**Organizational roles & responsibilities**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Responsibility** | **Board** | **CEO** | **Management** | **Staff** |
| 1. Set goals | Provide foresight | Cheerlead | Leaders | Supporter |
| 2. Define strategy | Offer insight | Lead architect | Execute & revise | Execute & refine |
| 3. Assess risk | Exercise oversight | Risk taker | Risk advisors | Risk monitors |
| 4. Implement strategy | Exercise oversight | Obstacle remover | Leaders | Drivers |
| 5. Assess results | Constructively critique | Chief quality officer | Assess results | Generate results |
| 6. Monitor finances | Oversight, contribute, leads | Chief revenue officer | Leaders | Drivers |
| 7. Compliance | Exercise oversight | Head compliance officer | Leaders | Drivers |
| 8. Culture | Exercise oversight | Lead culture artist | Leading culture artists | Culture artists |
| 9. Talent | Select and supervise CEO | Select & support mgmt | Select & support staff | Support each other |
| 10. Decisions | all As, some Bs; all 1s | all A&Bs; all 1&2s | all A&Bs; all 2s; some 1&3s | some Bs; all 3s |

**Decision types**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type** | **Characteristics** | **Risk** | **Occurrence** | **Pace** |
| Class A | irreversible (rocket launch) | high | rare | slow |
| Class B | reversible (business strategy) | moderate | annually/quarterly | moderate |
| Level 1 | org-wide | high to moderate | annually/quarterly | moderate |
| Level 2 | unit-level | moderate | monthly | fast |
| Level 3 | front-line or role-based | moderate to low | weekly/daily | fast |

**NONPROFIT BOARD GOVERNANCE BEST PRACTICES[[1]](#footnote-1)**

The basic duties of directors of not-for-profit and for-profit organizations are virtually the same, even though the organizations are typically governed by different laws and have different constituent relationships. Directors of not-for-profit organizations are required to discharge their duties in accordance with the following basic fiduciary duties:

* Duty of care: Act with the care an ordinarily prudent person in a like position would exercise under similar circumstances;
* Duty of loyalty: Act in good faith in a manner the director reasonably believes to be in the best interests of the organization; and
* Duty of obedience: Act within the organization’s purposes and ensure that the mission is pursued.

Breaches of fiduciary duty in the not-for-profit context may be enforced by applicable law. Enforcement actions can result in significant personal liability for directors, which can be minimized through indemnification and/or directors’ and officers’ insurance.

**BASIC FUNCTIONS OF A NOT-FOR-PROFIT BOARD**

The board of a not-for-profit organization is responsible for directing the affairs of the organization in accordance with its mission. In practice, the board delegates responsibility for managing the day-to-day activities of the organization to managers or staff; however, fiduciary duties cannot be delegated and, therefore, the board retains oversight responsibility for matters that have been delegated. Board service should not be viewed as just an honor – the oversight responsibilities of directors are real, and failure to discharge these legal duties can have unwelcome consequences for the organization and its board members.

The primary functions of the not-for-profit board typically include the following:

1. Selecting, monitoring, evaluating, compensating and – if necessary – replacing the Executive Director/Chief Executive Officer (the “CEO”), and developing and approving succession plans with respect to senior executives of the organization;
2. Defining and reevaluating from time-to-time the long-term strategy by which the organization fulfills its mission and monitoring the performance of the organization in implementing the strategy;
3. Reviewing and approving material capital allocations and expenditures and major transactions;
4. Approving budgets, financial plans and financial statements; monitoring and ensuring the integrity of the organization’s financial reporting processes, internal control systems and audit; hiring the independent auditor (if any) and assuring itself of the auditor’s independence;
5. Balancing constituency interests in a manner that is consistent with the mission;
6. Understanding the organization’s risk profile and reviewing and overseeing the organization’s management of risks;
7. Ensuring compliance with all applicable laws, regulations, policies and ethical standards of the organization (including laws and regulations enforced by the IRS, as well as the organization’s conflict of interest/related party transaction and other policies);
8. Assisting in obtaining resources through making personally meaningful financial contributions, fundraising and/or grant-writing; comply with prudent management of funds rules and donor-imposed restrictions; and
9. Establishing the composition of the board and its committees and determining governance practices.

The demands of not-for-profit board service can be heavy – board responsibilities are wide-ranging and board service is part-time (and usually voluntary). The board of a not-for-profit organization should consider implementing board processes and structures that can assist directors to more efficiently and effectively fulfill these responsibilities; however, in doing so, the board should bear in mind that board practices should address the unique needs and circumstances of the particular not-for-profit organization – one size does not fit all.

In addition to implementing any governance mechanisms that may be mandated by law, the board should look for governance “best practices” that embody pragmatic solutions that will work given the particular needs and circumstances of the organization, including organizational structure, size, activities, life-cycle stage and funding mechanisms. The goal of “best practice” is to promote active oversight and objective and informed judgment by the board. An effective board provides oversight over the activities of the managers and staff to whom the board has delegated authority. This is necessary to promote the accountable functioning of the organization, including the responsible use of assets that have been entrusted to the organization by others. Board effectiveness can be enhanced by considering the following guiding principles that are common to effective not-for-profit boards.

**COMMON GUIDING PRINCIPLES FOR EFFECTIVE BOARDS**

Mission

Board accountability begins with the charitable, educational or social mission of the not-for-profit organization. The mission is the reason why the organization exists and has been granted legal status as a not-for-profit by the state and/or relevant regulatory agency. The mission should be the not-for-profit organization’s compass needle in that it provides a measure of success and guides the organization’s conduct. (This can be compared to the for-profit world compass needle of maximizing shareholder value through the efficient production of goods and services.)

The board is charged with ensuring that managers further the mission, without wasting assets or engaging in self- dealing. Therefore, as a starting point, the board needs to:

1. Understand the entity’s mission, as stated in its governing documents and tax-exemption application;
2. Develop, with management, a strategy for carrying out that mission; and
3. Monitor and assess management’s efforts to carry out that strategy in line with the mission.

Clear Delineation of Responsibility and Authority

All directors need to understand the role of the board as an entity, as well as their individual duties as fiduciaries and the distinct role of management. The role of the board is one of oversight – directors “direct” – while the role of management is to carry out the day-to-day activities of the organization – managers “manage.” Often members of a not-for-profit board cross the line between oversight and management by becoming overly engaged in the operating activities of the entity, such as the day-to-day work required to fulfill programmatic goals. Board involvement in operating activities can lead to tensions between the board and management/staff.

Boards should consider the extent to which their involvement in operating – as opposed to strategic – activities benefits or hinders the ability of management and the organization to perform. The board may wish to consider defining the respective roles of the board and management with respect to strategic and operational activities in a formal “delegation of authority” that addresses the specific matters reserved to the CEO and those reserved to the board. For example, the board typically delegates the execution of certain policies and strategic objectives to management. Creating a formal delegation of authority can also help the board identify and communicate expectations about what issues are worthy of board consideration and in what time frame decisions are expected to be made.

Monitoring and Measuring Performance

Active board oversight requires that management performance be evaluated against the specific operational goals that the board has determined will further the agreed strategy in line with the organization’s mission. The board should then define with management the specific benchmarks (both long-term and short-term) that would indicate successful performance and monitor results achieved by management against those benchmarks. If performance goals are not being met, the board should consider where adjustment may be necessary. For example, improving performance may call for adjusting the strategy and replacing management where necessary. Management changes are inevitable, and the board should ensure that a succession plan for key executives is in place.

The board should utilize its evaluation of management performance in designing and implementing an executive compensation scheme that will compensate executives fairly and includes appropriate incentives for performance. Although not typical, in some cases it may be appropriate to compensate directors for their service on the board of the not-for-profit organization (rather than merely reimbursing their reasonable expenses). Not-for-profit organizations that are required to file Forms 990 with the IRS are required to make various disclosures with respect to the process for determining, and the amount of, compensation of executive officers, key employees, directors and trustees.

Follow the Money

Overseeing the finances of the not-for-profit organization is a critical part of the board’s role. Fulfilling this oversight responsibility begins with ensuring that the organization has an effective Chief Financial Officer (“CFO”) or equivalent (such as a bookkeeper or outside accounting firm). Recruiting such a person can be challenging, and, as elsewhere when selecting executives, *the organization must provide salaries that can compete with the private sector for top talent*. The board should establish open lines of communication with the CFO to facilitate the exchange of information. The board should work with the CFO in developing and approving budgets and financial plans, and should test management assumptions that may be embedded within budgetary analysis. The board is also responsible for monitoring and ensuring the integrity of the organization’s financial reporting processes (including recordkeeping), internal control systems and audit, and should hire an independent auditor if required by law or as appropriate.

Determining Board Focus and Information Needs

The board’s ability to govern effectively depends on how it focuses its time and attention and the information it has available to it. The board should take charge of its own agenda by identifying, articulating, prioritizing and scheduling the issues that the board will address. Usually, board attention – and therefore the board’s agenda – is best focused on “following the money,” setting strategic direction and long-term goals, monitoring management’s progress and results to achieve those goals, and ensuring satisfactory compliance with ethical standards, organizational policies and the law.

Board meetings should be structured to make the best use of board time. Meetings should be scheduled well in advance – for example, via an annualized schedule to address foreseeable issues – with additional meetings called when board review with respect to other issues is required. Board meetings should balance management presentations with discussion among directors (including in executive session) and with management.

Appropriate reports and analyses furnished in advance facilitate robust discussion at the meeting. An effective board requires accurate, relevant and timely information relating to the organization and the context in which it operates. The board should identify what information it needs and work with management and advisors to ensure that it obtains such information. Information should be distributed in advance of meetings to enable directors to review the material and reflect on it.

In addition, the board of a not-for-profit organization might find it helpful to adopt governance guidelines it applies in fulfilling its responsibilities, including board functions and processes, as well as the organization’s expectations of directors. Such guidelines should be specific and tailored to the needs and circumstances of the particular not-for-profit organization. Various factors unique to each not-for-profit organization, including, without limitation, organizational structure, activities, life-cycle stage, funding mechanisms and applicable legal requirements, may affect the provisions that should be addressed.

The board sets the tone by adopting a governing style that emphasizes: adherence to codes and principles of conduct and ethics; strategic leadership rather than a focus on administrative detail; prospective focus on achieving mission based on current and anticipated facts; anticipation and preparedness rather than reactivity; collegiality, with respect for diverse viewpoints, and not divisiveness; and consensus building, as opposed to “majority rule.”

Board Size and Composition

Size and composition influence the ability of a board to be effective. Most decision-making groups function best with between seven and ten members. Not-for-profit boards are often much larger, due to their fundraising nature. If downsizing is not practical, a very large board (e.g., of 20 or more members) may wish to consider whether there are ways to facilitate efficient decision-making through the use of committees; for example by creating an executive committee or advisory board that has authority to make decisions on behalf of the board where appropriate.

Board candidates should be selected with a set of criteria in mind that are specific to the needs of the particular not-for-profit organization. The board (through a nominating committee, if there is one) should periodically engage in a review of the composition of the board as a whole, including the balance of independence, business specialization, technical skills, diversity, fundraising ability and/or willingness to make personally meaningful gifts, geographic representation and other desired qualities that directors bring to the board (such as integrity and sound judgment) – bearing in mind that a board is more than the sum of its parts and that the right mix of competencies will change as the organization evolves and its circumstances change – and refresh the board where necessary.

Board member disengagement harms the organization in a number of ways, and that selection and identification of potential board members should involve a process of looking past a short-term ability to secure funds and should look to the long-term positive or negative impact on the organization that the particular candidate will have. The board should be comprised of directors who are committed to the organization’s mission. Directors should ensure that they are interested in and understand the activities of the organization, the environment in which it exists and the challenges and risks it faces. They should learn about the structure of the organization by reviewing its governing documents, policies and minutes of board and committee meetings from the past year, as well as any literature produced as part of the organization’s programs. Directors should seek out information from management where required to gain this understanding.

Board Independence

The board should be comprised and organized in a manner that encourages directors to be engaged and to form and express objective judgments about certain issues, such as:

1. Evaluation of management performance, compensation and succession planning;
2. Approving the organization’s financial objectives and major plans, strategies and actions;
3. Oversight of audit, accounting, financial reporting and risk management;
4. Review and approval of conflicts of interest and related party transactions; and
5. Determination of board composition and governance processes.

The board should include a number of persons who lack material business relationships to the entity and also lack material business and family relationships to senior management and key constituents (including to other directors). A board member may be considered “independent” if the following conditions exist (in all instances, defer to local laws and regulations):

1. The director was not an employee or a “key person” of the organization or a related organization or affiliate during the past three years;
2. The director does not have a relative who is, or has been within the last three years, a “key person” of the organization or an affiliate of the organization;
3. The director did not receive and does not have a relative who received total direct compensation exceeding an amount equivalent to 1 month median annual wages in the relevant location in any of the past three years from the organization or related organizations or affiliates for services provided in the director's capacity as an advisor, consultant or independent contractor other than any reasonable compensation for service as a director;
4. The director is not a current employee of and does not have a substantial financial interest in, and does not have a relative who is an officer of or has a substantial financial interest in, any entity that has made payments to, or received payments (not including charitable contributions) from, the corporation or an affiliate thereof for property or services in an amount that, in any of the last three fiscal years, has exceeded an amount equivalent to 1 month median annual wages in the relevant location
5. The director is not, and does not have a relative who is, a current owner, director, officer or employee of the organization’s outside auditor, or has worked on the organization’s audit at any time during the last three years; and
6. Neither the director, nor any relative of the director, was involved in a loan, grant, excess benefit transaction, or a business transaction involving an interested person with the organization (whether directly or indirectly through affiliation with another organization) during the most recent fiscal year.

Board Leadership

An effective board leader is one who is capable of developing a strong but independent working relationship with management, and guiding the board to consensus after free and open discussion of viewpoints. An effective board leader is especially important for:

1. Organizing the board agenda with input from management and helping to identify the board’s information needs;
2. Leading board discussions of management performance and compensation in sessions at which management is not present (“executive sessions”); and
3. Encouraging frank but collegial discussions both at the board level and as between the board and management.

Policies and Guidelines

The board plays a key role in setting the tone of the organization by establishing policies and guidelines that set forth expectations for behavior within the organization and by assessing whether senior management is promoting an appropriate ethical culture within the organization. These policies should include the following:

1. Board Guidelines: Board guidelines set forth expectations of directors, which may include board leadership, structures, composition, functions and processes, as well as requirements to make personally meaningful gifts or contribute to fundraising efforts.
2. Conflict of Interest and Related Party Transaction Policy: The conflict of interest policy assists directors, officers and others in the organization in identifying, evaluating and resolving conflicts of interest. A conflict of interest arises where a director, officer or other decision-maker has an outside interest or relationship that conflicts or may conflict with his or her ability to act strictly in the best interests of the organization. For example, a board member is said to be conflicted where the not-for-profit organization is considering a commercial transaction with another company in which the board member has a financial interest. The policy should define conflicts of interest and should require that the organization’s officers, directors, trustees, and key employees disclose or annually update their interests that could give rise to conflicts of interest, usually by completing a questionnaire. The conflict of interest policy should also include practices for monitoring proposed or ongoing transactions and dealing with potential or actual conflicts, whether discovered before or after the transaction has occurred. The conflict of interest policy should specify the committee or other body that determines whether a conflict exists and the body that reviews actual conflicts (typically the audit committee or the full board). Persons with a conflict should be prohibited from participating in the deliberations and other decisions regarding the conflict.
3. Code of Business Conduct and Ethics: This code applies to the board, management and employees and requires fulfillment of responsibilities in a manner that furthers the mission of the organization and complies with law, regulations, ethical standards and policies adopted by the organization.
4. Whistleblower Policy: The whistleblower policy should contain procedures to receive, investigate and take appropriate action regarding fraud or non-compliance with law or organizational policy, and to protect whistleblowers against retaliation. The policy should encourage directors, employees and volunteers to come forward with credible information regarding illegal practices or violations of organizational policies, law, regulations and/or ethical standards, and specify that the organization will protect the individual from retaliation, and identify those staff, board members or outside parties to whom such information can be reported.
5. Document Retention and Destruction Policy: The document retention and destruction policy ensures that documents are retained pursuant to applicable laws and that documents that may be relevant to legal proceedings or governmental investigations are not destroyed. Such procedures are encouraged to be implemented by not-for-profit organizations so as to reduce the risk that documents will be inappropriately destroyed and to ensure compliance with applicable laws.
6. Investment Policy: The investment policy assists the board in protecting the not-for-profit organization’s assets and ensuring any investment of its funds is prudent and in the best interest of the organization.

1. Adapted from *Guide to Nonprofit Governance*: Weil, Gotshal & Manges LLP Pro Bono Committee and Not-For-Profit Practice Group (2019) [↑](#footnote-ref-1)