

**The HEALTHY NONPROFIT BOARD: Selection, Care and Feeding for
Spectacular Results**

A Workshop

by

Bitsy Bidwell

Community Arts Development Manager

(360) 586-2421 or

(360) 753-3860 extension 20

Email: bitsyb@arts.wa.gov

Washington State Arts Commission

PO Box 42675

Olympia WA 98504-2675

(360) 753-3860

(360) 753-5351 FAX

Website: www.arts.wa.gov

Becoming An Effective Board Member

**Being a Board member is not always comfortable nor easy.
Not everything that counts can be measured and not everything that counts counts.
People must know their work makes a difference.
We need role models.
Everything is a choice.
It is not how good you are, but how good you can be.**

PLEASE NOTE: The information contained in this workbook is only for training and information purposes. You should always consult a lawyer, an accountant, or other licensed professional for the most accurate information on a specific subject. The Washington State Arts Commission attempts to make this information as accurate as possible, but carries no responsibility for the content.

WHY DO WE HAVE NONPROFIT CORPORATIONS?

Historically, nonprofits were created because there were certain things that our founding fathers thought should be done to benefit the public citizenry, but which they did not feel should be done by the government. Although each state has different laws, these corporations serve “eleemosynary” purposes, or those that are charitable.

WHY A BOARD OF TRUSTEES?

The board acts on behalf of the “owners” of the nonprofit.....the public. Shareholders “own” a for-profit corporation. Nonprofit corporations owe their loyalty to the public, which they are established to benefit. The board represents the public viewpoint and protects the public’s interest in the eleemosynary purposes of the agency. Technically, the nonprofit agency has no owners, but is rather a corporate entity held in trust for the public by the board.

A nonprofit has a board to satisfy the laws that govern tax-exempt 501(c)(3) status. Without such status, an institution cannot provide the private sector donor (individual, foundation, corporation) with a receipt valid for tax deduction purposes. Nor is it eligible to receive grant support from most private foundations or from federal, state or local public sector sources.

If the organization has members, these members have no significant ownership rights in the corporation. That is, if the agency dissolves, the assets cannot go to members (or for that matter, to any individual). The assets of a dissolved nonprofit tax exempt must go to a similar nonprofit tax-exempt organization, or be destroyed.

WHAT IS NONPROFIT?

A nonprofit corporation is formed at the state level. In Washington State you incorporate with the Secretary of State's Corporate Division, by filing Articles of Nonprofit Incorporation, having three incorporators sign the forms, and paying the filing fee. Nonprofit has nothing to do with whether or not you earn a profit. However, it does have to do with who has the benefit of the profits made by the corporation. Profits made by a nonprofit corporation must be used to further the corporation. Profits of a nonprofit corporation cannot benefit individuals/stockholders.

Nonprofits:

- are organized and operated under state corporate law and federal and state tax statutes
- can profit from their activities
- must meet special requirements:
 - cannot be set up to benefit a particular person
 - if dissolved, remaining assets must be distributed to a similar tax-exempt nonprofit

Being a nonprofit corporation exempts you from some state taxes (which vary from state to state), such as B&O tax for arts organizations in Washington.

WHAT IS TAX EXEMPT?

Nonprofit corporations that want to be exempt from taxes must seek their tax-exempt status from the federal Internal Revenue Service. The laws that regulate tax exemption are listed under section 501(c) of the Internal Revenue Code. There are many types of tax exemption. You will want to seek your tax-exempt status under section 501(c)(3). The exempt purposes set forth in IRC Section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

A 501(c)(3) organization is not only exempt from income taxes, but donors to it are allowed to deduct contributions to it as a charitable contribution on their income taxes.

Other types of tax-exempt organizations include labor unions, fraternal organizations, lobbying organizations and other organizations that funnel their proceeds back into the organization. Each category of 501(c) organization earns exemption from different taxes.

Characteristics of 501(c)(3) organizations:

- are organized for scientific, literary, educational, or charitable purposes
- exempt from federal income taxes
- none of the profits may go to members/stockholders
- when corporation dissolves assets go to similar nonprofit
- self-dealing rules are more stringent
- can be taken to court by the Attorney General to make sure it complies with law
- majority of board cannot be paid, or related to persons who are paid by the agency

NOTE: Nonprofit status and tax-exempt status are two different things. Nonprofit status establishes a legal corporate entity and is accomplished through the state. Once a nonprofit is established it can request tax-exempt status from the federal government. Failure to comply with state rules and regulations regarding nonprofits can result in the official dissolution of the corporation, even though the federal government continues to recognize the tax-exempt status. A dissolved corporation does not exist. It is not a legal entity. It cannot receive monies. It cannot conduct activities. It does not exist. Non-legal entities which continue to operate as corporations can be subject to fines, lawsuits, and other legal actions.

LEGAL RESPONSIBILITIES OF BOARDS

The basic legal wording of board members' responsibilities is called 'fiduciary responsibility.' This concept is not just about fiscal responsibility. It is about the total stewardship of the organization, including seeing that the reason for being - the mission - of the organization is continued. A fiduciary is an individual having a duty to act for another's benefit in a specified area of responsibility...in this case on behalf of the public as it is concerned with the organization. Fiduciary duties entail proper utilization, management, or investment of property and other assets placed in the fiduciary's trust.

Different states use different words in their legal codes regarding the legal responsibilities of board members. Generally, the idea is known as the prudent man concept of the law. This means that board members should conduct themselves in the manner that any prudent person would. Washington State laws says: "A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which directors may serve, in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances."

[Chapter RCW 24.03.127]

Washington law allows all corporations to indemnify their board members, by adding such a provision to their articles of incorporation. The law says: "The articles of incorporation may contain provisions not inconsistent with law that eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, for conduct violating RCW 23B.08.310, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective." [Chapter RCW 23B.08.030]

The Principle of Good Faith, Due Care (Diligence), Full Disclosure

- Board members are legally responsible for the management and control of the organization
- Board members are liable for the consequences of negligence on the part of the organization
- Director/board member is protected from liability as long as her or she acts responsibly and in good faith

There are **three kinds of violations of fiduciary responsibility:**

Mismanagement

- Failure to ensure that planning occurs
- Failure to set up adequate controls with reasonable reporting
- Failure to review reports or problems
- Drawing improper conclusions from available information

Non-management

- Failure to use good management
- Failure to consider data when making decisions
- Failure to use available control systems
- Failure to attend board and committee meetings

Self-dealing (the most serious charge)

- Board members voting on decisions on which they face possible gain
- Failure to have a conflict of interest policy

What this means is that board members who act prudently within the law **can** be indemnified from personal financial liability. Board members who do not act prudently are **not** indemnified. Board members who make “errors and omissions” are **not** indemnified.

Some quick definitions:

Reasonable (or prudent) person - refers to hypothetical reasonable person used to objectively evaluate conduct, i.e., how would a reasonable person act?

Good faith: compliance with standards of decency and honesty: *bargained in good faith*

Prudence: careful management, economy. “refer(s) to the exercise of good judgment and common sense, especially in conduct of practical matters. Prudence, the most comprehensive, implies not only caution but also the capacity for judging in advance the probably results of one’s actions.”

BOARD ROLES AND FUNCTIONS

The following roles and responsibilities are adapted from materials by Florence Green, an independent consultant from California, who was one of the founding trainers of the Grantsmanship Center.

1. GOVERNANCE

- Establish corporate identify
- Provide continuity
- Determine and approve policies
- Accountable for programs and practice
- Make sure proper management occurs
- Fulfill mission of agency

2. ACT AS FIDUCIARIES ON BEHALF OF THE OWNERS OF THE CORPORATION (the Big Picture level)

- Responsible for financial well-being
- Regularly review financial statements, insurance coverage, asset management
- Provide for a regular financial audit
- Make sure monies are handled properly and requirements for funders are met
- Help the Executive Director/staff develop and implement strategies for creating a reserve account

3. DEVELOP POLICIES TO GUIDE THE EXECUTIVE DIRECTOR/STAFF AND THE BOARD

- Financial guidance
- Scope of operations
- What agency can or cannot do
- Salary scale
- Programs and services

4. PLANNING AND SETTING BOUNDARIES AND SCOPE OF ACTIVITIES AND PROGRAMMING (along with others.)

- Create a vision for the future
- Set goals and objectives that will fulfill the mission
- Make sure there is an effective work plan in place
- Monitor fulfillment of the plan
- Complete own obligations

5. LIAISON WITH THE COMMUNITY

- Educate the community about the agency and its purpose
- With the Executive Director/staff, identify the image you want the agency to have
- Use appropriate marketing strategies to help the agency reach community

- Represent and advocate for agency view
6. WORK CLOSELY WITH EXECUTIVE DIRECTOR/STAFF
- Identify outcomes ED/staff is to achieve
 - Hire and fire Executive Director only
 - Set performance standards
 - Provide policy direction and specify desired outcomes
 - Evaluate performance of Executive Director
7. PARTICIPATE IN FUNDRAISING
- Everyone does something
 - Ask for money
 - Meet with funders
 - Connect agency to resources
 - Plan and evaluate fundraising efforts
8. ACTIVELY PROVIDE FOR CONTINUITY ON THE BOARD
- Work to find appropriate replacement for retiring board members
 - Look beyond just ‘cloning’ yourself
 - Provide mentors to new board members
 - Provide new board members with orientation
 - Evaluate board performance (individual and as a group)
9. SET STANDARD FOR BOARD MEMBER PERFORMANCE AND REGULARLY MEASURE
- Participate on board and committees
 - Fundraising support
 - Attendance
 - Sharing skills and connections
10. EXPECTATIONS
- Share expertise and leadership skill
 - Know history, purpose, policies, practices
 - Provide direction and guidelines to staff
 - Be available for consultation
 - Interpret work of agency to community
 - Insure financial support for agency
 - Make final decisions
 - Support work of staff

11. REQUIREMENTS

- Arrange for appropriate record keeping
- Can delegate work – but cannot delegate responsibility
- Take role in the organization seriously and fulfill that role in a responsible manner at all times
- Evaluate own performance
- Manage meetings effectively

A CHECKLIST OF THE NINE EXPECTATIONS FOR BOARD MEMBERS

Every board member is expected to:

- _____1. Be an active advocate of the organization
- _____2. Attend the programming and be a subscriber (if there is a subscription)
- _____3. Attend board meetings and be prepared for the board meeting
- _____4. Serve actively on at least one board committee*
- _____5. Bring some kind of in-kind contribution to the agency
- _____6. Make personal cash contribution to each annual operating budget
- _____7. Assist making a financial plan and in raising the contributed income necessary to implementing the approved budget
- _____8. Exercise discretion in conversations with others and honor confidentiality
- _____9. Exercise fiduciary responsibility

*According to Washington State Law any official Board Committee must have two or more Board members. Committees are created by the Board and follow the By-Laws. Committees have no independent authority.

WHAT YOU CAN DO ABOUT BOARD MEMBERS' LIABILITY WORRIES

Many folks worry about their personal liability as board members. In the State of Washington laws limit the liability of individual nonprofit board members. In general, individuals should act prudently and be oriented to their legal responsibilities.

Agencies should protect their board members by making sure that their Articles of Incorporation include the necessary legal language about board indemnification. [NOTE: You may have to revise your Articles of Incorporation with the Secretary of State's office in order to indemnify your board members.] It is also a good idea to include a section in your by-laws that states that no board member is personally liable for the debts of the agency. Agencies should review all of their insurance coverage and determine if purchasing insurance for their boards that provides coverage for "directors and officers" and "errors and omissions" is appropriate.

The Insurance Commissioners Office fact sheet for nonprofit organizations states:

"D&O policies are purchased in order to protect both the organization and its directors and officers. Many of these policies offer only limited protection for the organization. But if they are selected carefully, they can supplement the indemnification protection appearing in the nonprofit's articles of incorporation."

ONE EXCEPTION TO THE ABOVE

There is one exception to the limitations of liability. Every board member of record and/or authorized to sign checks is held personally responsible for money due to the federal government for withheld taxes and social security contributions. If there is a "cash flow" problem and these taxes are not paid in a timely manner, the Internal Revenue Service is allowed, by federal law, to look for the funds in the so-called "deepest pocket", i.e. the board members' bank accounts and personal property. Notice is always sent to the agency, but this does not necessarily mean that the affected board members are notified. **Take CARE.** Part of the fiduciary responsibility of the board member is to know what is happening throughout the agency. If management is not sending monies to the federal government, the board should know about it, and behave in a prudent way.

NOTE: Insurance of all kinds can be an issue for nonprofits. There are a variety of types of insurance to meet your needs- from Directors and Officers to Employee Dishonesty to Student/volunteer/Participant insurance and everything in between. The Alliance of Nonprofits for Insurance Risk Retention Group www.ani-rrg.org is a good source of information about types of coverage.

CORPORATE COMPLIANCE

- Practice standards similar to Sarbanes-Oxley/COSA
- Establish an audit committee to review all 990s and audits
- Create a compliance plan, policy, compliance officer, and training for Board and staff
- Develop a Code of Conduct that includes Conflict of Interest and disclosure

BOARD DEVELOPMENT

In today's world the board members have limited time and energy for your organization. We can no longer think of board members of volunteers, but as unpaid staff who assist with vital organizational functions. As we've seen in the previous material, the major job of the board is to solve problems and to be:

- policy-makers
- evaluators
- advocates
- resource gatherers

It is a good idea to regularly assess the efficiency and effectiveness of the board as a whole and of individual board members. Then, you have a basis for "filling in the holes" in your group with your recruitment process.

Most by-laws have an orderly progression of board membership built into the organization's structure: term lengths are identified, the nominating committee is organized, and voting procedures are listed. Many even have wise delineations of term limits so that new viewpoints are continually integrated into a consistent board.

SCOUTING AND RECRUITMENT

What many organizations do not have is a clear method for scouting and recruitment. Often nominating committees are appointed at the last minute, there is no process for informing or interviewing prospective board members, and the end result is non-committed, confused new board members.

Getting Ready

1. As mentioned before, internal assessment of your organization is the first step. Identify what your organization needs.
2. Now you can begin to assess what organizational needs might be met through board membership. Using a recruitment grid can help guide your thinking.

Scouting

1. Make a list of potential sources for good board members: publications, businesses, professional organizations, service or civic clubs, college or university directories, etc.
2. Make appointments to familiarize other groups with your organization – not just for recruiting purposes but also for general awareness purposes. Add your interest in finding board members as one of the elements of your presentation.
3. Collect names from your current board members, but encourage them to not only think about “cloning” themselves but also about building the capacity of the organization. Keep an up-to-date list of potential board members and their particular skills.
4. Create a Board Application Form for prospective new members. The form should ask about their biographical information, why they are interested in joining the board, what they think they can bring to the board, and what they hope to get from being on the board, as well as any questions. It can also ask the prospect about prior experience on nonprofit boards, skills in specific needed areas, how much time/energy/commitment they might have available, whether they have previously raised funds, etc.

Recruiting

1. Your next step is to invite a potential board member to get to know you – to visit a classroom, come to a performance, etc. A member(s) of your nominating committee who can get a feel for how the individual might enhance the organization should host this opportunity. The subject of possible board involvement can be brought up at this point.
2. If the prospect seems feasible, then it is time to arrange another, more focused meeting. The prospective board member should meet with the board chair and the chief executive, hear an overview of the organization and receive relevant organizational materials describing the organizations products and/or services, receive a board member job description, and a board member application form. At

- the same time you should share more in-depth information about the organization, its strengths and weaknesses, its strategic plan, etc.
3. Now the nominating committee has enough information to discuss all of the prospective board members and to identify those that would be most desirable. Only at this point should board membership be specifically considered. By this time both parties will have a good idea of whether there is a good match.
 4. Each prospect can now be invited to a board meeting where they are introduced, and get a chance to see the board in action. When the meeting is over, ask if they have any questions.
 5. Shortly after this board meeting, the prospective board member should be called and asked if they want to apply to be on the board. If so, solicit their completed board member application.
 6. The nominating committee collects all the applications and provides them to the board for their review. At this point, nominees for the board are considered by the board or the members, the election process described in the by-laws is followed and new members are brought onto the board.
 7. As soon as the final decision has been made the new members are contacted, invited to subsequent board meetings and informed of the orientation process.

This process looks a lot harder and a lot more time consuming than the usual “begging folks to be on the board at the last minute” and promising that “you really won’t have to do much.” Fortunately, the results of this more in-depth scouting and recruiting will also be a much stronger board that has continuity, that is flexible and that meets the ever-changing tasks that a board must accomplish.

NEW BOARD MEMBER ORIENTATION

When you join a Board you should be given or specifically ask for (the minimum):

- mission statement, goals, vision and objectives
- short history of the organization
- copy of the by-laws
- copy of the articles of incorporation
- copy of personnel policies (including evaluation procedures for executive)
- copy of board policies (including conflict of interest policies)
- copy of management policies
- copies of program descriptions, guidelines, program procedures
- copy of board committees and detailed charge of each committee
- list of board activities and member expectations
- copy of most recent annual report
- copy of most recent audit or financial review
- information on all insurances
- copy of minutes for previous meetings of the board (at least 3 months)
- copy of staff reports for previous meetings, if not part of minutes
- organizational chart
- contact list for all board and staff
- calendar of events and board meetings

also ask about: Non discrimination policies, Americans with Disabilities policies and implementation plan, Drug Free Workplace policies, AIDS/HIV policies, Affirmative Action policies

Most groups compile this information into a loose-leaf notebook for each member.

In addition to printed materials, it is a good idea to assign the new member a 'mentor' from among experienced board members. This relationship gives the new member someone to offer explanations, to provide feedback, and to check observations. It is also the friendly thing to welcome new members into the social structure of the group.

BOARD RETENTION AND TRAINING

Board members are most effective and stay in organizations where:

- they know what they are “getting into” before it happens
- their roles, overall and specifically for each project, are clear
- expectations and levels of performance are clearly stated
- they feel their contributions are valued
- their own personal reasons for joining the group are being met
- ‘perks’ related to the organization’s growth and development are regularly planned
- their contribution is time-limited and finite
- they have the opportunity to evaluate themselves as individual board members and as a total group
- they know they are doing a good job at important tasks

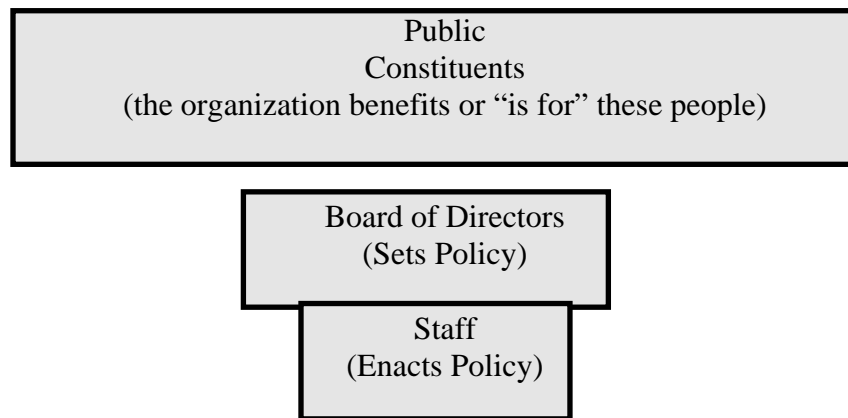
Again, this may sound a lot like employee retention and professional growth....and it really is!

Training is one aspect of board membership that is often ignored in nonprofits; we want our board members to already be perfect! By offering training, the organization shows its willingness to nurture board members, to keep them motivated, and to expand their skills. Through training you can also fill some of the gaps that may be evident in your board makeup. Training can be about either of the bottom lines of the organization: its mission, or its management. Ideally, training is also fun and interesting. ASK board members what they would like to know about: what trainings would benefit the organization? Or what opportunities would be enjoyable?

The most important part of retention is acknowledging the board’s contributions as a group and as individuals. This can be done in a variety of ways – from naming seats, or programs, or buildings after them to throwing a potluck thank you dinner. Try to identify what each board member is seeking and provide the opportunities. If someone is on your board to begin a political career, make the appropriate introductions. If someone really wants to spend time with famous artists, ask them to be the airport limousine service. Be creative and cultivate the board’s good will and most enthusiastic support. They, in turn, will provide you the necessary support for the work of the organization.

ORGANIZATIONAL CHART

Shows how the organization is structured; who reports to or is responsible to whom; shows the hierarchy.



TO CLARIFY:

- when you are setting policy, you function as a board member
- when you are carrying out policy, you function as a staff member

THUS:

- when you are a board member you supervise the chief executive officer
- when you are a staff member you are supervised BY the staff

One of the roles of the chief staff member is to define the responsibilities, limitations, and procedures, which govern staff, in conformance with the personnel policies, identified by the Board.

Unpaid staff members, usually called volunteers, are governed by the policies of the Board, which are carried out by the chief staff member. This person could be paid or unpaid, but is responsible for other staff - their recruitment, their training, their work, their evaluation, and their firing.

Generally, it is easiest if there is a direct linear line of responsibility between staff members; i.e. one with ultimate responsibility, some with intermediary responsibility, and some that help do the work. This can become confusing when there are two areas that are considered equal, such as artistic and managerial areas. These roles must be carefully negotiated, agreed upon, and written down for all to understand.

ROLES AND RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR

Once again, this is taken from materials developed by Florence Green.

1. Manages fulfillment of the mission through day to day operations
2. Enables board members and staff to fulfill their obligations and commitments
3. Implements the policies of the board
4. Coordinates all organizational activities and oversees all delegation of responsibilities
5. Hires, develops, evaluates, trains, coaches and fires staff. If these roles are delegated, maintains oversight to assure these activities are done in a professional, caring, and legal manner.
6. Prepares all board information and distributes it on a timely basis
7. Prepares the budget for approval
8. Determines how things are done. Open to board's ideas
9. Accountable for staying within the approved budget
10. Takes leadership in developing teams
11. Active fundraiser
12. Confronts problems in a caring and tactful way
13. Regularly takes time to acknowledge everyone for their efforts on behalf of the agency
14. Regularly evaluates his/her own skills and abilities and takes steps to keep those skills and abilities updated and relevant

Board Successes & Challenges

Produce results

Succeeds despite difficulties

Members feel responsible for team efforts

Members act to clear problems

Do short and long term planning

Have participation in board training

Use clear and effective communication

Collaborate with other organizations

Risk change

Understand the complementary but different roles of staff and board

Develop a cohesive, productive group

Develop participatory methods of work and decision-making

Appreciate & utilize difference and diversity

Give the agency the leadership and management it needs

Involves those who resist change

Board Mistakes & Inefficiencies

Poorly organized

Dominated by a few members

Avoidance of conflict

Allow staff to dominate

Waste time on trivia

Don't enforce performance

Evaluate staff in an arbitrary way

Members are factionalized; internal conflicts

No policies; no framework for evaluating issues

Don't believe in planning

Fail to develop and follow agendas

Meddle in day-to-day operation

Require performance without delegating adequate authority

Accept rather than question

Fail to develop competence

Lack of mutual relationships between board members & board and staff

Undermine the manager with the staff

Board timidity; failure to establish own authority

Financial Responsibilities and Asset Management

- Read and understand all financial reports presented
- Prepare guidelines for budget development
- Analyze budget recommendations critically
- Compare actual expenditures with budget allowances; adjust and revise to balance budget at end of year
- Comply with financial regulations and funding source requirements
- Arrange for annual, independent audit
- Determine adequacy of financial reporting system
- Establish guidelines for investments
- Know all sources of income
- Ensure that grant stipulations are met
- Ensure that all assets are insured
- Ensure that all assets are known and accounted for
- Maintain bank accounts in proper manner

Continuous Functions

- Communication
- Teamwork
- Problem-solving
- Decision-making
- Process Management
- Keeping Perspective

ABOUT POLICIES

Policies are rules for organizational behavior. They are means, values, or procedures, designed to direct, guide and limit how things will be done. The Board collectively makes policies for the agency.

Policies should be:

1. Developed by the board - not delegated.
2. Developed in concert with management.
3. Always in writing. Always clear.
4. Distributed to everyone.
5. Consistently enforced.
6. Periodically reviewed.
7. In conformance with by-laws, articles of incorporation, state codes, affiliate requirements, funding regulations, etc.
8. Focused on key decision, activity and result areas.
9. Used as guidelines for management.

Some critical policies to have in place include:

1. Personnel policies
2. Conflict-of-interest policies
3. Fiscal management policies

Some good policies to consider are:

1. Non discrimination policies
2. Americans with Disabilities policies and implementation plan
3. Drug Free Workplace policies
4. AIDS/HIV policies
5. Affirmative Action policies
6. Access to Native Americans/First Nations
7. Policies concerning political behavior/lobbying/support of candidates

Making Decisions

- Democracy is based on well thought out alternatives; it is not asking “What would you like to do?”
- It is the right of the majority to end the debate and move along to a vote.
- The minority have the right to make their views known.
- The way to settle differences is to vote, not to let the meeting drag on.
- A major decision made by a small majority is probably wrong and may split the group.
- It is often wise for the majority to say that unity is more important than winning.

- Gauging the temper of the group can be done through: thumbs up = “I’ve discussed enough and am ready to vote favorably”; thumbs down = “I’ve discussed enough and I am in disagreement.”; or, thumbs sideways = “I need more discussion before I can decide.”

Actions Which Help Build Group Cohesiveness

- * Harmonizing - try to reconcile disagreements and reduce tensions.
- * Gate keeping - encourage others to participate; help keep channels of communication open.
- * Encouraging - be warm, friendly, and responsive to other group members through verbal and non-verbal messages.
- * Compromising - admit own mistakes; be willing to change/modify your position in the interest of the group task.
- * Checking - to see if people are pleased with the way the group is working and the procedures that are used.
- * Sensing - be willing to share personal feelings with the group, encourage others to express their feelings.

Actions, Which Help the Group Work on the Task

- * Initiating - help the group get started; suggest tasks, goals, ideas, procedures.
- * Asking - request ideas, information, opinions about the task at hand.
- * Giving - share ideas, information, opinions about the task at hand.
- * Clarifying - clear up confusion by defining or explaining the terms, problems, ideas, suggestions; give examples, suggest alternative.
- * Summarizing - pull together related ideas, suggestions, information; suggest a decision or conclusion.
- * Testing - check to see if the group has come to consensus regarding a decision or conclusion.

(Based on work done by Benne and Sheats; enhanced by Florence Green.)

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

BoardSource and Independent Sector wish to thank Dan Moore, Vice President for Public Affairs, GuideStar; Tom Hyatt, Principal, Ober Kaler; and Paul Nelson, President, Evangelical Council for Financial Accountability, for sharing their professional insights and expertise on this document. Information and guidance in this document is provided with the understanding that BoardSource and Independent Sector are not engaged in rendering professional opinions. If such opinions are required, the services of a certified public accountant or an attorney should be sought. This paper was revised in January 2006 to reflect changes in laws relating to, and practices of, nonprofit organizations.

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations / ©2003 BoardSource and INDEPENDENT SECTOR

The Sarbanes-Oxley Act was signed into law on July 30, 2002. Passed in response to the corporate and accounting scandals of Enron, Tyco, and others of 2001 and 2002, the law's purpose is to rebuild public trust in America's corporate sector. The law requires that publicly traded companies adhere to significant new governance standards that broaden board members' roles in overseeing financial transactions and auditing procedures. While nearly all of the provisions of the Act apply only to publicly traded corporations, the passage of the bill served as a wake-up call to the entire nonprofit community. Indeed, several state legislatures have already passed or are considering legislation containing elements of the Sarbanes-Oxley Act to be applied to nonprofit organizations. In many instances, nonprofit organizations have adopted policies and altered governance practices in response to the Act. Nonprofit leaders should look carefully at the provisions of Sarbanes-Oxley, as well as their state laws, and determine whether their organizations ought to voluntarily adopt governance best practices, even if not mandated by law. This report will review those provisions and assess their relevance to nonprofit organizations. Finally, it is important to note that two provisions of Sarbanes-Oxley apply to all entities, including nonprofit organizations. This report will also review those features of the Act that require immediate nonprofit compliance.

MAIN PROVISIONS OF THE SARBANES-OXLEY ACT

With two notable exceptions, the Sarbanes-Oxley Act affects only American publicly traded companies and regulates what boards must do to ensure auditors' independence from their clients. The Act also creates and defines the role of the Public Company Accounting Oversight Board, an entity empowered to enforce standards for audits of public companies. The Act explains processes for electing competent audit committee members and for ensuring that adequate reporting procedures are in place. In addition, it calls for regulations, and closes most of the loopholes, for all enterprises — for-profit and nonprofit — relating to document destruction and whistle-blower protection. The following sections cover each of the major provisions of the law and discuss their relevance to nonprofit organizations. In addition, BoardSource and Independent Sector offer recommendations for how nonprofit leaders should implement various provisions of the law.

INDEPENDENT AND COMPETENT AUDIT COMMITTEE

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act requires that each member of a company's audit committee be a member of the board of directors and be independent. "Independence" in the Act is defined as not being part of the management team and not receiving any compensation (either directly or indirectly) from the company as a consultant for other professional services, though board service may be compensated.

In addition, a company must disclose whether it has at least one "financial expert" serving on its audit committee. If it does not have such an expert, it must disclose the rationale behind that decision. Who qualifies as a "financial expert" is still being debated. The Securities and Exchange Commission (SEC) proposes a definition that relies on an individual's education and experience as a public accountant, auditor, or principal accounting officer. At present, however, the company's board seems to retain the final right to establish specific qualifications for a financial expert. The audit committee is directly responsible for hiring, setting compensation, and overseeing the auditor's activities. It sets rules and processes for complaints concerning accounting and internal control practices.

RELEVANCE TO NONPROFIT BOARDS

While not all nonprofits conduct outside audits, most nonprofit boards have established one or more financial committees (e.g., finance, audit, and/or investment). In those organizations that undertake annual audits, particularly medium to large nonprofit organizations, the board is likely to have a separate audit committee or subcommittee. In California, the Nonprofit Integrity Act of 2004 requires that any charity registered with the attorney general and receiving annual gross revenues of \$2 million or more must form an audit committee. Several other states have adopted similar rules, albeit at varying gross revenue thresholds. It is good practice for nonprofit organizations to take steps to ensure the independence of the audit committee. While most nonprofit board members serve as volunteers without any compensation and staff members do not participate as voting members, all nonprofit organizations should review their practices to ensure the independence of the audit committee. Also, many states provide additional liability protection for volunteer directors that may be lost if the directors are compensated for their service.

Because of recruitment priorities to create a well-balanced and diverse board, finding people with financial savvy may be challenging for boards. Nonprofit organizations need to ensure that board members of the audit committee have the financial competency to understand financial statements, to evaluate accounting firm bids to undertake auditing, and to make sound financial decisions as part of their fiduciary responsibilities. A nonprofit that has a limited number of financial experts on its board may struggle with filling the treasurer's position, a finance committee, and an audit committee.

RECOMMENDATIONS

While it is too onerous to demand that all nonprofit organizations undertake a full audit, the board is responsible for assessing the potential benefits and costs of an independent audit. Nonprofits that expend more than \$500,000 of federal funds are required to conduct an annual audit. In addition, participating in the Combined Federal Campaign requires an audit at \$100,000. Any other charitable organization with \$1 million or more in total annual revenues (excluding houses of worship or other organizations that are exempt from filing Form 990) should have an audit conducted of their financial statements and consider attaching a copy to their Form 990 or 990-

PF. Smaller charities with revenues of at least \$250,000 should choose a review or at least have their financial statements compiled by a professional accountant. The boards of nonprofit organizations that forego an audit should evaluate that decision periodically.

All nonprofit organizations that conduct outside audits, particularly medium to large organizations, should consider forming an audit committee and should separate the audit committee from the finance committee. The audit committee should be composed of individuals who are not compensated for their service on this committee and do not have a financial interest in or any other conflict of interest with any entity doing business with the organization. Most nonprofit organizations have volunteer board members. Nonprofit organizations that do compensate board members should not compensate audit committee members for their additional service. In addition, all nonprofits should ensure that no members of staff, including the chief executive, serve on the audit committee, although it is reasonable to have the chief financial officer provide staff support to the audit committee. The chair of the audit committee should be a board member and it is reasonable to expect that the majority of the committee members are board members. The audit committee should ensure that the auditing firm has the requisite skills and experience to carry out the auditing function for the organization and that its performance is carefully reviewed.

The audit committee should meet with the auditor, review the annual audit, and recommend its approval or modification to the full board. The full board should review the annual audit and the audit committee's report and recommendations. Ideally the full board would also desire to meet with the auditor before formally accepting or rejecting the audit.

At least one member of the audit committee should meet the criteria of financial expert and have adequate financial savvy to understand, analyze, and reasonably assess the financial statements of the organization and the competency of the auditing firm. This may be a non-director advisory member where permitted by state law. Orientation of board members should include financial literacy training. To support the accounting field and help ensure that nonprofit boards have available financial expertise, professional accreditation and membership organizations of accountants should require CPAs to participate in a pro bono nonprofit board service program.

RESPONSIBILITIES OF AUDITORS

SUMMARY OF SARBANES-OXLEY PROVISIONS

The Sarbanes-Oxley Act requires that the lead and reviewing partner of the auditing firm rotate off of the audit every five years. This does not necessarily mean that the auditing firm must be changed, although that may be the most direct way to comply with this requirement. In addition, the Act prohibits the auditing firm from providing most non-audit services to the company concurrent with auditing services. This prohibition applies to bookkeeping, financial information systems, appraisal services, actuarial services, management or human resource services, investment advice, legal services, and other expert services unrelated to the audit. The board's audit committee may, however, pre-approve certain services (not included in the above categories), such as tax preparation, which can then be carried out by the auditing firm. In addition, the pre-approval requirement is waived for non-auditing services if the value of the nonauditing services is less than five percent of the total amount paid by the organization to the auditing firm for auditing services.

The Act also requires that the auditing firm report to the audit committee all "critical accounting policies and practices" that are used by the organization, discussed with management, and

represent the preferred way management wants these policies and practices treated. These critical accounting practices include methods, assumptions, and judgments underlying the preparation of financial statements according to generally accepted accounting principles (GAAP) and assurance that any results would be disclosed in case of changed assumptions.

RELEVANCE TO NONPROFIT BOARDS

Changing auditors (partner or firm) every five years should be considered on a regular basis. The rationale: Auditing firms may grow accustomed to the financial procedures within one organization after a certain number of years, and bringing in a new firm helps ensure that all practices are closely examined. Nonprofit organizations would be well served to adopt the Sarbanes-Oxley rule of preventing auditing firms from providing non-auditing services, as this provision precludes a conflict of interest between the auditing firm and the client. At a minimum, application of the rule should be considered in each case. At the same time, certain services can be pre-approved by the audit committee, and there is no reason why tax services and preparation of the Form 990 or 990-PF (for private foundations), for example, could not and should not be undertaken by a nonprofit's auditing firm. This can also ensure that certain economies are achieved for the client.

Finally, the provisions about disclosure to the audit committee of critical accounting policies and discussions with management also seem to follow good practice. Greater disclosure of these internal control practices and management's views on them will foster more informed judgments by the audit committee, enhanced oversight by the board, and greater transparency. The critical accounting practices would include processes for segregation of duties, policies to use restricted funds for intended purposes, processes to review off-balance sheet transactions, and procedures for monitoring inventory fluctuations. In addition, the audit committee may be an effective committee for overseeing implementation and enforcement of the governing body's conflict-of-interest policy.

RECOMMENDATIONS

Large nonprofits should consider rotating at least the lead and reviewing partners of the audit firm every five years. Nonprofit organizations should be cautious when using their auditing firms to provide non-auditing services except for tax preparation, which should be approved in advance, while the firm is contracted to provide auditing services. The audit committee should require each auditing firm to disclose to the committee all critical accounting policies and practices used within the organization as well as share with the committee any discussions with management about such policies and practices.

CERTIFIED FINANCIAL STATEMENTS

SUMMARY OF SARBANES-OXLEY PROVISIONS

The chief executive and the chief financial officers must certify the appropriateness of financial statements and that they fairly present the financial condition and operations of the company. There are criminal sanctions for false certification, but violations of this statute must be knowing and intentional to give rise to liability. In addition, to avoid conflicts of interest, the CEO, CFO, controller, and chief accounting officer cannot have worked for the auditing firm for one year preceding the audit.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Any CFO who is responsible for generating timely and accurate financial statements for the company or organization should feel comfortable about certifying document integrity. In a for-profit company, a positive bottom line is the CEO's responsibility. Business acumen, capacity to interpret financial statements in detail, and skillfulness in convincing the board and shareholders that the corporation is meeting all expectations are obvious characteristics in a manager. Likewise, a nonprofit chief executive may be handicapped without adequate financial skills. He or she may be hired, however, primarily for other qualities. Nonprofit CEOs may excel in fundraising, knowledge of the organization's field of interest, or a variety of other skills. Lack of superior financial prowess must be complemented by a skillful financial officer; without that person, the organization cannot convince donors and funders that their money is properly managed. Nevertheless, it is still the responsibility of the CEO to ensure good stewardship of the organization's resources.

Under Sarbanes-Oxley, CEO and CFO certification carries with it the weight of the law, but part of the underlying rationale is to ensure that both the CEO and CFO know and understand the financial statements. For a nonprofit organization, CEO and CFO sign-off on financial statements would not carry the weight of law (although some states are now considering adopting a similar requirement), but it would signal the importance that the CEO, in particular, attaches to understanding the nonprofit's financial condition.

For nonprofit organizations, a key financial document is the Form 990 or 990-PF. The form requires a signature from an officer of the organization. Research from a number of studies reveals that the accuracy of these forms leaves much to be desired. Many of the errors in the Form 990 and 990-PF relate to failures to complete all forms, including Schedule A. Other problems include presenting an inaccurate report on fundraising costs, thereby distorting the required financial picture of the organization's operations. Thus, it is critical that nonprofit organizations examine their financial systems, policies, and reporting to help improve the accuracy and completeness of these forms. There is, in all likelihood, considerably less staff movement in the nonprofit world between accounting firms and client organizations than there is in the for-profit world. Furthermore, because nonprofit executives do not receive lucrative stock options, the relevance of possible conflicts of interest from an auditor joining the executive staff of a nonprofit client is correspondingly less.

RECOMMENDATIONS

CEOs or CFOs, while they need not certify the financial statements of the organization, do need to fully understand such reports and make sure they are accurate and complete. Signing off provides formal assurance that both the CEO and the CFO have reviewed them carefully and stand by them. The CEO and CFO should review the Form 990 or 990-PF before it is submitted to ensure that it is accurate, complete, and filed on time.

Regardless of whether the CEO and CFO certify the financial report, the board has the ultimate fiduciary responsibility for approving financial reports. Just as the financial and audit reports are reviewed and approved by the audit committee and the board, the Form 990 or 990-PF should also be reviewed and approved. At a time when the Form 990 and 990-PF are published on the Internet by third parties, it is more important than ever that directors be familiar with the contents of the organization's 990 each year.

INSIDER TRANSACTIONS AND CONFLICTS OF INTEREST

SUMMARY OF SARBANES-OXLEY PROVISION

The Act generally prohibits loans to any directors or executives of the company.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Nonprofits are currently highly regulated with respect to financial transactions that take place within the organization. Private inurement, excessive personal benefit, and selfdealing all cause serious penalties for any nonprofit that steps out of line. “Intermediate sanctions” laws specifically address compensation and excess benefit transactions with “disqualified” individuals, generally board members and executive staff. Providing private loans to insiders — the specific item included in the Sarbanes- Oxley Act - is not a common practice in the nonprofit sector. However, when it has occurred, it has caused problems either from the perception of a conflict of interest or because it has not been appropriately documented as part of executive compensation. In addition, in some states, nonprofit law expressly prohibits loans to directors and officers.

RECOMMENDATIONS

Because the practice of providing loans to nonprofit executives has been a source of trouble in the past and because this practice is specifically prohibited under Sarbanes-Oxley and in some states, it is strongly recommended that nonprofit organizations not provide personal loans to directors or executives. If such loans are provided, they should be formally approved by the board, the process for providing the loan should be documented, and the value and terms of the loan should be disclosed.

To guide the board and staff in independent decision making, the organization must have a conflict-of-interest policy with board members annually disclosing their potential conflicts of interest, and this policy must be enforced without fail.

DISCLOSURE

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act requires a number of disclosures, including information on internal control mechanisms, corrections to past financial statements, and material off balance sheet transactions (adjustments). The Act also requires companies to disclose information on material changes in the operations or financial situation of the company on a rapid and current basis.

RELEVANCE TO NONPROFIT ORGANIZATIONS

While nonprofit organizations do not file most of the reports that publicly traded companies are required to file, they should nevertheless provide their donors, clients, public officials, the media, and others with an accurate picture of their financial condition. Current law already requires tax-exempt organizations to make their Forms 990 or 990-PF freely available to anyone who requests them in writing or in person. These information returns, as mentioned before, need improvements both in accuracy and in timeliness of disclosure. One way to achieve that objective is through electronic filing, something the Internal Revenue Service is currently pursuing and the nonprofit community generally endorses.

RECOMMENDATIONS

Nonprofit organizations should improve the timeliness, accuracy, and completeness of the Forms 990 or 990-PF by filing electronically when that option is available to them. Nonprofits should strive for greater disclosure and transparency. Nonprofits should not rely on automatic extensions for filing Forms 990 and 990-PF without cause.

Audited financial statements should be easily accessible for review.

Two provisions of the Sarbanes-Oxley Act apply to all entities because they are amendments to the federal criminal code, so all nonprofit organizations need to comply with them.

WHISTLE-BLOWER PROTECTION

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act provides protections for whistle-blowers and imposes criminal penalties for actions taken in retaliation against those who risk their careers by reporting suspected illegal activities in the organization. It is illegal for any entity — for-profit and nonprofit alike — to punish the whistle-blower in any manner.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Nonprofits must start by protecting themselves. They must eliminate careless and irresponsible accounting practices and benefit from an internal audit that brings to light weak spots and installs processes that are not vulnerable to fraud and abuse. Written policies that are vigorously enforced by executive staff and the board send a message that misconduct is not tolerated. These policies should cover any unethical behavior within the organization — including sexual harassment.

Each organization must develop procedures for handling employee and volunteer complaints, including the establishment of a confidential and anonymous mechanism to encourage employees and volunteers to report any inappropriateness within the entity's financial management. No punishment for reporting problems — including firing, demotion, suspension, harassment, failure to consider the employee for promotion, or any other kind of discrimination — is allowed. Even if the claims are unfounded, the organization may not reprimand the employee. The law does not force the employee to demonstrate misconduct; a reasonable belief or suspicion that a fraud exists is enough to create a protected status for the employee.

RECOMMENDATIONS

Nonprofits must develop, adopt, and disclose a formal process to deal with complaints and prevent retaliation. Nonprofit leaders must take any employee and volunteer complaints seriously, investigate the situation, and fix any problems or justify why corrections are not necessary.

DOCUMENT DESTRUCTION

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act addresses destruction of litigation-related documents. The law makes it a crime to alter, cover up, falsify, or destroy any document (or persuade someone else to do so) to prevent its use in an official proceeding (e.g., federal investigation or bankruptcy proceedings). The Act turns intentional document destruction into a process that must be monitored, justified, and carefully administered.

RELEVANCE TO NONPROFIT ORGANIZATIONS

Common sense dictates that individuals, nonprofit organizations, and companies regularly need to shred or otherwise dispose of unnecessary and outdated documents and files. Like their for-profit counterparts, nonprofit organizations need to maintain appropriate records about their operations. For example, financial records, significant contracts, real estate and other major transactions, employment files, and fundraising obligations should be archived according to guidelines established by the organization.

Because of current technology, electronic files and voicemail can become complicated as we come to understand the relevance of the delete button as a permanent method of file removal.

RECOMMENDATIONS

A nonprofit organization should have a written, mandatory document retention and periodic destruction policy. Such a policy also helps limit accidental or innocent destruction.

The document retention policy should include guidelines for handling electronic files and voicemail. Electronic documents and voicemail messages have the same status as paper files in litigation-related cases. The policy should also cover back-up procedures, archiving of documents, and regular check-ups of the reliability of the system.

If an official investigation is underway or even suspected, nonprofit management must stop any document purging in order to avoid criminal obstruction charges.

CONCLUSION

The Sarbanes-Oxley Act has now been in force for several years. The legal climate has intensified in the nonprofit sector as Congressional committees and state legislatures are actively proposing new legislation to regulate organizations. Individual nonprofits have begun to identify loopholes - and figure out how to eliminate them. Watchdog agencies and other nonprofit field-building organizations are reconsidering assumptions and standard operating procedures in an effort to identify guidelines, standards, and best practices in the sector.

Regardless of the present scope of existing and potential new legislation at the state and federal level, nonprofit organizations have heard the wake-up call. For all of us in the sector, the Sarbanes-Oxley Act spearheaded a renewed realization that nonprofit organizations rely on - and must protect - the indispensable and unequivocal confidence and trust of our constituents. Self-regulation and proactive behavior will always prove more powerful than compulsory respect of laws.

ADDITIONAL RESOURCES

Press Release from the Office of New York State Attorney General

www.oag.state.ny.us/press/2003/mar/mar12a_03.html

“Strengthening Transparency, Governance, Accountability of Charitable Organizations, a Final Report to Congress and the Nonprofit Sector, June 2005.”

Panel on the Nonprofit Sector, www.nonprofitpanel.org/final.

Summary of the Sarbanes-Oxley Act

www.aicpa.org/sarbanes/index.asp.

Recommendations from the National Association of Corporate Directors

Concerning Reforms in the Aftermath of the Enron Bankruptcy
www.nacdonline.org/nacd/enron_recommendations.asp
 “Corporate Governance. The Wall Street Journal Reports.” *Wall Street Journal*,
 February 24, 2003.
 “Raising the Bar on Governance: Board Committee Performance in the New Era of
 Accountability.” American Governance & Leadership Group, 2002.
 Hamel, W. Warren. “What Corporate Governance Legislation Means to You.”
Association Management, March 2003.
 Heinz, Patrice A. “The Financial Reporting Practices of Nonprofits”. Alliance for
 Children and Families, 2003. www.alliance1.org/Home/SOX_final_8-03.pdf
 Kokourek, Paul F., Christian Burger, and Bill Birchard. “Corporate Governance: Hard
 Facts about Soft Behaviors: Seven steps to fixing what Sarbanes-Oxley can’t.”
strategy+ business, Issue 30, Spring 2003.
 McLaughlin, Thomas A. “For-Profit Spillover: New Regulation of Independence.”
NonProfit Times, February, 1, 2003.
 Michaelson, Martin. “A New Era of Corporate Governance Bears Down on Higher
 Education.” *Trusteeship*, January/February 2003.

Created to rebuild public trust in the corporate community in the wake of corporate and accounting scandals, the federal legislation that has become known as the Sarbanes-Oxley Act requires publicly traded companies conform to new standards in financial transactions and audit procedures. As state officials explore ways to apply elements of the law to the nonprofit sector, BoardSource and Independent Sector offer the publication, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations*, which provides nonprofit leaders practical recommendations on promoting effective oversight of their organizations.

Independent Sector and BoardSource recommend that nonprofits voluntarily incorporate certain provisions of the Act that make good governance sense.

Accountability

Sarbanes-Oxley and Implications for Nonprofits

<p>A checklist for nonprofits and foundations includes:</p>
--

1. Insider Transactions and Conflicts of Interest

- Understand and fully comply with all laws regarding compensation and benefits provided to directors and executives (including "intermediate sanctions" and "self-dealing" laws).
- Do not provide personal loans to directors and executives.
- In cases in which the board feels it is necessary to provide a loan, however, all terms should be disclosed and formally approved by the board, the process should be documented, and the terms and the value of the loan should be publicly disclosed.
- Establish a conflict of interest policy and a regular and rigorous means of enforcing it.

2. Independent and Competent Audit Committee

- Conduct an annual external financial audit (the boards of very small organizations, for whom the cost of an external audit may be too burdensome, should at least evaluate carefully whether an audit would be valuable).
- Establish a separate audit committee of the board.
- Board members on the audit committee should be free from conflicts of interest and should not receive any compensation for their service on the committee.
- Include at least one “financial expert” on the audit committee.
- The audit committee should select and oversee the auditing company and review the audit.
- Require full board to approve audit results.
- Provide financial literacy training to all board members.

3. Responsibilities of Auditors

- Rotate auditor or lead partner at least every five years.
- Avoid any conflict of interest in staff exchange between audit firm and organization.
- Do not use auditing firm for non-auditing services except tax form preparation with pre-approval from audit committee.
- Require disclosure to audit committee of critical accounting policies and practices.
- Use audit committee to oversee and enforce conflict-of-interest policy.

4. Certified Financial Statements

- CEO and CFO should sign off on all financial statements (either formally or in practice), including Form 990 tax returns, to ensure they are accurate, complete, and filed on time.
- The board should review and approve financial statements and Form 990 tax returns for completeness and accuracy.

5. Disclosure

- Disclose Form 990 and 990-PF in a current and easily accessible way (also required of all nonprofit organizations by IRS law).
- File 990 and 990-PF Forms in a timely manner, without use of extensions unless required by unusual circumstances.
- Disclose audited financial statements.
- Move to electronic filing of Form 990 and 990-PF.

6. Whistle-Blower Protection

- Develop, adopt, and disclose a formal process to deal with complaints and prevent retaliation.

- Investigate employee complaints and correct any problems or explain why corrections are not necessary.

7. Document Destruction

- Have a written, mandatory document retention and periodic destruction policy, which includes guidelines for electronic files and voicemail.
- If an official investigation is underway or even suspected, stop any document purging in order to avoid criminal obstruction.

RESOURCES

U.S. Internal Revenue Service

see the government pages of your phone book

www.irs.gov

“Stay Exempt – Tax Basics for Exempt Organizations” an online workshop

<http://www.stayexempt.org/>

Washington State Secretary of State’s Office – Corporations Division

www.secstate.wa.gov

Alliance of Nonprofits for Insurance Risk Retention Group

www.ani-rrg.org

Charity Village Online Resources: Online Publications for the Nonprofit Community

www.charityvillage.com (a Canadian resource with helpful information)

The Chronicle of Philanthropy – newsletter

www.philanthropy.com

Internet Nonprofit Center: Information and Resource for Nonprofits

(especially helpful are the Nonprofit Frequently Asked Questions – FAQs)

www.nonprofits.org

Boardsource (formerly National Center for Nonprofit Boards)

1828 L Street NW, Suite 900

Washington DC 20036-5114

202-452-6262

www.boardsource.org

Nonprofit management and leadership publications

www.josseybass.com

Nonprofit Assistance Center

1825 South Jackson Street, Suite 101

Seattle WA 98144

(206) 324-5850

Fax: (206) 324-6423

www.nacseattle.org

NonProfit Times - newspaper

190 Tamarack Circle

Skillman, NJ 08558

www.nptimes.com

Washington Attorneys Assisting Community Organizations
PO Box 2134
Seattle WA 98111-2134
1-866-288-9695
contact@waaco.org
www.waaco.org

Society for Nonprofit Organizations
5820 Canton Center Road, Suite 165
Canton MI 48187
(734) 451-3582
(734) 451-5935 FAX
www.snpo.org

The Executive Alliance – a membership organization for nonprofits in Puget Sound
www.exec-alliance.org

www.boardnetusa.org

Provides matching services for potential board members for a fee

PUBLICATIONS

An Insurance Guide for Nonprofit Organizations

www.insurance.wa.gov, then click Publications, then on Small Business,
scroll through to publication

Boards That Make A Difference, a New Design for Leadership in Nonprofit and Public Organizations

John Carver, 1990, Jossey-Bass Publishers, San Francisco
ISBN: 0-7879-0811-8

CarverGuides Series on Effective Board Governance

- 1. Basic Principles of Policy Governance*
- 2. Your Roles and Responsibilities as a Board Member*
- 3. Three Steps to Fiduciary Responsibility*

John Carver, 1996, Jossey-Bass Publishers, San Francisco
ISBN: 0-7879-0296-9

Guidebook for Directors of Nonprofit Corporations

George W. Overton, editor, 1993, The Legal Guidebook for Directors Subcommittee,
Nonprofit Corporations Committee, Section of Business Law, American Bar Association
ISBN: 0-89707-892-6

How to Form and Maintain a Nonprofit Corporation in Washington State

King County Bar Association, Young Lawyers Division, 900 Fourth Ave, Suite 600,
Seattle, WA 98164-1060, (206) 624-9365, www.kcba.org

On Board: Guiding Principles for Trustees of Not-For-Profit Organizations

Robert W. Crawford, 1991, Western States Arts Federation, 1543 Champa Street,
Denver, CO 80202

ISBN: 0-9611710-5-7

The Board: A Challenge to Serve

Len Alexander, Gregory Kandel, Linda Sweet, Management Consultants for the Arts,
132 East Putnam Avenue, Coos Cob, CT 06807

The Board Development Kit

Richard Linzer and Annie Hansen, 1994, Richard Linzer Facilitation and Consulting,
PO Box 374, Indianola, WA 98342

The Sarbanes-Oxley Act and Implications for Nonprofit Organizations

<http://www.boardsource.org/clientfiles/sarbanes-oxley.pdf>

**Welcome to the Board: Your Guide to Effective Participation For All
Nonprofit Trustees**

Fisher Howe, 1995, Jossey-Bass Publishers, San Francisco

Working with Board and Volunteers: The Board and Its Responsibilities

Peter P. Schoderbek, 1997, Kellogg Foundation and United Way Volunteer Leadership
Development Program, a National Academy for Voluntarism project supported by a grant
from the W. K. Kellogg Foundation of Battle Creek, MI

11/14/08 BB