

# LAYING THE FOUNDATION



*Building*


**High Performing Boards**


Because Strong Nonprofits Help Build Strong Communities





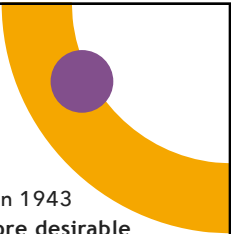
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Founded by Madison Cooper in 1943  
 “to make Waco a better or more desirable place to live.”

- Grants
- Capacity Building for Nonprofits  
 ~ Board Governance ~ Nonprofit Network ~ Candid Community ~
- Waco Leadership Forum
- Cooper House





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### **WHY THIS MATTERS**

- Many board members and chief executives don't fully understand the role of the board.
  - This increases risk and makes the board an underutilized asset.

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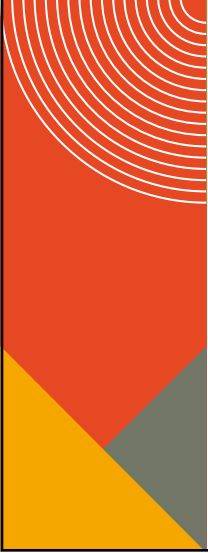
### **Why this matters**

**NONPROFITS  
EXIST TO  
IMPROVE  
THE WORLD.**



So... people will suffer if I don't do my job as a board member well!

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## Why this matters

- Board members and officers have a **legal duty** to the organization.
- Ineffective governance may signal other problems
  - More donors looking at recipients' governance practices
  - Renewed focus on governance by the IRS in recent years
    - Annual IRS Form 990
    - Focus on conflicts of interest


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**DISCLAIMERS**

**Leading Practices**

**Not cookie cutter.**

**Do what makes sense.**

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**agenda**

**Legal Duties & the Role of the Board**

**Building a Great Board**

**Leading Practices in Board Structure**

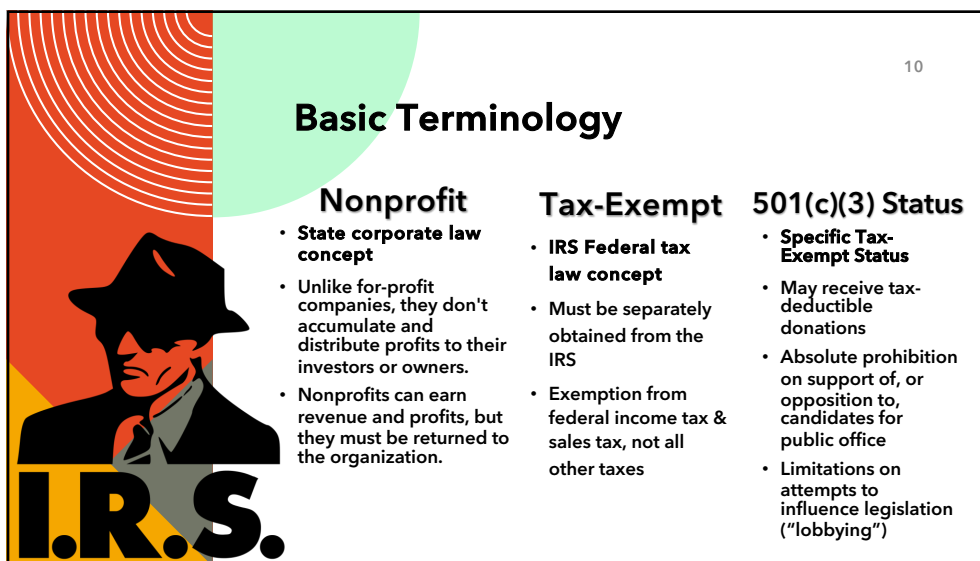
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agenda

- Legal Duties & the Role of the Board
- Building a Great Board
- Leading Practices in Board Structure

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## Basic Terminology

Nonprofit	Tax-Exempt	501(c)(3) Status
<ul style="list-style-type: none"> <li>• <b>State corporate law concept</b></li> <li>• Unlike for-profit companies, they don't accumulate and distribute profits to their investors or owners.</li> <li>• Nonprofits can earn revenue and profits, but they must be returned to the organization.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>IRS Federal tax law concept</b></li> <li>• Must be separately obtained from the IRS</li> <li>• Exemption from federal income tax &amp; sales tax, not all other taxes</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Specific Tax-Exempt Status</b></li> <li>• May receive tax-deductible donations</li> <li>• Absolute prohibition on support of, or opposition to, candidates for public office</li> <li>• Limitations on attempts to influence legislation ("lobbying")</li> </ul>

**I.R.S.**

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## Nonprofits are weird animals



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- **Must have a board of directors, which has authority over the organization**
  - **BUT** - the leadership is shared between the board of directors and the chief executive (aka Executive Director, CEO, Chief Executive, etc)
  - 3-25+ volunteer board members supervise one person
- Constraints on Board Authority
  - Texas Business Organizations Code, Title 2, Chapter 22, and IRS Code
  - Charitable Purposes (Section 501(c)(3) generally)
  - Specific purposes in Certificate of Formation
- Other Provisions of the Certificate of Formation
- Governed by Bylaws
- Must adhere to Gift Restrictions by Donors

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## Legal Duties of Boards according to US Nonprofit Corporation Law


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Duty of Care

Duty of Loyalty

Duty of Obedience

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**Duty of CARE:**


Each board member has a legal responsibility to **participate actively** in making decisions on behalf of the organization and to exercise their best judgment while doing so.

~ SHOWING UP ~

~ READING THE BOARD PACKET ~

~ ASKING QUESTIONS ~

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**Duty of LOYALTY:**


Each board member must put the interests of the organization before their personal and professional interests when acting on behalf of the organization in a decision-making capacity. **The organization's needs come first.**

~ AVOID CONFLICTS ~

Fiduciary - where multiple fiduciary duties come into conflict  
 Financial - where directors' personal financial interests are involved  
 Personal - where directors' personal or familial interests are involved

~FAILURE TO DO SO PUTS THE ORGANIZATION AT RISK AND CAN CREATE DISTRUST OF BOARD, LEADERSHIP, STAFF, DONORS & THE PUBLIC ~

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**Duty of OBEDIENCE:**

Board members bear the legal responsibility of ensuring that the organization **complies with all the applicable federal, state, and local laws and adheres to its mission.**

- ~ UNDERSTAND THE APPLICABLE LAWS ~
- ~ ENSURE THAT DECISIONS & STRATEGIES REINFORCE THE PURPOSE OF THE ORGANIZATION~

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**YOU NEED THESE:**

**DUTY OF COMMON SENSE**



**DUTY OF CURIOSITY**

Can you help me understand...?



**TO DO THESE WELL...**

- Duty of Care
- Duty of Loyalty
- Duty of Obedience





## The Role of the Board

### Set Strategic Direction

### Ensure Adequate Resources

### Provide Fiduciary Oversight

BoardSource

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## The Role of the Board





### Mission & Vision

### Set Strategic Direction

Organization as part of Ecosystem



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HOW WILL OUR DECISIONS & STRATEGIES IMPACT **ALL OF THE PLAYERS IN OUR ECOSYSTEM**? WILL IT HELP US – AS AN ECOSYSTEM – DO THE MOST GOOD?

(NOT JUST ASKING HOW DECISIONS IMPACT OUR ORGANIZATION)

Set  
Strategic  
Direction

## Purpose-driven boards

[https://ssir.org/articles/entry/the\\_four\\_principles\\_of\\_purpose\\_driven\\_board\\_leadership](https://ssir.org/articles/entry/the_four_principles_of_purpose_driven_board_leadership)

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HOW WILL OUR DECISIONS OR STRATEGIES **CREATE MORE EQUITABLE OUTCOMES**? HOW MIGHT OUR DECISIONS REINFORCE SYSTEMIC INEQUITIES?

(NOT JUST ASKING HOW DECISIONS ADVANCE OUR MISSION)

Set  
Strategic  
Direction

## Purpose-driven boards

[https://ssir.org/articles/entry/the\\_four\\_principles\\_of\\_purpose\\_driven\\_board\\_leadership](https://ssir.org/articles/entry/the_four_principles_of_purpose_driven_board_leadership)

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## The Role of the Board

Set Strategic Direction

Ensure Adequate Resources

Provide Fiduciary Oversight

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## The Role of the Board

Ensure Adequate Resources

TRUST INTEGRITY HONOR

REPUTATION

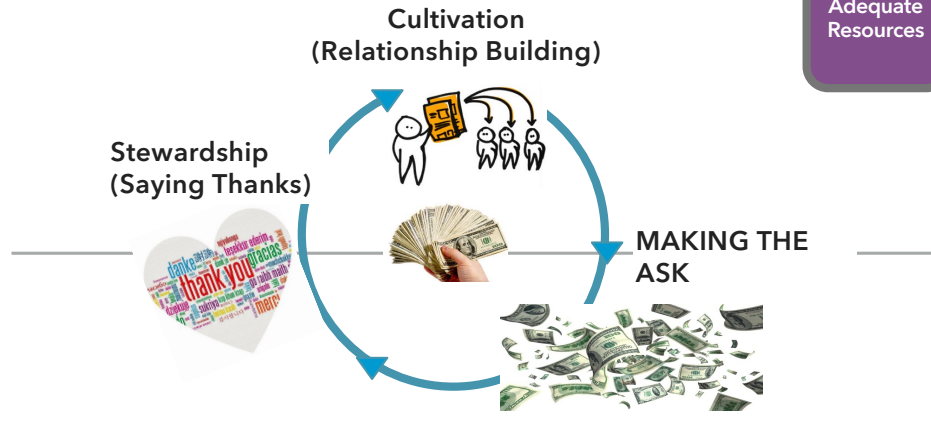
HONESTY STATURE

speak up!

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## Everyone can be a fundraiser!

Ensure Adequate Resources



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## Fundraising Committee!

With non-board members on the committee!

Ensure Adequate Resources



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## Support the Chief Executive



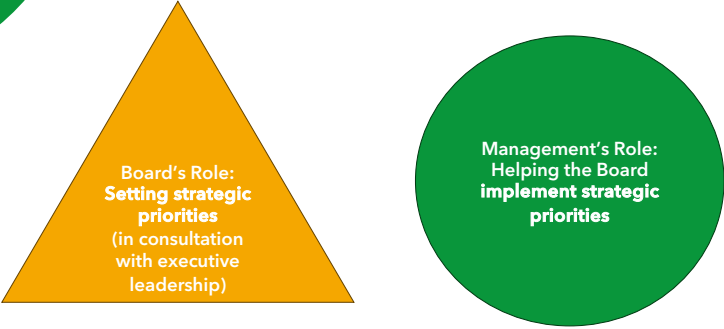
A healthy board-CEO relationship is based on:

- a shared understanding of mission and vision
- reciprocal communication; and
- mutual respect, trust, and support for each other and the partnership.

Ensure Adequate Resources

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## Board vs. Management Roles



**Board's Role:**  
Setting strategic priorities  
(in consultation with executive leadership)

**Management's Role:**  
Helping the Board implement strategic priorities

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## Board vs. Management Roles

- The Chief Executive typically oversees the operations of a nonprofit by:
  - Working with the Board to implement Board policies and meet goals
  - Taking responsibility for nonprofit's daily operations
  - Making operational and programmatic decisions of the nonprofit
  - Having authority over staff hiring, evaluation, and dismissal
  - Keeping the Board educated and informed on these matters
    - Bringing well-documented recommendations and information to the Board
  - Taking responsibility with the CFO (if applicable) and the Board Treasurer for developing and monitoring the nonprofit's financial resources

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## Support the Chief Executive



Ensure  
Adequate  
Resources

## Hold the CEO accountable:

- Annual Evaluation with clear, measurable goals
  - Service and impact
  - Staff satisfaction/turnover
  - What else?
- Communication throughout the year

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### The Role of the Board

- Set Strategic Direction
- Ensure Adequate Resources
- Provide Fiduciary Oversight

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Provide Fiduciary Oversight

*“What we didn’t have but obviously needed was an alarmist.”*

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## The Role of the Board

Provide Fiduciary Oversight

- Approve annual budget
- **Monthly** review of financial statements
- Annual review of the 990
- Internal controls
- Annual audit
- Directors & Officers Insurance

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## The Role of the Board

Provide Fiduciary Oversight

### INTERNAL CONTROLS

- Separation of duties
- **Unscheduled** reviews of staff expense reports
- Bank statements (all!) sent to board treasurer
- Culture of Questions / Encourage whistleblowers

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## The Role of the Board

Provide Fiduciary Oversight

- Nonprofit - 501(c)(3) - is a TAX STATUS, not a business model
- Nonprofits should have 3-6 months cash on hand
- Ideally, nonprofits would also have different types of reserved for a variety of purposes:
  - Capital needs
  - Transitions/Direction Changes
  - Operating Needs
- Overhead is important and has its place.
  - People should have the equipment they need to do their jobs well!

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## Noses In, Fingers Out

through understanding of the organization's operations

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### MANAGE OPERATIONS



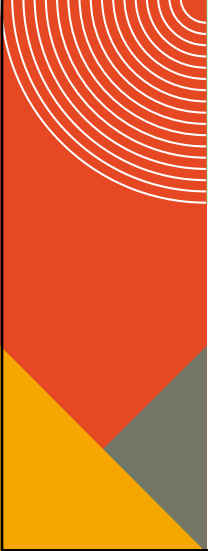
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## Board Action Must Be Collective 35

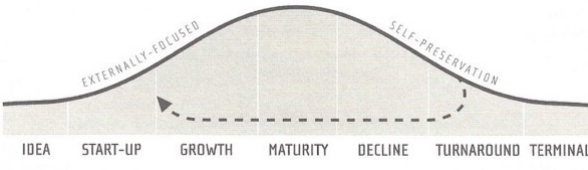
- Directors only have formal authority through the whole board.
- Individual board members have no authority.

- **Best Practices for Communication:**
  - When is it conversation and when is it instruction?
  - When is it oversight and when is it micromanagement?
  - Don't circumvent management by giving conflicting directions to staff.
  - Communicate through the Chair or officers rather than directly giving directions to staff.




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## Lifecycle of a Nonprofit 36



IDEA    START-UP    GROWTH    MATURITY    DECLINE    TURNAROUND    TERMINAL



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### The Role of the Board

**GROUP THINK**

**ASK HARD QUESTIONS**

**Set Strategic Direction**

**Ensure Adequate Resources**

**Provide Fiduciary Oversight**

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## agenda

- Legal Duties & the Role of the Board
- Building a Great Board**
- Leading Practices in Board Structure



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## Who Builds the Board?



**YOU!**  
(the board!)

**&**

**Governance Committee**  
(formerly/AKA: Nominating Committee)



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## When do we work on building the board?



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## • Step #1: WHAT DO WE NEED RIGHT NOW and in the near future?

- What are the three most important things for our board to accomplish this year?
- Do we have the right people on the board to make that happen?

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Is our Board populated in a way that ensures that our power is **authorized by and inclusive of the community impacted by the work we do?**

Are we doing all we can to listen to what our programmatic stakeholders **tell us is important?** (INSTEAD OF ASKING, "WHAT DO \*WE\* THINK IS BEST?" without intentional reflection on how who "we" are informs our perspective)



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inter-faith commitment dialogues  
multi-generational community  
access share veterans  
gender identity compassion leadership growth race inclusion representation  
opportunity equity  
diversity  
disability sexual orientation pride  
perspective advocacy empowerment

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## Changing the makeup of your board IS NOT EASY

Boards must be willing to **make changes to the way that their board operates** to become more diverse and inclusive of new voices.

- Participate in trainings
- Become more intentional in recruiting for board diversity
- Welcome differing points of view into boardroom deliberations; find new ways to engage
- Think about when and how you meet

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COLLEAGUES  
 BOARD MEMBERS OF OTHER NONPROFITS  
 NEWS MEDIA  
 SOCIAL MEDIA  
 CURRENT VOLUNTEERS & BOARD MEMBERS  
 DONORS  
 COMMUNITY LEADERS  
 SMALL BUSINESS OWNERS  
 PROFESSIONALS RELATED TO MISSION  
 LOCAL LEADERSHIP PROGRAMS

## BUILDING A GREAT BOARD: HOW & WHERE?

Page 11 of the workbook

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## DIVERSIFYING YOUR BOARD: how do I do that?!

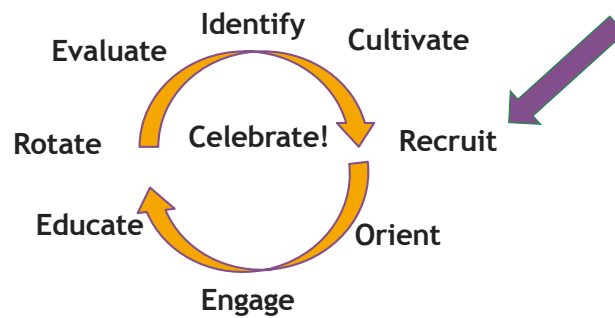
### GO BEYOND YOUR NETWORKS!

- Other community organizations
- Leaders in your current or past client community
- Post board positions publicly (website, social media)
- Strategic board recruitment isn't about speed and ease – it's about taking the time to get it right.

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## THE BOARD BUILDING CYCLE



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## THE BOARD BUILDING CYCLE

# RECRUIT!

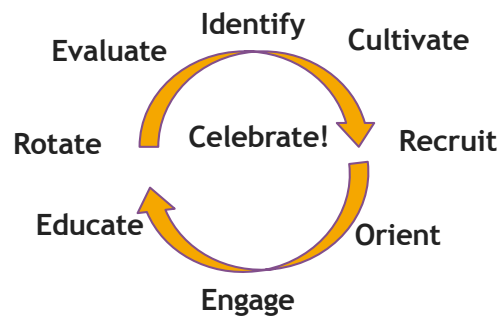
### ASK POTENTIAL BOARD MEMBERS:

- In reading through our nonprofit's strategic plan (or whatever background documents we gave you ahead of time), **what things excite you?**
- **What specific skills, experience or networks do you think you could bring to the table** in order to help us move forward on our goals?
- **Ensure the potential board member understands the responsibilities of serving** (e.g. time & financial commitment, committee service, length of term)

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## THE BOARD BUILDING CYCLE



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## EVERYONE IS IMPORTANT!

### Are they willing to do what it takes?

Ways to help public charities:

- Become a member of a board (GOVERN)
- Be a volunteer (HELP)
- Be a staff person
- Be a donor

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# agenda

- Legal Duties & the Role of the Board
- Building a Great Board
- Leading Practices in Board Structure

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## ROLE OF THE BOARD CHAIR

LEAD THE BOARD BY ENGAGING INDIVIDUAL BOARD MEMBERS TO WORK AS A UNIT

- Plan for and facilitate engaging board meetings (create a purposeful agenda & follow it)
- Serves as point of contact for all board members
- Set goals and objectives for the board
- Support, consult with, and supervise the chief executive

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## MECHANICS OF BOARD ACTION

- The Board **acts collectively**, by:
  - Vote
  - Written consent
- Voting must be at a meeting:
  - Where a quorum of directors is present
  - That takes place in person or by phone/videoconference
- Action without a meeting must be **unanimous** and **written**
  - No "email meetings" (unless emails show unanimous approval of action)
  - No proxies at meetings unless authorized by governing documents
  - No majority votes without a meeting unless explicitly permitted in the governing documents

## DOCUMENTATION OF BOARD ACTION

- "If it's not in writing, it didn't happen."
- Every meeting should be documented in minutes that reflect:
  - All Board actions or resolutions on which a vote was taken
  - Topics of discussion
  - Action items for directors, officers, or committees
- Any action taken without a meeting must be recorded in writing that shows **unanimous, written** consent (or majority consent if permitted by governing documents)

## GETTING THE WORK DONE

### COMMITTEES

- Standing Committees
  - Executive\*\*
  - Finance & Audit
  - Governance
- Fundraising
- Ad Hoc Committees

### TASK FORCES

- Bylaws review
- Capital Campaign
- Employment Policy Review
- Events
- Executive Search
- Public Policy
- Strategic Planning

## COMMITTEE STRUCTURE

- **Formal committee charters** which include responsibilities and expectations, reporting structure, and says what the committee can and cannot do.
- Committee members **open to all board members**
- **Committee Minutes** ☒ **Committee Reports**
  - Committee MINUTES provide a comprehensive record of what happened, including official motions, deliberations, and follow-up action items; these go out within a few days to committee members (check accuracy and inform those unable to attend)
  - Committee REPORTS shared with the full board

## GOVERNANCE COMMITTEE

### TAKES THE LEAD AND RESPONSIBILITY FOR:

- Nominating & Recruitment
- Ongoing Board Development
- Leadership Development
- Board and Member Assessment & Board Education
- Ensuring that the Board is equipped with proper guidelines and structure to do its work most effectively:
  - Bylaws review
  - Policies review
  - Written governance procedures

## The EXECUTIVE COMMITTEE: Friend or Foe?

- Are committee members essentially attending two board meetings?
- Is the executive committee actually making all of the decisions?
- Is there information the executive committee has that the rest of the board is not privy to but should know about? (All board members have equal fiduciary responsibility!)
- Is the executive committee doing other committees' work? (e.g. finance, governance/nominating)



**The EXECUTIVE COMMITTEE:  
Friend or Foe?**

**IF YOU HAVE ONE:**

- Limited Role
- Two purposes: 1. Review the CEO  
2. Handle emergencies
- Meet only if needed
- Limited decision-making, outlined in bylaws
- Accountable to full board
- Ensure prompt reporting back
- Bylaws should determine who is on the committee  
(not the committee's whim)

**DON'T HAVE ONE!!!  
UNLESS YOUR BOARD:  
Meets ≤ quarterly AND has  
>15 members**

 BoardSource

**TRANSPARENCY IS KEY**



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**LEADING PRACTICES**

**BOARD TERMS**

- Two 3-year terms (members)
- 2-year terms for Board Chair
  - Next Best: a Strong Vice Chair who serves the year preceding their Chair year

**NON-BOARD MEMBERS ON COMMITTEES**

- New expertise & diversity
- Expands the number involved while avoiding an unwieldy board
- Testing ground for potential board members
- More people learn about the organization
- Involves people unable to commit to board service

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## A More Strategic Agenda

<i>pre-meeting</i>	<b>MISSION MOMENT</b> ( <i>perhaps a video that's playing as people walk in or sent ahead of time</i> )	
12:00 - 12:03	Welcome & Quick Check-Ins	
12:03 - 12:05	CONSENT AGENDA e.g. Board Minutes, CEO Report, Committee Reports, non-controversial committee motions	
12:05 - 12:20	FINANCIALS What are the key takeaways?	
12:20 - 12:45	QUESTIONS TO CONSIDER Might include: <ul style="list-style-type: none"> <li>• Committee Recommendations that need discussion</li> <li>• What do the committees need from the board? (not committee reports!)</li> <li>• What does the board need to be thinking about?</li> </ul>	<b>STRATEGIC WORK</b>
12:45 - 12:58	EXECUTIVE SESSION Part 1: with CEO Part 2: without CEO	
12:58 - 1:00	REVIEW ACTION ITEMS, Board Meeting Evaluation, ADJOURN	

Items can be removed from a Consent Agenda by request of any board member if discussion is needed.

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## LEADING PRACTICES: EXECUTIVE SESSION

### WHAT IS THE EXECUTIVE SESSION?

- Closed or special meeting-within-a-meeting where no minutes are taken, except to record official actions.

### WHY WOULD WE DO THAT?

- to handle sensitive and confidential issues
- foster robust discourse
- strengthen trust and communication between board members
- Address board relationship challenges
- Discuss CEO performance
- Allows for deeper conversations

## WHY USE ROBERT'S RULES

- Helps to shorten meetings
- Protects the voice of the minority (if used with that intention)
- Helps you avoid getting sued
- Sets the tone and formality needed for an official meeting



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## Principles of Good Practice

1. Authority is vested in the board as a whole; a director must refrain from responding to a situation individually.
2. An individual director does not become involved in specific management or personnel issues (unless necessary under a conflicts or whistleblower policy).
3. A director accepts and supports board decisions.
4. A director keeps all board deliberations confidential.
5. A director separates the interests of the organization from self-interest and/or interests of a particular constituency.
6. A director supports the organization and its leadership and demonstrates that support in the community.

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## Controlling CEO/Weak Board



- Restricted Information Flow
- Limited Oversight
- Limited Strategic Input
- Conflicts of Interest
- Filled with Figureheads & Fundraisers with no time
- Filled with handpicked friends of the CEO who serve as a favor
- Skeleton board or consistent/widespread absences

## REMEDIES

- Who recruits the board?
- Reconsider size of board/executive committee
- Board self-assessments
- Strong Board Chair
- Succession planning
- Job descriptions/ Expectations Statement
- Open culture for asking questions
- Executive Session

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**QUESTIONS?**

- Legal Duties & the Role of the Board
- Building a Great Board
- Leading Practices in Board Structure

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**LAYING THE FOUNDATION**

**Please fill out an evaluation!**

*Building*  
**High Performing Boards**  
Because Strong Nonprofits Help Build Strong Communities

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FOUNDATION  
WACO, TEXAS • SINCE 1943

## **Thank you!**

**Felicia Goodman**

**Executive Director**

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