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Duties and Responsibilities of the Board of Directors

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Today's Agenda

- Introductions and Identification of Your Key Questions
- Legal and Fiduciary Roles and Responsibilities
- The Board's Policy and Monitoring Functions
 1. Board Management & Development
 2. Audit, Finances & Fixed Assets
 3. Personnel - HR
 4. Resource Development
 5. Stakeholder & Community Relations
 6. Mission Impact - Programs & Services
 7. Strategically Planning for the Future
- Committee Leadership & Engagement

The Mission

- The tax-exempt purposes for which resources are to be devoted
- Define scope of activities & who you serve
- Official statement is in your Certificate of Incorporation
- Exempt activities flow from mission
- One-third “public support” test- must have a broad base of support to be a public charity

- Your Mission: *to improve the health and well-being of rural New Yorkers and their communities.*

Why Does the Board Exist?

- To Represent “*The Public Interest*”
- Nonprofits spend public money through grants, donations, and tax exemptions, therefore the board represents the public’s interest in how those funds are spent
- The *Board*, not staff, are the ones held accountable for how these funds are spent

Fiduciaries

*Fiduciaries act for someone else's benefit and have responsibilities in connection with the administration, investment & distribution of **someone else's assets.***

Committed To A Fiduciary
RESPONSIBILITY

trust good faith honesty ethical confidence care diligent

All In The Best Interest Of The Client

Board Members Ultimate Responsibility

Discharging the duties of their position in good faith and with that degree of diligence, care, loyalty, & skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

Duty of Care

Duty of Loyalty

Duty of Obedience

Duty of Care

The degree of competence & care expected to advance the mission & avoid reasonably foreseeable harm.

Requirements:

- ✓ Be Reasonable – Not Reckless!
- ✓ Be prepared for, attend & actively participate in meetings
- ✓ Deliberate, ask questions & inquire
- ✓ Vote your opinion as to what is in the best interest of the organization
- ✓ Ensure documentation shows exercise of care and proper conduct in decision-making & actions

Duty of Loyalty

Make decisions in the best interest of the mission & the nonprofit without being compromised by private gain or other interests.

Requirements

- ✓ Be faithful to your position & the organization
- ✓ Be publicly supportive of organization
- ✓ Minimally, adhere to law & applicable regulations
- ✓ Disclose and avoid, when possible, conflicts of interest
 - Consider higher standard such as non-financial conflicts and those that are “perceived”
 - Ensure transparency in membership subcontracting/awards

Duty of Obedience

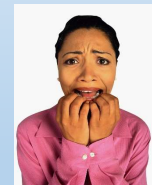
Compliance with the laws & regulations that govern the organization's actions.

Requirements

- ✓ Federal, State & Local Laws
- ✓ Certificate of Incorporation/Charter & any Amendments
- ✓ Bylaws
- ✓ Contractual Obligations
- ✓ Board decisions & policies
 - Respect board process
 - Understand & support duly made decisions
 - Follow the established chain of command

Manage Your Risk: Board Members are Responsible for:

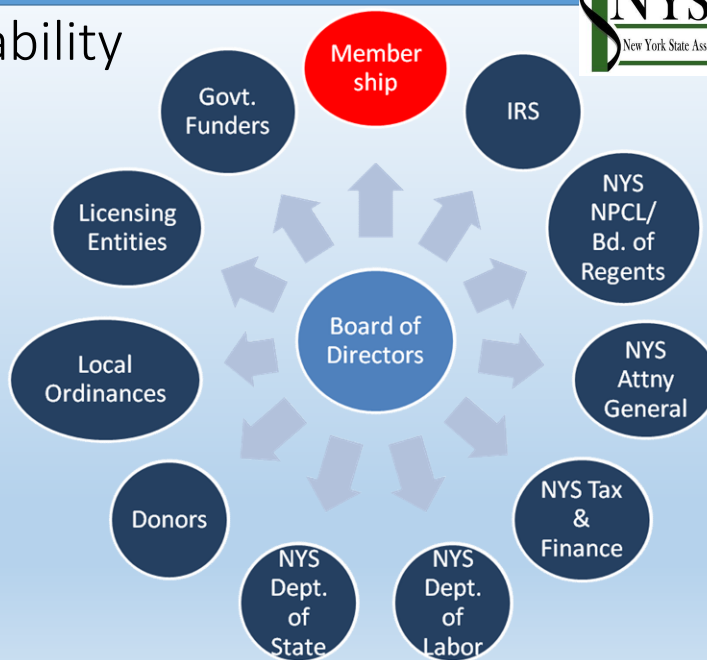
- Violations of law, including employment related claims
- Acts or omissions constituting willful or wanton or grossly negligent conduct
- Operating outside of the bylaws
- Misappropriation of assets
- Unpaid payroll & other taxes
- Unsatisfied corporate debt



Board Members Are Protected By:

- ✓ Immunity Laws: Protect volunteers of 501 (c)(3) nonprofit organizations from lawsuits
 - No protection for the nonprofit itself
 - No protection for allegations of gross negligence
 - Defense expenses still incurred
 - ✓ Appropriate Insurance Coverage: *Directors and Officers Liability Insurance* provides coverage in case of lawsuits
-
- ✓ **Good Risk Management:**
 - ≈ Regular review of bylaws and policies
 - ≈ Financial planning and oversight
 - ≈ Engaged participation, respecting chain of command, etc.

Board Accountability Landscape



Membership's Legal Voting Rights

- Election & removal of Directors. *N-PCL §703-706*
- Authorize amendment of the Certificate/Charter & other fundamental corporate changes. *N-PCL §802 ;N-PCL §908,*
- Approval of changes to Membership Rules promulgated by the Board if the rules affect the rights of members.
- Approval of the sale of all or substantially all of a corporation's assets. *N-PCL §510*
- Approval of the sale of real property. *N-PCL §510*
- Unless specified in the bylaws, the right to amend or repeal bylaw provisions & to restrict the Board from amending same. *N-PCL §602(b)(c)*
- Dissolution of the membership. *N-PCL §1002*

In Building a Governance Accountability Structure...

Clearly define the decision-making, monitoring, and reporting responsibilities at the board & management levels in order to know:

- ✓ *Who is responsible for what,*
- ✓ *Who makes what decisions,*
- ✓ *Who is accountable to whom, and*
- ✓ *How and in what ways?*



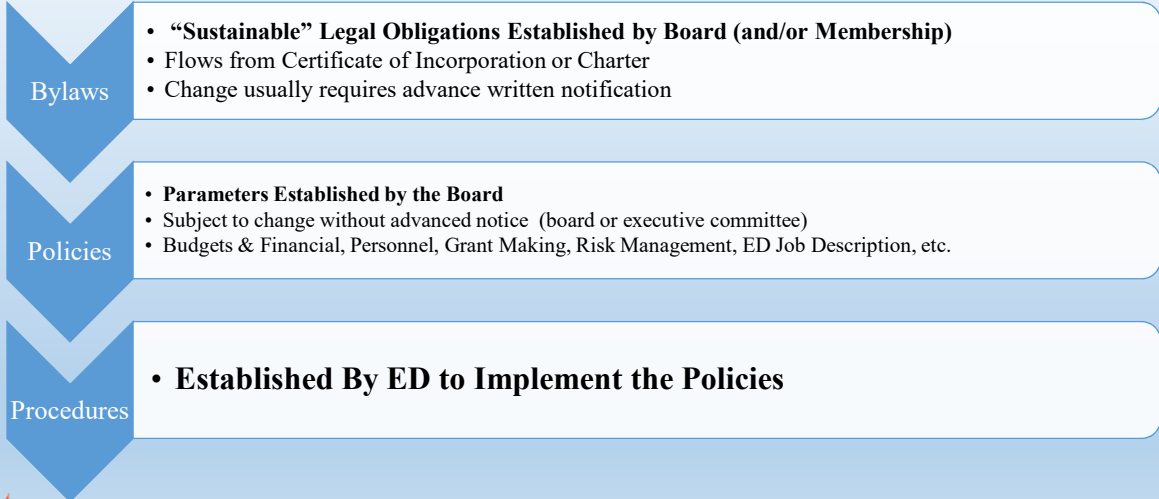
Accountability Starts with Your Bylaws

- Is essentially your legislation -the board is legally bound to adhere
- Sets the rules; composition; nomination, election & removal process & procedures for the board & officers
- Distributes duties & powers to officers, committees, & executive leadership/management
- Defines your decision-making process
- Serves as a compliance & risk management document

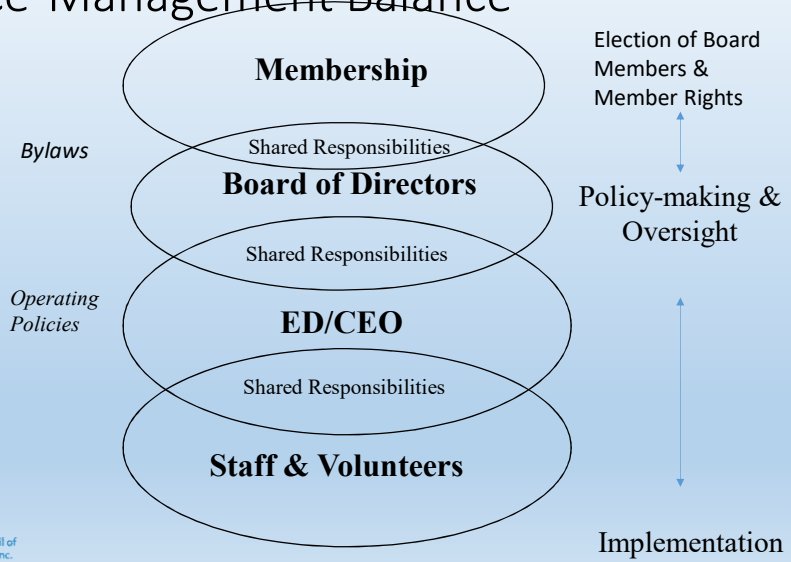
Bylaw Considerations

- Membership-
 - *Suggest You Add voting by Proxy and Electronic Participation/Meetings*
- Board Size-15-21 Members
- Three 3 year terms
- Officers serve no more than two consecutive 1 year terms
- Committees of the Board: Executive, Finance, Governance
 - *Full Board must approve members of Committees of the Board*
- Committees of the Corporation: Membership, Policy, Conference
 - *Note- Do not equal ad hoc committees*

The Bylaws-Policy-Procedure Flow



Typical Model Governance-Management Balance



Major Governance & Policy Areas

1. Board Management & Development
2. Audit, Finances & Fixed Assets
3. Personnel - HR
4. Resource Development
5. Stakeholder & Community Relations
6. Mission Impact - Programs & Services
7. Strategically Planning for the Future
8. Corporate Compliance (for some)
9. Collections and Facilities (for some)

Board Development

The process of creating, maintaining & improving the functioning, effectiveness & productivity of board leadership & governance.



The Board's Role Audit, Finance & Fixed Assets

- Oversee filings of state and federal tax forms, including required reviews or audits
 - IRS Form 990= Federal tax form
 - CHAR 500 = State tax form
 - \$250k+ Requires Review
 - \$750k+ Requires Audit- Increasing to \$1M in 2021
- Review & approve budget and regular financial statements
- Financial planning, cash flow management, and year end projections
- Adopt financial policies & internal controls
- Ensure investments and fixed assets are managed prudently
- Ensure adequate liability insurance coverage

Key Elements of Financial Reports

- Income Statement
 - Comprehensive, concise, understandable
 - Covers reporting period
 - Functional by program
 - Compares actual to date with budgeted figures-notes variances
 - Line items reflect general ledger
- Balance Sheet
 - Clearly defined asset and liability classes
 - Net assets by restriction
 - Balance sheet date is final date of reporting period
- Cash Flow

Examples of Fiscal Policies... and Procedures

- Purchasing & bidding
- Check signing, credit card use, etc.
- Investments
- Compensation policies & authority
- Insurance coverage
- Budgetary discretion of ED/CEO
- Initiative/proposal development & submission
- Grant making/pass through funding
- Unexecuted contract spending
- Records retention & document destruction
- Whistleblower

The Board's Role Resource Development

- Ensure the organization has the resources it needs to meet obligations & pursue mission
- Approve fund development plan & related policies including donor confidentiality, gift acceptance, etc.
- Establish policies regarding board participation, solicitation, compliance confidentiality, etc.
- Represent the organization to funders, donors, government officials & other constituents
- Ensure compliance all state and IRS regulations, notifications, and filings

The Board's Role Stakeholder & Community Relations

- Serves as “Ambassador” & representative of organization to members, the community, constituents & other stakeholders
- Brings issues, community needs, opportunities, etc. to the board & Staff
- Works to enhance the organization’s public image
- Promotes benefits of membership, supports and recruits members
- Engage prospective/new board members
- *Be an Advocate* - exercises influence that promotes the organization’s interests

The Board's Role Strategically Planning for the Future

- Create & foster a strategic culture
- Adopt & embrace a positive and achievable “stretch” vision or intent for mission success/impact, sustainability, & growth
- Develop a plan for strategies & accountabilities for achievement
- Generate enthusiasm for organizing & putting the plan into action
 - Align board, committee, financial and programming priorities with the strategic plan
- Monitor ongoing progress on “live” plan and revise course as needed

Strategic Planning is a Tool

- An *internal tool* – To motivate, unify & get everyone on the same page!
- A *creative tool* – To think & strategize out of the box!
- An *external tool* – To improve competitive position & investment in your future!
- A *monitoring tool* – To enhance accountability & demonstrate results!

The Board's Role

Mission Impact - Programs & Services

- Prioritize programs in resource allocation/budgeting to align with mission and strategic goals
- Approve program policies
- Oversee & ensure consumer protection, contractual & regulatory compliance
- Monitor & ensure that services produce demonstrable mission-based outcomes
 - Review programs at least annually

Overseeing Contracted Employees

- You are likely not evaluating employees, you are evaluating the ability of the company to carry out the terms of your contract within the parameters defined by your organization.
 - How clear are you on setting expectations?
 - Does your contract have an evaluation mechanism?
 - Does your board have an evaluation process?
- Discussion

Committee Fundamentals

- Establish committees when it's apparent that issues are too complex and/or numerous to be handled by the entire board.
- Committees make full use of board members' expertise, time and commitment, and ensure diversity of opinions on the board.
- Committees may expand opportunities to engage experts or stakeholders.
- All committees MUST have 3 board-appointed members
- Committees of the Board can act on behalf of the board and can include ONLY board members in a voting capacity.
- Committees of the Corporation are advisory and can include non-board members (e.g. members/delegates).

Chair Responsibilities-(1)

- Call meetings & set the agenda
 - Consult with other board members and ED if and as needed
- Ensure meetings are properly recorded
- Manage the committee or group process
- Coordinate communication and staffing services with the Executive Director (and/or assigned staff), if available
- Recommend to the chair and/or board, who they would like to see serving on the committee.
- Engage and support committee member participation

Committee Chair Responsibilities- (2)

- Ensure that the committee stays within its charge and is accountable to the board of directors as appropriate.
- Keep the board chair apprised on an ongoing basis of committee work and progress, and notify the chair of the committee's report to the board in advance of the board meeting
- Regularly report to the board all committee recommendations, progress and any other significant issues or concerns that warrant the committee's attention.
- When the committee provides advice to the Executive Director and/or staff, clearly distinguish and articulate to all concerned that such advice is not a directive or supervisory in any way.