



Great Board Member's Guide

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

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Today's Presenters

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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.”

Tepley v. Pub. Emples. Ret. Ass'n, 955 P.2d 573, 577 (Colo.App. 1997).

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.

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How can board members ensure that they fulfill their duties?

How can board members ensure that they fulfill their duties?

- 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:

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THANK YOU FOR COMING!