

Engaging Your Board

January Webinar

Presented by Hemenway & Barnes, LLP

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Marta Hodgkins-Sumner

Director of Membership and Programs





Engaging Your Board

Massachusetts Nonprofit Network
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Thomas L. Guidi, Esq.



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What is Governance?

- Board members need to understand their job responsibility...
“Nonprofit Governance”



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Nonprofit Governance

Members

- Election of Officers and Board Members
- Amendments to Bylaws and Articles of Organization
- Disposition of all or substantially all assets
- Merger or Dissolution

Board

- Oversight of all aspects of operations
- Legally required to have a board and officers with the powers of a president, treasurer and clerk
- Board members may be designated as Directors, Trustees, Governors, Overseers, Vestrymen, etc.



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Board Governance – What does it mean?

1. Duties of Board Members

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

2. Specific Duties – A Closer Look

- Financial Review
- Mission Achievement
- CEO/ED Compensation and Review
- Fund Raising





Board Governance Defined

A board of directors exists to fulfill the mission of the organization, help ensure its financial stability and protect the public interest.



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In practice, governance means:

- Strategic Planning
- Financial Oversight
- Fund Raising
- Program Implementation
- Selection, Evaluation and Setting Compensation of CEO/ED



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Governance does not mean:

- Performing staff functions
- Getting mired down in management or administrative details (micro-managing)



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Legal Responsibilities of Directors/Trustees:

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



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Duty of Care

A director must act in good faith and in a manner he or she reasonably believes to be in the best interests of the organization and with such care as an ordinarily prudent person in a like position with respect to a similar organization would use under similar circumstances.



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Translation...

A director must act with honesty and common sense in carrying out the mission of the organization.



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How can directors satisfy the duty of care?

- Awareness
- Meetings
 - Preparation
 - Attendance
 - Participation





Duty of Loyalty

Directors must act with the strictest good faith in governing the organization and may not unfairly profit, directly or indirectly, from the organization.



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Translation...

Put the organization first



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How can directors satisfy the duty of loyalty?

Follow the rules:

- Conflict of Interest
- Confidentiality



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A potential conflict of interest arises where

- a director or an entity in which the director has an interest considers entering into a transaction with the organization, or
- where an advantageous opportunity comes to the director's attention by reason of his association with the organization.





What should a director do if there is a potential conflict of interest?

- Disclose the conflict (if unsure, ask)
- Have the transaction independently approved



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Conflict of Interest Policy

- A conflict of interest policy is a critical mechanism to deal with potential conflicts
- If no independent approval, you lose the benefit of the business judgment rule
- IRS and Attorney General Hot Issue



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Confidentiality

A director should keep confidential all matters regarding the organization that are not public information.



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Duty of Obedience

Directors must perform their duties in accordance with the organization's nonprofit purposes, governing documents and applicable laws.

- Not explicitly mandated by Massachusetts law or courts
- AG's office has indicated that the duty of obedience applies to nonprofit directors
- Legally mandated in other states
- Based on public's trust that donated funds will be used to fulfill the organization's mission



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How to satisfy duties of loyalty, care and obedience?

- Be active and engaged in board work
- Maintain confidentiality
- Work in the best interests of the organization
- If a conflict of interest may exist – disclose and obtain independent approval
- Stay true to the organization's purposes and adhere to its organizational documents



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Special Duties of Directors – A Closer Look:

- Financial Review
- Fund Raising
- CEO/ED Compensation and Evaluation
- Mission Achievement



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Financial Review

- Directors are stewards of the organization
- Each member must understand the budget



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Fundraising

- Critical role for the whole board
- Full Board Giving and Getting
- Assisting Management and Staff
- Planning, Doing, Getting



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CEO/ED Compensation

- Approved by the full board
- Consider CEO/ED performance and compensation of CEOs/EDs of comparable organizations
- Market is the measure
- IRS and Attorney General Hot Issue



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Mission Achievement

- Short and long term planning
- Oversight of Management
- Review Program Track Record



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- To learn more, visit:

<http://hembar.com/pdf/sitting-on-a-nonprofit-board-a-guide-for-directors-of-nonprofit-organizations>



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