Great Board Member’s Guide

Presented by:
Community Foundation of the Gunnison Valley
Chaffee County Community Foundation

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Today’s Presenters

- William P Edwards, PC, Attorney
- Maryo Ewell, Director of Community Impact, CFGV
- Kelly Sudderth, Chief Operating Officer, Rocky Mountain Biological Lab
LEGAL DUTIES OF NONPROFIT BOARD MEMBERS
Legal Duties of Nonprofit Board Members

- What is a duty?
- Who do nonprofit members owe duties to? (To whom are duties owed by nonprofit board members?)
- Who can enforce these duties?
- What are these duties?
- What are these duties, again, in Plain English?
- How can board members ensure that they fulfill their duties?
What is a duty?

- “A legal obligation that is owed or due to another and that needs to be satisfied; that which one is bound to do, and for which somebody else has a corresponding right.” Black’s Law Dictionary 637 (11th ed. 2019).

- It’s something you must do.
- You can get in trouble for not doing it.
- Other people can bring a lawsuit against you for not doing it!
Who do nonprofit members owe duties to?  
(To whom are duties owed by nonprofit board members?)

- The organization itself.
- The voting members of the organization.
- The general public.
Who can enforce these duties?

- The organization itself.
- The voting members (in a similar fashion to a derivative suit in securities/corporate law).
- Other board members.
- Other third-parties (i.e., employees, contractors).
- The Attorney General.
- The IRS.
Who can enforce these duties?

Phil Weiser  
Colorado  
Attorney General

Merrick Garland  
Attorney General of the United States

J. Russell George  
Treasury Inspector General
What are these duties?

- Statutory Duties:

  Nonprofit directors must act with (1) good faith, (2) care, and (3) in a manner the director reasonably believes to be in the best interests of the organization.

  C.R.S. § 7-128-401
What are these duties?

- Fiduciary Duties

“A fiduciary is a person having a duty, created by his or her undertaking, to act primarily for the benefit of another in matters connected with the undertaking.”

What are these duties, again, in Plain English?

- Good Faith
- Care
- In the best interests of the organization
- Primarily for the benefit of the organization
- Loyalty

What does this all mean???
What are these duties, again, in Plain English?

- Loyalty, Care, Good Faith – LCGF.

- A board member fulfills her duties when she is:
  - informed,
  - attentive, and
  - taking action, always with the best interest of the organization in mind.
Loyalty

- Courts expect “undivided loyalty and allegiance.”
- Don’t compete.
- Don’t put your business interests ahead of the organization.
- Don’t do business with the organization.
- Have a conflicts of interest policy and follow it.
Care

- be appropriately informed about issues requiring their consideration,
- to devote appropriate attention to oversight of the organization’s activities,
- and to act with the care that an ordinarily prudent person would reasonably be expected to exercise in a similar situation.
Good Faith

- Honesty in belief or purpose.
- Faithfulness to one’s duty or obligation.
- Observance of reasonable commercial standards of fair dealing in a given trade or business.
- The absence of intent to defraud or to seek unconscionable advantage.
What are these duties, again, in Plain English?

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How can board members ensure that they fulfill their duties?
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- Be informed about:
  - The organization’s Mission;
  - The organization’s finances (includes being informed about key financial concepts!);
  - The organization’s assets and liabilities;
  - The organization’s risks;
  - The organization’s performance;
  - The organization’s governing documents.
How can board members ensure that they fulfill their duties?

- Be attentive to:
  - Inflow and outflow of money;
  - Staff needs;
  - Operational drift;
  - Potential conflicts;
  - New risks;
  - Changes in regulatory environment;
  - Changes in employment law.
How can board members ensure that they fulfill their duties?

- Take action by:
  - Meeting (regularly!);
  - Adopting needed policies;
  - Asking when you don’t know;
  - Seeking counsel (financial, tax, legal);
  - Suggesting ideas;
  - Debating ideas;
  - Voting;
  - Putting the organization’s business before your own.
BEST PRACTICES FOR NONPROFIT BOARD MEMBERS
It’s a balance...

...between Program and Governance, and the balance shifts depending on where the nonprofit is in its life cycle.

But even a program-oriented board needs to spend time setting up governance infrastructure for the future.
Boards are stewards who...

...steer the nonprofit towards a sustainable future by adopting sound, ethical and legal governance and financial management policies, and by making sure the nonprofit has the resources it needs to advance its mission.
Maryo’s 6 A’s of a Great Board Member:

- Attitude
- Action
- Asset development/conservation
- Ambassadorship
- Appropriateness
- Assessment
Attitude

- Passion for the mission and the npo
- Willingness to learn about the ecosystem
- Willingness to work
- Willingness to embrace your role
- Understanding of the balancing of roles, spirit of the law, letter of the law…. 
Action: Before your first meeting

- Explore the website
- Read your job description
- Read the annual report
- Read some minutes
- Skim the by-laws
- Skim the strategic plan
- Skim the budget
- Review the most recent balance sheet and B 2 A
Action: Before or early on

- Sign a conflict of interest document
- Sign a confidentiality document
- Maybe sign off on your job description
Action: Responsibilities

- Attend (plan your calendar accordingly)
- Read materials prior to the board meeting; come prepared to discuss
- Participate!
- Pay attention to the finances
Action: continued

- Approve ED’s job description, salary; hire; ensure an evaluation; fire if needed
- Participate in planning
- Ensure that there’s a policy book
- Learn about your field and nonprofits
Assets: Develop, Conserve

- Money
  - Donate what’s significant for you
  - Participate in fundraising
  - Review the financials and thoughtfully plan, and monitor, the budget
Assets: Develop, Conserve

- People
  - Don’t micromanage
  - Ensure there’s a personnel manual
  - Pay the staff as well as you can: don’t think, “How little can we pay someone?”
  - Ensure a good, evolving staff structure
  - Ensure that the staff job descriptions are clear, with performance standards
  - Ensure there are job descriptions for board members, officers and committees
Assets: Develop, Conserve

- **Time**
  - Ensure the plan is realistic
  - Ensure the staff has what they need to be efficient
  - Don’t waste time in unnecessary, inefficient meetings
Ambassadorship

- Keep your board hat on when you’re in the community: represent your nonprofit positively and with excitement.
- What’s said in meetings, stays in meetings….even if you disagree with a board action.
Appropriateness

- The board sets policy; the staff carries it out. Do not micromanage your staff!
- Remember which hat you are wearing:
  - In board meetings, you are a Governor
  - Privately, don’t direct the staff unless you’re authorized
  - When you are volunteering, you take off your Governor hat; you take direction from the staff or person in charge just as any other volunteer does
Assess

- Does your npo play well in the “sandbox” of its ecosystem?
- Does your npo articulate and track its desired impact?
- Does the Director get reviewed?
- Does the board self-assess?
- Does the board have a process to address things raised in the self-assessment?
You’ll receive…

- Information on the Life Cycles book
- A link to “Principles and Practices for Nonprofit Excellence in Colorado”
- A couple of sample tables of contents for a policy book
- A great template for fiscal policy
FINANCIAL SAVVY FOR NONPROFIT BOARD MEMBERS
The role of the Board

- Plan early and often
- Objectivity, honesty, efficiency
- No conflicts of interest
- Serve as a “financial inquisitor”
- Develop (and update) a realistic, well-considered financial plan
- Ensure the financial plan is consistent with the strategic plan
- Ensure appropriate checks and balances are in place to prevent fraud, errors and abuse
- Ensure funders’ requirements are managed and met
- Monitor key financial indicators
- Approve the budget (and understand the details)
- Oversee legal obligations
- Make deliberate decisions which aren’t just based on emotion
A financially healthy nonprofit

✓ Commitment and process are as important as the numbers
✓ Culture of financial awareness/literacy
✓ Effective financial governance
✓ Clear roles and responsibilities – and accountability
✓ Financial goals aligned with strategic goals
✓ Budgeting is an organization-wide process
✓ Generating annual operating surpluses
✓ 3-6 months operating reserves
✓ Begin the fiscal year with at least ½ year’s funds in the bank (and realistic plan for where you will get the remaining funds)
✓ Monthly (effective & accurate) financial reporting
✓ Diverse funding sources
✓ Sustainable business model
✓ Finance always has a voice at the table
Cash management

- An essential part of decision-making
- Start with an accurate UNRESTRICTED cash balance
- Base projections on realistic assumptions
- Reflect the timing of receipts and payments – don’t just divide by 12
- Be careful about including grants/contributions that are for future periods
- Don’t forget lump sum payments (insurance, program costs, etc…)
- If you have biweekly payroll, don’t forget to plan for the 2 months with 3 payroll cycles
- Generally, forecast cash flow by month – but if you don’t have a month’s cash on hand, break it into a smaller chunk of time
Cash reserves

Why?
• No margin, no mission!
• Achieving an operating surplus is the most reliable engine for sustainability (and growth)
• You need to weather crises and be prepared to take advantage of opportunities

How?
• Build internal cash reserves over time
• Budget for surpluses
• Identify a dollar value of cash reserves as a strategic initiative

How much?
• 3-6 months operating expenses
8 steps for successful budgeting

1: Get everyone involved (board and staff)  
2: Set financial goals – based on organizational goals  
3: Prepare high-level organizational budget (snapshot)  
4: Prepare detailed program budgets – capture all costs  
5: Go back to step 3 (or 2) if necessary  
6: Monitor progress at least monthly  
7: Understand the cause(s) of variances  
8: Adjust expenses, staffing, programs as required

Practice income-based, rather than expense-based spending.
Useful Financial Reporting

**Step 1: Identify key performance indicators.**
- Ex: program revenue, expenses, overhead, payroll, # tickets sold, # volunteer hours, cash flow
- How do you define success?

**Step 2: Capture data in a timely manner.**

**Step 3: Identify your audience.**
- Internal or external? Level of financial literacy?

**Step 4: Tell your story.**
- Where were you, where are you today, where are you going?
- Do your funding sources support the program mix you need?
- Are you investing in your organization’s future?
- Can you keep up with your financial obligations?
- Are you wisely allocating your resources?

Keep it simple.

Pictures and stories can be as useful as numbers.

The goal is to provide useful information for decision-makers.
We will send you:

- The link to the recording of this session
- The powerpoint
- A short list resources
- How to get assistance in Gunnison County
- How to get assistance in Chaffee County
Contact the presenters:

- Will Edwards, will@edwardslawcolorado.com
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THANK YOU FOR COMING!