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# Duties and Responsibilities of a Board of Directors

Presented by Susan Weinrich  
Senior Vice President, NYCON  
[sweinrich@nycon.org](mailto:sweinrich@nycon.org)



# Today's Agenda

- Legal and Fiduciary Roles and Responsibilities
- Important Components of the Nonprofit Revitalization Act
- 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
  8. Facilities and Collections Oversight

# Why Are Board Members Leaders?

The position commits board members to a charitable mission with both obligations and opportunities to exercise significant influence regarding the nonprofit.



# Nonprofit Leadership is a Process...

- Defined by the mission, culture & services of the nonprofit you are serving
- Influenced by position, personality, style, knowledge, & skills
- A team experience where power & roles are distributed

# The Mission

- The tax-exempt purposes for which resources are to be devoted
- Exempt activities flow from mission
- One-third “public support” test
- Define scope of activities & who you serve
- Unrelated Business Income Tax (*UBIT* )
- Official statement is in your Certificate of Incorporation (*filed with Dept. of State*) and/or Charter (*registered with Dept. of Education*)
- Chartered organizations required to review every 5 years
- Check IRS application & IRS Form 990

# 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”
  - *Legal requirement for conflict of interest policy and disclosure (annual and situational)*

# Duty of Obedience

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

## *Requirements*

- ✓ Abide by Federal, State & Local Laws
- ✓ Comply with Certificate of Incorporation/Charter & any Amendments
- ✓ Follow your Bylaws
- ✓ Meet Contractual Obligations
- ✓ Uphold 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:

- Error or Neglect under NYS Immunity Laws
  - **Gross** error or neglect of fiduciary, legal & financial responsibilities (if a volunteer)
  - Neglect of fiduciary, legal & financial responsibilities (if paid)
- Violations of law, including employment related claims
- 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
- ✓ Good Risk Management: Includes regular review of bylaws and personnel policies, engaged participation, respecting chain of command, etc.
- ✓ Appropriate Insurance Coverage: *Directors and Officers Liability Insurance* provides coverage in case of lawsuits

# Key NPRA Reforms

## Most became effective July 1, 2014

- Some electronic age updates for Board, Committee & Membership Meetings and for Filings with AG's Office
- REQUIRED Conflict of Interest Policy – New Definitions & Significantly Stronger Requirements
- Higher Audit Thresholds & Increase Audit Oversight
- Required Whistleblower Policies (20 or more employees and \$1M)
- Improved processes for Certificate Amendments, Mergers, Dissolutions & Consolidations, Real Estate Sales or Transfers
- Greater Authority for the AG
- Redesigned Committee Structures
- Definitions for “Entire Board”
- Staff can only serve as chairperson if approved by 2/3 board (not recommended)



# Conflict of Interest

## *New State Law*

- Must have policy & procedures for disclosure
- Must consider alternatives & show that transaction is fair, reasonable & in best interest of the organization
- Person with conflict:
  - Cannot be present/participate in deliberations or vote
  - Cannot make any attempt to improperly influence
- Must document disclosure, deliberations, reasons & resolution to approve in minutes
- Must have signed annual disclosures (from Secretary to board chair or audit committee chair)



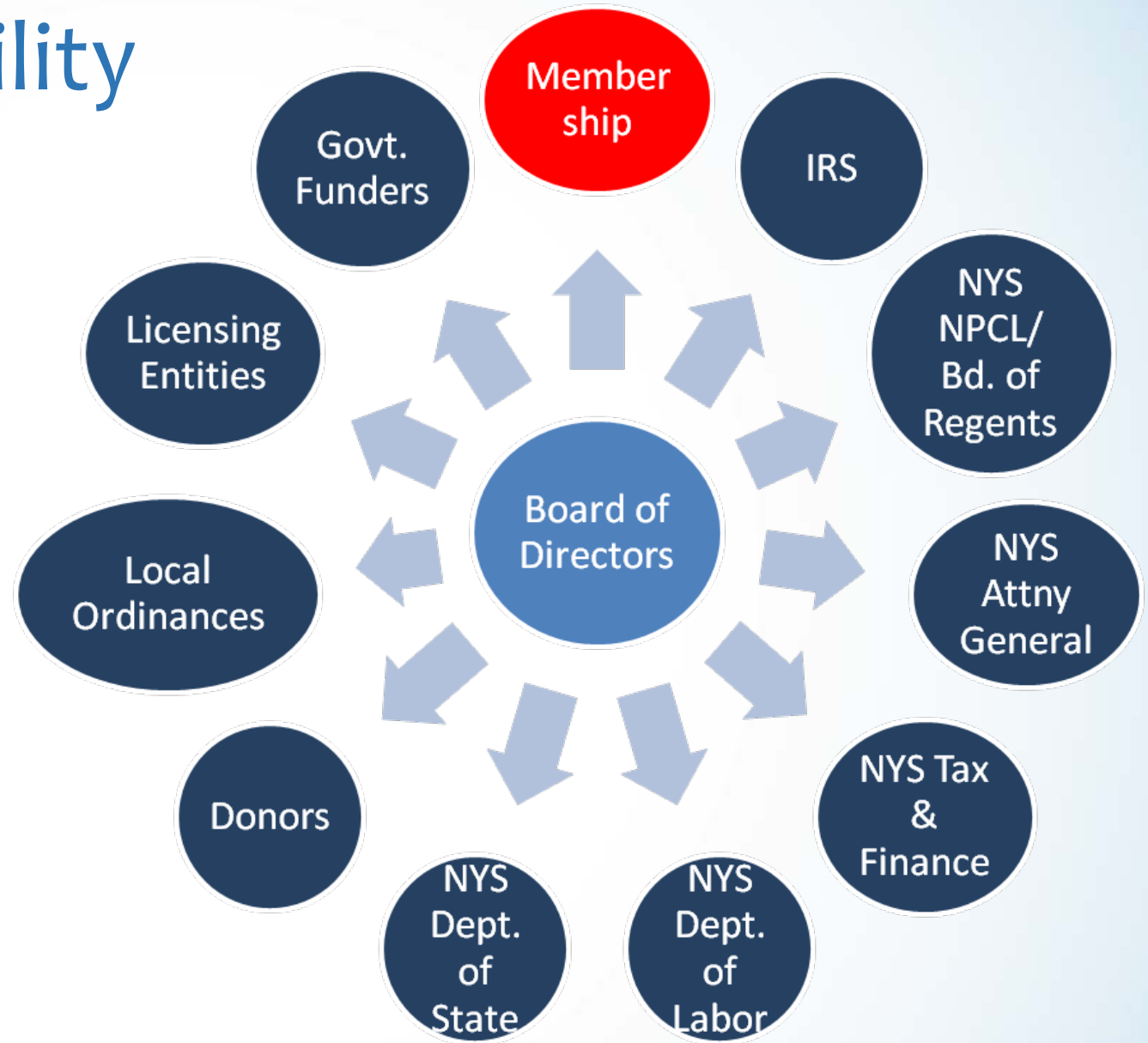
# New Rules on Committees

Committees of the Board	Committees of the Corporation
<ul style="list-style-type: none"><li>✓ Can “bind” the Board</li><li>✓ Comprised only Board members (at least 3)</li><li>✓ May include non-Board members in advisory capacity</li><li>✓ Appointed by majority of Board</li></ul> <p>Committees Cannot:</p> <ul style="list-style-type: none"><li>≠ Fill vacancies</li><li>≠ Fix compensation of board or committee member</li><li>≠ Adopt or amend bylaws or corporate docs</li><li>≠ Amend or appeal board resolution</li></ul>	<ul style="list-style-type: none"><li>✓ Cannot bind the board</li><li>✓ Must have 3 members but may include non-board members</li><li>✓ Are to be appointed or elected the same as officers as stated in the bylaws</li><li>✓ Can be accountable to the Board, Membership, or the Executive Director/staff</li></ul>

# 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, including potential board members.

# Board Accountability Landscape



# 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

# The Bylaws-Policy-Procedure Flow

## Bylaws

- **“Sustainable” Legal Obligations Established by Board (and/or Membership)**
- Flows from Certificate of Incorporation or Charter
- Change usually requires advance written notification

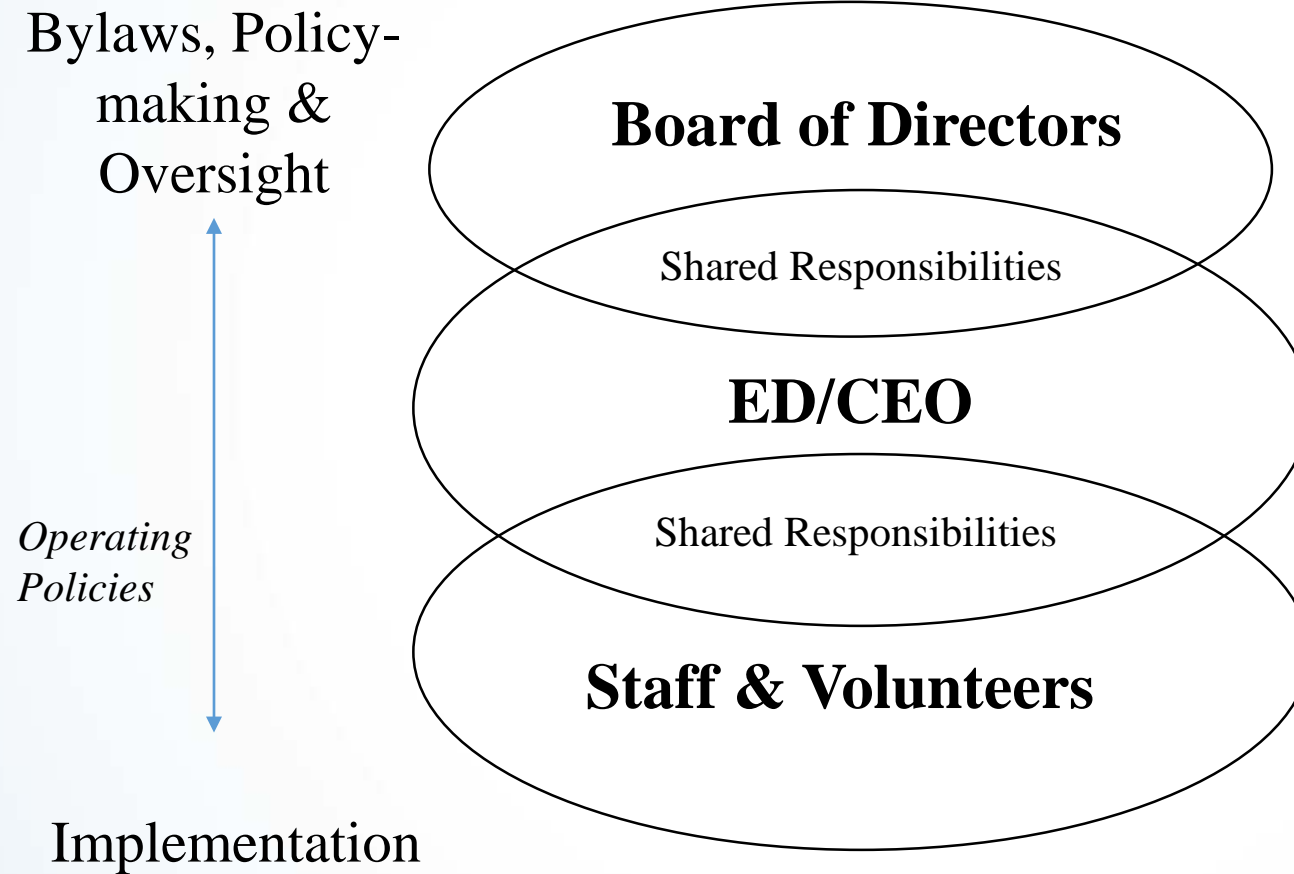
## Policies

- **Parameters Established by the Board**
- Subject to change without advanced notice (board or executive committee)
- Budgets & Financial, Personnel, Grant Making, Risk Management, ED Job Description, etc.

## Procedures

- **Established By ED to Implement the Policies**

# Achieving Governance-Management Balance





# Achieving Governance & Management with All Volunteer Boards: Some Options...

- Establish an operations committee focused on programs and a governance committee focused on governance.
- Appoint someone in charge of day to day operations separate from the President or Board chair.
- Divide your board agendas clearly to distinguish between governance and operations.
- Alternate board meetings between governance (policy, budget, etc.) and working or operational meetings (programs, events, etc.).
- Clearly identify expectations for governance and board services separately from volunteer expectations.
- Other? Add to chat bar...



# 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. Facilities and Collections Oversight

# Board Development

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



# The Board's Role

## Audit, Finance & Fixed Assets

- Must have the full board OR a designated audit committee comprised solely of “independent directors” oversee the accounting, financial reporting processes, conflict of interest, whistleblower policy, and audit (*New State Law*)
- Review & approve budget, reviews financial statements and year end projections, and oversees cash flow
- Adopt financial policies & internal controls
- Ensure investments and fixed assets are managed prudently
- Ensure adequate liability insurance coverage

# The Board's Role

## Personnel Oversight

- *Remember* - The Board, as a collective body, is the “employer”
- Ensure compliance with all pertinent laws, regulations & obligations
- Establish & ensure consistent application of personnel policies, including compensation practices
- Establish authority for hire, supervise, evaluate & sets compensation for ED/CEO
  - Must ensure compensation is “reasonable”
  - Comply with Governor’s Executive Order (*if applicable*)
- Follow lines of authority on personnel matters

# *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 with NYS Charities Bureau and IRS regulations, notifications, and filings

# What is a Development Plan?

**A detailed plan of how needed resources will be obtained including:**

- The case for support
- Environmental analysis and capacity assessment
- Goals
- Strategies
- Budget and human resource needs
- Timelines
- Accountability (board and staff)
- Evaluation

# The Board's Role

## Stakeholder & Community Relations

- Serves as “Ambassador” & representative of organization to the community, constituents & other stakeholders
- Brings issues, community needs, opportunities, etc. to the board & ED/CEO
- Works to enhance the organization’s public image
- *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, sustainability & growth
- Develop a plan for strategies & accountabilities for achievement
- Generate enthusiasm for organizing & putting action into the 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
- Approve program policies
- Oversee & ensure consumer protection, contractual & regulatory compliance
- Monitor & ensure that services produce demonstrable mission-based outcomes
  - Review programs at least annually

# *The Board's Role*

## Facilities and Collections

- Developing and implementing policies and procedures to protect their long-term integrity
  - Security
  - Storage
  - Climate
  - Display
- Foster the preservation, accessibility and utility of the collections and related data

# Discussion and Questions





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