002, the U.S. government passed the American Competitiveness and Corporate Accountability Act (a.k.a. the **Sarbanes-Oxley Act**), which regulates the financial controls of corporate boards. The Act itself doesn't apply to nonprofits, but there are a number of provisions you might want to adopt voluntarily, particularly as they relate to board oversight and committees, disclosure, document retention, whistleblower policies and audits.

Laws and Guidelines Governing Boards

In its publication, **Compliance Guide for 501(c)(3) Public Charities**, the Internal Revenue Service recommends that nonprofits consider whether such governance practices are necessary to ensure sound operations and compliance with tax law.

It's important to note that Ohio requires charitable nonprofits to submit financial information in conjunction with the process of registering the charitable nonprofit so that it is able to lawfully engage in fundraising activities in the state (commonly known as "charitable registration"). In Ohio charitable registration is filed at the Attorney General's office.

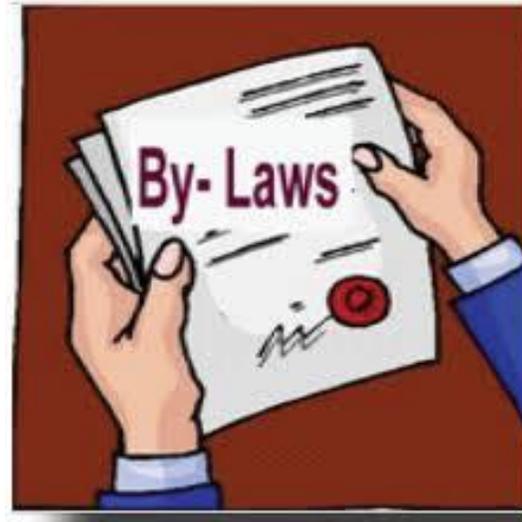
It's also important that private nonprofit agencies become familiar with relevant legislation in Ohio that applies to nonprofit corporation law through the **Ohio Revised Code**.

Governing Documents

- **Articles of Incorporation for private agencies**

- Filed with Secretary of State
- Articles must be consistent with current purposes and activities of the organization
- Align with state nonprofit corporation law.

What are
bylaws and
why do we
need them?



How can Bylaws protect the board?

Bylaws are the written rules by which an organization is governed.

- Sets forth the governance structure of the organization.
- Determines the rights of participants and they determine the procedures by which rights can be exercised. In other words, bylaws guide the board in conducting business. Carefully crafted bylaws and adherence to them can help ensure the fairness of board decisions and provide protection against legal challenges.
- Deals with more specific issues than articles.
- Subordinate to the articles and must be consistent with them.

Bylaws protect the board

It's important to note that bylaws are in fact legal documents. This means there are legal requirements for what should be included. These requirements vary by state. For example, Ohio state law require membership, board selection and other issues to be stated in the organization's bylaws.

Bylaws can help protect your directors and officers from personal liability. For example, your nonprofit can protect its directors and officers from costs arising from wrongful lawsuits by including provisions regarding indemnification in your bylaws.

1. Is the organization's bylaws reviewed on a regular basis by an attorney? Best Practice: Review every 5 years
2. Does the organization have a procedure in place to ensure that each governing board member has received a copy of the bylaws?

How does the board ensure the organization is mission driven?

A mission-driven organization is one that is constituent-focused at every touchpoint. Your mission may be defined in terms of providing exemplary service, or developing products that meet and exceed the needs of your target audiences, or both.

A mission-driven strategy can be a framework to help your board align your programs and services with the values and priorities of your organization.

But how do you ensure your board is using this framework effectively?

How does the board ensure the organization is mission driven?

First, the executive director and the board should establish a guiding mission and vision that reflect the organization's constituency. This will require careful research and strategic planning. It's important that the executive director and staff support the board with the research they need in order to develop an informed mission that positions your organization appropriately and sets you up for success.

Once established, board commitment to driving your mission forward at every opportunity is essential. Such a commitment helps everyone in the organization create a solid operational structure, a strong organizational identity and effective communications and fundraising strategies.

Three tips to ensure your board keeps your organization's mission top priority:

1. Develop opportunities to keep board members communicating. Members should be engaged in moving your mission forward. Keep the line of communication open between board members and the executive director to ensure buy-in at all levels and a shared understanding of your common purpose.

Keeping your organization's mission top priority:

2. Ask the board to regularly review communications and fundraising plans to ensure they tie in with mission and strategic goals. This keeps them tied into critical organizational activities and ensures the mission is top of mind for everyone. Be sure to follow up on their suggestions for improvement.
3. Don't let your mission "drift." Potential support from large donors or corporate sponsors can sometimes result in taking on programming that is not in line with your mission. If growth means a potential shift, do your research and plan your strategies before you make the leap.

To guard against an unclear or misguided mission, ask yourself:

- What is the social benefit gained by our organization's existence and how important is it?
- Does our mission have meaning for stakeholders, or is it just boilerplate for grant applications?
- Do we know our organization's competitive advantage, and who our constituents are?

Source: Mission-Driven Governance, by Raymond Fisman, Rakesh Khurana and Edward Martenson

CSBG Organizational Standards

Governance Standards – Board Structure

Federal CSBG Act requires that, as a condition of designation, private nonprofit entities and public organizations administer their CSBG program through tripartite boards that “fully participate in the development, planning, implementation, and evaluation of the program to serve low-income communities.”

The agency’s governing board is structured in compliance with the CSBG Act:

1. At least (1/3) one-third democratically-selected representatives of the low-income community;
2. (1/3) one-third local elected officials (or their representatives); and
3. The remaining membership from major groups and interests in the community.

CSBG Organizational Standards

Governance Standards – Procedures

The agency's tri-partite board has written procedures that document a democratic selection process for low-income board members adequate to assure that they are representative of the low-income community.

1. What is the democratic process?
 - A practice that allows democracy to exist. Democracy is based on the idea that everyone should have equal rights and be allowed to participate in making important decisions.
2. If low-income board member is chosen to represent a particular neighborhood, the individual must live there
3. The board member representing the low-income community does not need to be low-income themselves. – Best practice: Have at least some (if not all) low-income board members who are low-income themselves.

Democratic Selection

- Broad array of democratic selection techniques available
 - ✓ Election by ballot or at community meeting
 - ✓ Elected by or designated from elected leaders of low-income groups (e.g. Head Start Policy Council, neighborhood association, public housing tenants' association, community health center board, etc.)
- Should NOT be chosen simply by agency board or nominating committee
- Should NOT be staff of another low-income service provider picked by agency board or nominating committee or by executive director of other organization

Source: CAPLAW

Democratic Selection

- Bylaws may, but do not need to, describe democratic selection procedure
 - ✓ If not described in bylaws, selection procedure should be described in a separate document referred to in the bylaws and approved by the board

Private Sector

- Should be officials or members of business, industry, labor, religious, welfare, education, law enforcement, or other major groups and interests in the community served
 - May include both public and private sector groups and interests
- Usually grantee may choose representatives from organizations or individuals
 - If choosing reps from organizations, board has more flexibility if bylaws don't specify which organizations

Source: CAPLAW

Petitions for Board Representation

- CSBG Act: agencies must establish procedures for low-income individuals, community organization, religious organization or representative or low-income individuals that considers its organization or low-income individuals to be underrepresented on the board to petition for representation
- If state CSBG law/regs don't specify petition procedures, the agency can develop its own

Board Selection Suggestions

- Have board development/governance committee oversee the recruitment and selection process
- Require all candidates for board positions to complete an application
- Have full board elect all board members once they have been chosen through the appropriate selection process.

What are some best practices for board operations?

- Implementing “best practices” for building and running a board effectively can help you further your cause with confidence.
- Here are some top issues to consider:

Board size

- Federal CSBG Act doesn't dictate board size, but Ohio law establishes a minimum of three directors for nonprofit corporations.
- Beyond legal requirements, the number of board members will depend largely on your organization's needs. Before you decide on size, it's best to think about your needs. Do you want to create a diverse board with varied skills, knowledge and experience to support your organization and match the needs of a diverse constituency?
- To determine the right number for your organization, think about the dynamics between members and their ability to accomplish tasks. Consider whether adding more will help or hinder in this regard.

Quorum

A quorum is the minimum number of members that must be present at a meeting to make the proceedings of that meeting valid. This is typically established in an organization's bylaws, although in some cases state law will determine the quorum. Often the quorum for a meeting of the board is one-third of its total members, or two directors (whichever is higher).

- Ohio law – “a majority of the whole authorized number of directors is necessary to constitute a quorum for a meeting of the directors, except that a majority of the directors in office constitutes a quorum for filling a vacancy in the board.
- “Majority” – A majority is the greater part, or more than half, of the total.

Effective meeting planning

To ensure full participation and thoughtful decision making in the best interest of the organization, board meetings should always be carefully planned, facilitated and documented for implementation and follow-up.

How to keep meetings on track:

1. Begin with a clear, focused agenda. Agendas should address meeting topics and outline goals for discussion. Deliver the agenda to board members at least a week in advance. You may also want to compile an organizational update, key background needed for decision-making points and highlights of the latest “good news.”
2. During the meeting, stick closely to the agenda to make good use of everyone’s time. Focus on getting results and critical decision-making at every meeting.

Keeping meetings on track:

3. Make attendance mandatory. Develop policies around meetings and hold members accountable. If a meeting is scheduled but agenda items have changed, don't waste members' time. Reschedule for another, more appropriate day.
4. Ask for board input on the agenda. This allows members to include topics of interest, increasing the likelihood of attendance and helping to keep them engaged while there. This can also help the executive director better understand where members stand on important issues.
5. Schedule time for discussion and networking among members. Give members the opportunity to get to know each other and build their own professional networks.

Executive directors and founders as members

- While an executive director is often a member of the board, involved in board discussions and information sharing, he or she is rarely granted a vote. After all, the board is technically the executive director's employer and conflicts of interest could arise. To guard against this, both the board and the executive director should act independently from each other – the executive director as leader of the organization and the board in a governance role.
- Because of their passion and commitment, founders may want to directly exert their influence over the organization as a member of the board. Ultimately, the answer to this question rests in the founder's ability to use his or her skills and experience to move the organization's mission forward at the governance level. As a board member, a founder can be granted a vote. This means he or she should be able to effectively address the organization's needs and provide guidance and support.

Term limits

- Federal CSBG Act doesn't address agency board members' terms or term limits
- Term limits give both the board member and the organization an opportunity to determine if continued service is in the best interest of both parties. To ensure the organization's ability to bring in fresh perspectives and expertise and foster its ability to be flexible and responsive to changing needs, many nonprofits set defined terms for their board members. These typically range from one to four years.
- When developing policy in this area, think carefully about the needs of your organization and your funders.
- Best practice: Specify board members' terms in bylaws.
 - May provide for staggered terms
 - Terms can be different lengths for different sectors

Removal of Board Members

- Best practice: Include strong removal provisions in bylaws
 - ✓ Permit the board to remove any board members (including public official board members) for cause
 - Examples of cause: false certification on board application, unexcused absences from a certain number of board meetings, failure to comply with agency policies, taking actions against the best interests of the agency, incapacity
- Refer to Ohio nonprofit corporation law for required procedures

Vacancies

- Vacancies should be filled as quickly as possible
- Best practice: Bylaws should specify how vacancies in each sector will be filled, term length of replacement and how partial term counts toward term limits, if any
- Board seats replacement once chosen through appropriate process

Board committees

- Board committees help optimize individual expertise and diversity by allowing the board to use resources more effectively. By operating in smaller groups, members can often accomplish more than if the board acted as a whole, particularly where issues are complex or numerous.
- Ohio law allows for the creation by the directors of an executive committee or any other committee of the directors, to consist of one or more directors, and allows directors to authorize the delegation to any such committee of any of the authority of the directors.

Board orientation

- Board orientation is critical to getting organization-wide buy-in to your mission, values, organizational identity and strategic plans. It helps improve communication and participation, and it empowers new members with the tools they need to steward your nonprofit in the community.
- Orientation prepares your board members to provide informed guidance and support in governance issues, allowing your organization to make better use of their expertise.

Board Orientation

Remember, board orientation is key:

- Develop an orientation manual/board handbook outlining what each member needs to know about service and your organization.
- Give your board the tools they need to excel. Regularly update members on key organizational issues and good works.
- Use mentoring and ongoing education to help members feel prepared.

Get Getting On Board with Effective Orientation (www.boardsource.org). This BoardSource Toolkit can help you design your board orientation materials and training sessions.

Board Handbook

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Board Handbook

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Where do you find board members?

Finding the right candidates for your board is not an easy task. Ideally, you'll recruit individuals with a range of complementary skills who are as passionate about your mission as you are. So, where do you start?

First, think about the skills that will benefit your organization. There are often three key areas represented on the board:

- One-third would be individuals who have access to financial resources or soliciting donations.
- One-third would be individuals with management expertise in areas of financial, marketing, legal and the like.
- One-third would be individuals connected at the community level.

Then, think about other characteristics such as age, gender, diversity, geographic representation and familiarity with your cause.

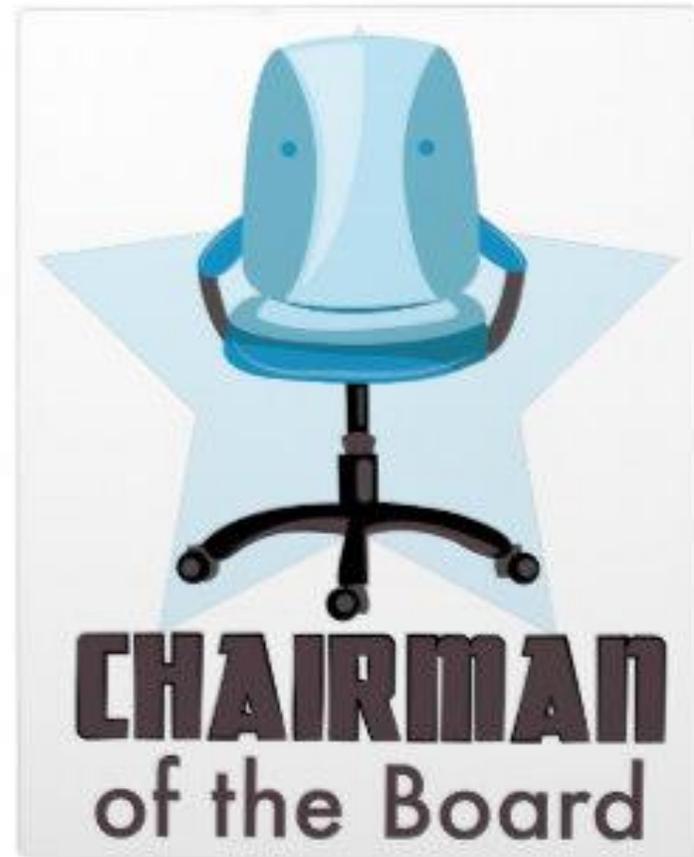
Finding board members:

Consider current volunteers and significant donors as candidates. Ask for board and staff suggestions, and look at business leaders and high net-worth individuals in the community.

Sites like boardnetUSA (www.boardnetusa.org), VolunteerMatch (www.volunteermatch.org) and BoardSource (www.boardsource.org) also help nonprofit boards and new leaders find each other. The latter also offers “**Recruiting a Stronger Board: A BoardSource Toolkit**,” which, among other tools, provides a sample board matrix to help you outline the desired expertise, sectors and demographics that comprise your board.

You might consider designating a board nominations committee to identify potential candidates. Ask the board to seek out candidates who can contribute in a unique way. And be sure to review each candidate in light of your mission and goals.

What role
does the
board chair
play?



What is the board chair relationship with the executive director?

Successful, mission-driven nonprofits have two things in common:

1. a strong executive director, and
2. an engaged, collaborative board chair.

Without exception, the role of board chair is paramount to ensuring an active, focused and supportive board. This in turn ensures a healthy, happy agency.

What is the board chair relationship with the executive director?

The board chair's commitment to stakeholders is to operate under the guiding principle of what is best for the organization. He or she should facilitate board leadership and good governance. In this way, the chair molds the board's culture, work and impact.

A board chair is responsible for leading the board and setting the tone for all members. He or she oversees governance and policy setting, with a focus on mission, direction, priorities and evaluation. The chair has a significant influence on how the board uses its time (and in particular is often instrumental in helping the board address fundraising goals).

In addition to overseeing board and committee meetings, supporting recruitment, and assessing the performance of board members and the executive director, the board chair works closely with the executive director. The two should meet regularly to collaboratively drive the organization's mission forward.

The relationship between the executive director and board chair is key. Trust, respect and a willingness to rely on each other's strengths are critical, along with a common understanding of the organization's goals and the strategies needed to get there. Both the executive director and the chair should also have clearly defined roles and responsibilities so that everyone understands where one individual's authority ends and the other person's begins. This helps to determine what issues are matters for the board, and what issues lie in the domain of the organization itself.

What is the board chair relationship with the executive director?

Important ways the board chair and the executive director work together:

- Partnering to make sure board resolutions are carried out.
- Appointing committee chairs and recommending who will serve on committees.
- Preparing strategic agendas for board meetings that are geared to decision-making.
- Conducting new board member orientation.
- Each acting as spokespersons when necessary.

Adapted in part from BoardSource and the Board Chair Handbook, Second Edition (www.boardsource.org).

How do you
get board
members
engaged for
your cause?



Engaging board members

- Board members play a vital role in helping an organization drive its mission forward. And in most instances, board members want to fulfill their responsibilities and contribute positively to the work of the nonprofit they serve. When a member is not actively participating, it's often due to a lack of understanding of what is expected or not having access to the tools necessary to participate effectively.
- Actively involve your board in the development of strategic plans, including fundraising plans. A board can be a significant resource in terms of making introductions. In fact, they often have the business expertise that can be useful in developing a sound plan.

Engaging board members

- The board is responsible for ensuring the financial health of your organization. Getting them involved at the planning stage helps boards understand their fundraising responsibilities, builds excitement toward implementation and increases the likelihood that members will want to engage in actionable activities.
- If you sense resistance, you may want to conduct a session with the board to discuss any reluctance to being involved in fundraising. Such a session may reveal the source of hesitation so you can address it.
- Providing the board with outside training in fundraising strategies and techniques will help mitigate such fears, as will setting up a structure for successful fundraising that may include partnering board members with other board members, volunteers or staff members.

Tips to get members moving.

Gail Perry, the author of **Fired Up Fundraising: Turn Board Passion into Action**, suggests the following four steps:

1. Work with the board chair to get your board members involved in developing an annual fundraising plan. Put numbers on your program objectives, such as how many kids you'll send to camp or how many meals you want to serve to a needy public.

Tips to get members moving.

2. Communicate the community impact of the results of your efforts. Talk to your board about benefits in real terms, such as “We’ll help kids who go to camp be healthier, have better self-esteem, and do better in school.” Or “We will help hungry people get nutritious meals right here in our community.”
3. Create an action plan and give each board member a job. Ensure all individuals understand their role and how it relates to results. How is each board member going to help make the plan a reality? For example, some may seek out sponsors, some may enlist volunteers and some may serve on committees to strengthen community and government relationships. Be sure to tie all responsibilities back to your cause and your fundraising goal.
4. Communicate regularly with your board members to keep excitement up and momentum going. Keep in touch weekly or monthly and keep them informed of your success. Board engagement is strongest when members’ interests match those of the organization.

How do you keep the board communicating effectively?

- The board assumes a unique responsibility in the nonprofit sector. It is obligated to hire the executive director, develop policy, assume fiduciary responsibilities and support the executive director in implementing strategies to move the organization forward. Each member offers a diverse perspective, distinct expertise and unique character, yet all work toward a common goal.
- Communication between the board and the executive director is vital to the health of your organization. Regular, open meetings between the board chair and the executive director are paramount and must be guided by what's best for the organization. Each should keep the other informed about trends, developments and the like.
- Disagreements should be respectfully resolved and responsibilities should be clear. As leaders in their respective positions, the executive director and the chair act as partners to guide your agency and set the tone for the board and the organization at large.

To keep the board communicating at its best, consider the following:

- 1. Focus meetings on strategy, not just administration.**

Make it easy for routine issues to be dispensed with quickly. Then, get your board talking about deeper issues that can help you meet your goals. Provide clear, concise agendas and disseminate them in advance so board members can come prepared to engage, ask insightful questions and provide informed opinions.

Board communication at its best:

2. Invite candid discussions.

Create an environment that encourages board members to freely express their opinions, even if they challenge the status quo. Consider bringing in a facilitator to discuss complex issues. This will help keep the chair, executive director or any one member from pushing a particular agenda in an attempt to sway the group.

3. If your board is large, consider breaking up into groups for discussion.

Smaller group discussions encourage creativity and may encourage less outspoken members to join in and offer their expertise.

4. Make it easy for the board to understand and act.

Use real examples and frame issues in terms of what you want the board to do. Discuss strategies you want to implement and talk about how you intend to get there.

How do you deal with an ineffective board member?

Most individuals choose to serve on a board because they want to contribute their expertise, collaborate with peers, give back to the community and affect change in a meaningful way. However, there are instances in which a board member is not effectively engaged, or is ineffective in his or her role. There may be a reasonable explanation.

When addressing the “why,” consider the following barriers:

1. The board member is not clear on what is expected of him or her.
2. The board member is not comfortable with an assignment given.

When addressing the “why,” consider the following barriers:

3. The board member has served for too long. He or she has lost commitment or is “burnt out.”
 4. The board member is not in the right role. He or she really wants to be a direct service volunteer.
- Whatever the case, you’ll want the board chair to resolve the problem right away. He or she should meet with the member to discuss what is causing reduced participation and seek an appropriate resolution.
 - Clarifying expectations and providing training, orientation or coaching may help the member meet expectations.
 - If the case is that the member is “burnt out,” allowing him or her to gracefully resign may be the appropriate solution.

When addressing the “why,” consider the following barriers:

- To help mitigate the chance of a member becoming ineffective, develop expectations in writing. Provide them to each potential board member before they accept the position.
- Once on board, orient individuals to ensure your organization’s mission, goals and objectives are clearly understood.
- Along the way, keep your board updated on your good work and get members involved where appropriate.
- Consider starting formal committees to put boundaries on responsibilities and tasks.
- And don’t forget to conduct annual board evaluations to determine what’s working and what isn’t.

How
important is
board
assessment?



What are the steps in board evaluation?

Performance evaluations are often a cause for apprehension, even among board members. Individuals tend to assume a performance assessment is designed to highlight bad performance, but this should not be the case. Without review and reflection, it's impossible to determine whether your board and your organization are meeting goals and making progress.

Board evaluations are designed to do the following:

1. Identify gaps and improve performance. They help the chair and the executive director understand where they may need to support board members with training, coaching or member partnering to help a member meet goals and objectives.
2. Hold the board accountable for its performance. They create transparency and add credibility to board decision-making.

Board evaluations

3. Offer an opportunity to communicate objectively. They offer a vehicle to openly discuss strengths and weaknesses and realign board members with the organization's identity, mission, values and goals.
4. For the chair, provide important feedback on leadership style and facilitation skills. They highlight the chair's strengths and weaknesses in handling challenges, and his or her ability to keep board members engaged.

Board evaluations

To get started, experts recommend a nonprofit board conduct a self-assessment every two years. That said, it's also important to assess each board member's performance before a new term is granted.

Individual board members' performance can be tied to a full board assessment process by asking board members to rate their own performance at the same time that they rate board performance. You may also want board members to conduct peer evaluations, and assess other board members' contributions.

Board chair performance can be evaluated by the governance committee or you may want to ask board members to provide anonymous assessments. The results should be communicated in a private meeting.

To make evaluations work most effectively, consider the following:

- **Get board buy-in.** Without consensus from all members, the board won't participate.
- **Research and explore before you jump in.** If you're new to board assessment, form a task force to investigate how to appropriately conduct a self-assessment. Research the self-assessment tools available and choose those that are best aligned with your needs. Get board members involved at the research and selection phase and have them refine their chosen tool for effective self-reflection. If costs are a concern, identify foundations that fund board development activities and include assessment costs in the organization's budget.

Effective evaluations

- **Devote time to planning.** Ensure members have enough time to complete the assessment and determine when and how you'll discuss results.
- **Consider bringing in a facilitator.** Members need to know how to give constructive feedback. If anyone is unclear, you may want to bring in a facilitator to aid in the evaluation process and help discussions go smoothly.
- **Follow up and implement recommendations to affect real board change.** Expectations and duties should be clarified and each member should be provided with opportunities for self-improvement.

Adapted in part from BoardSource, Assessing your Performance (www.boardsource.org)

Do you need a conflict of interest policy for your board of directors?

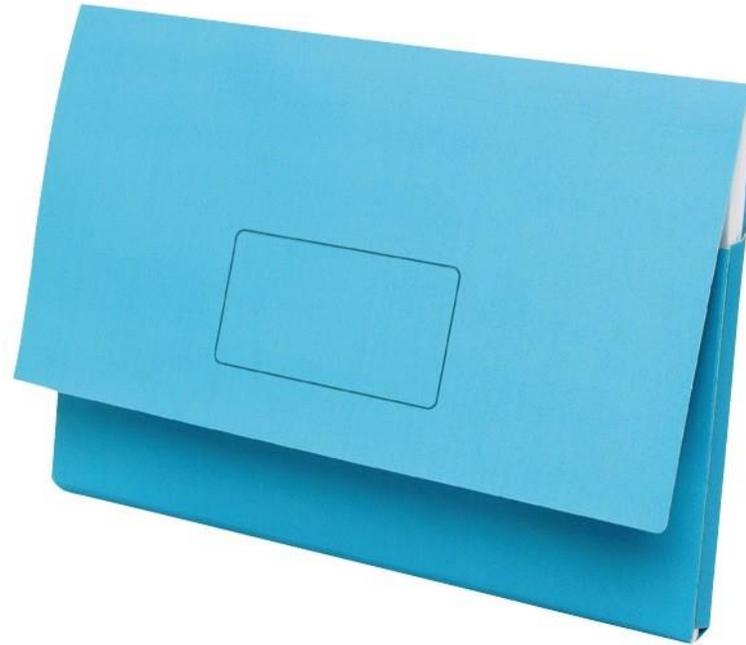
- You want to safeguard against conflict of interest situations in your organization, but do you really need a policy to do so? Federal law does not require tax-exempt organizations to have a conflict of interest policy in place. However, the IRS strongly encourages it and its IRS Form 990 asks not only about whether the nonprofit has a written policy, but also about the process that the organization uses to manage conflicts, as well as how the nonprofit determines whether board members have a conflict of interest.
- Such a policy can reduce the appearance of impropriety and help to ensure that the exempt organization is conducting business in a manner that is consistent with its charitable purpose.
- It's important to note that conflicts of interest involving a director are not in and of themselves illegal or improper. They are, in fact, quite common. It's the manner in which the director and board deal with and disclose the conflict that determines the propriety of a decision or transaction.

Conflict of Interest

- So what exactly is a conflict of interest? A conflict is present whenever a transaction has the potential to personally benefit a director. This can occur, for example, when a director has an employment, investment or family involvement with an entity with which the nonprofit is dealing.
- A board member's duty is to act in good faith with regard to the best interests of the exempt organization, not in the board member's personal interest. This is called "duty of loyalty" in the law, and directors are legally bound to carry it out.
- Given the risks and responsibilities, a written conflict of interest policy is strongly recommended. A policy clearly spells out the legal procedures for disclosure of conflict of interest and approving transactions in which a director may have an interest. The board may also wish to go beyond what the law requires and establish more stringent policies, such as forbidding transactions in which the director has an interest.

Adapted in part from: Guidebook for Directors of Nonprofit Organizations, by the American Bar Association.

What documents are needed for board meetings?



What should be recorded in board minutes?

As an exempt organization, you've been keeping an official board book. It should include all corporate documentation such as bylaws, articles of incorporation, conflict of interest policy, a template for board meeting minutes, minutes of board and committee meetings, contact information for all directors, and any other documents that govern your operations.

How long you should keep your record?

The IRS says that you “must keep all of your records as long as they may be needed.” While this may sound like rather loose guidance, it is easy enough to determine how long that might be. Financial records, such as general ledgers and audits, should be kept for seven years. This standard is derived from the ability of the IRS to audit your records for intentional fraud for up to six years; the seventh year is needed to cover starting balances.

Corporate records, which set forth policy decisions such as board minutes, should be kept forever. The goal here is to present a full history of the organization, since an organization may need to review historic decisions (for example, the restrictions placed on a donation).

Minutes of board and committee meetings must be kept within an official board book and a tax-exempt organization is required by law to keep them. All board members should receive copies of the minutes and have access to the minutes at any time.

What you should know about minutes.

Minutes are the permanent record of the proceedings of a board or committee meeting. They need to be clear, accurate, brief and objective. In addition to basic information such as the date, time and location, names of members present or absent, and results of votes, your minutes should include:

- The names of persons abstaining from any vote or requesting that their vote be recorded.
- The names of members who disclosed a potential conflict of interest, the nature of the conflict and disposition.

Minutes

- A list of all reports and documents introduced during the meeting (with copies attached to the official minutes).
- A summary of significant points raised during discussion.
- Any commitments made by officers or any other person present.
- The time of adjournment.
- Minutes must be approved by the board and have the signature of the board secretary upon approval.
- When appropriate, a brief addendum showing required follow-up activities.

Adapted from: 10 Minutes to Better Board Meetings, by Planned Parenthood Federation of America.

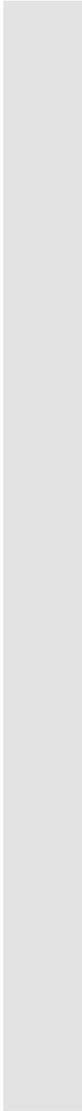
Ohio Sunshine Laws

- Ohio's Public Records and Open Meetings laws, collectively known as the "Sunshine Laws," give Ohioans access to government meetings and records.
- The Ohio Attorney General's Office (OAG) helps public officials and citizens understand their rights and responsibilities under these laws.
- Ohio's Public Records and Open Meetings Acts are both self-help laws that the OAG has no authority to enforce.



Public Records 101

Understanding the Public Records Act begins with first understanding the two seemingly basic, yet sometimes complicated terms “public record” and “public office”.



What is a “Public Record”?

- The Ohio Revised Code (ORC) defines public records as “records kept by a public office”.
- To meet the definition of a “record” a particular item must meet all three conditions’ under the following test:
 1. Information stored on a fixed medium that can be recovered (e.g. CD, Email, spreadsheet, other forms of storage, etc.);
 2. Created by, received by, or comes under the jurisdiction of the public office;
 3. Documents the organization, functions, policies, decisions, procedures, operations, or other activities of the public office.
- “Kept By” a Public Office – At time the request is made, the record must be:
 - In the possession or control of the public office under the terms of its record’s retention schedule for such records
 - Currently in existence at the public office
 - Not yet properly disposed of according to the record’s retention schedule

What is a “Public Office”?

- The Ohio Revised Code (ORC) defines public office as “Any state agency, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.”
- What about Private Entities?
 - Private entities MAY be a “public office” if they are the “functional equivalent” of a public office:
 1. Performing a governmental function;
 2. Level of government funding;
 3. Extent of government involvement or regulations; and
 4. Whether the entity was created by the government or to avoid the requirements of the Public Records Act.

Public Office Contracts With Private Entities

- Three-part test to analyze whether records involving private entity are public:
 1. Private entity prepared the records to perform duties normally belonging to the public office;
 2. Public office is able to monitor the private entities performance; and
 3. Public office may have access to the records.

Open Meetings Act

- Ohio's Open Meetings Act mandates that a "public body" must conduct official business in open meetings.
- What is a "public body"?
 - Decision-Making Body
 - State agencies (e.g. Board, Commission, Committee, Council, or similar decision-making body)
 - Local agencies (e.g. County, Township, Municipal corporation, school district, and other local public agency)
 - Includes any committees or subcommittees of the primary public body.
- What is NOT a "public body"?
 - General Assembly
 - Grand Juries
 - Organized Crime Investigations Commission (OCIC)
 - JobsOhio
 - Other agencies exempted by statute

What is a “Meeting”?

- A Public Body needs to meet the Open Meetings Act requirements when:
 1. Prearranged gathering
 2. Majority of members of the public body
 3. Purpose of discussing/conducting public business
- Requirements for all Open Meetings
 - Public Body gives notice of meeting (regular, special, or emergency)
 - Openly conduct business (unless specifically provided by law)
 - Cannot vote by secret ballot
 - Keep full and accurate minutes of all meetings and make the minutes available to the public for inspection.
 - Minutes must provide enough information so that the public can understand the rationale behind the public body decision.

Open Meetings Act: Executive Sessions

- A Public body may enter into an Executive Session from which the public may be excluded to discuss and deliberate certain matters in private; however, no formal decisions or votes can take place in the private session.
- The Act permits discussion only on the following matters:
 1. Personnel matters
 2. Purchase or sale of property
 3. Pending or imminent court action
 4. Collective bargaining matters
 5. Matters required by law to be kept confidential
 6. Security arrangements
 7. Certain hospitals' trade secrets
 8. Economic development by cities and townships

Public Records Request

- The Ohio Public Records Act ensures that the records of public offices in Ohio are available to any person who requests them.
- Composing a Request
 - DO ask for actual records that exist at the time of the request
 - DON'T ask for records that have been properly disposed
 - DON'T ask for records that have not been created yet
 - A public office has no duty to create new records
- A request must be made with “reasonable clarity”
- Make a request as specific as possible so that the public office can identify and locate the records you want
- Seek out a retention schedule from a public body to understand how records are organized by that body.
- Requests can be made anonymously with contact info.

Resources

Publications

- Ohio Attorney General – Ohio Sunshine Laws 2017
- IRS Compliance Guide for 501(c)(3) Public Charities
- CAPLAW - CSBG Organizational Standards Resource Guide

Websites

- www.boardsource.org
- www.councilofnonprofits.org
- www.oano.org
- www.soxlaw.com
- www.thenonproffitimes.com
- www.nonprofitexpert.com/nonprofit-law
- www.nonprofitrisk.org
- <http://allianceonline.org>
- www.capl原因.org
- <https://nonprofitquarterly.org>