Engaging Your Board
January Webinar
Presented by Hemenway & Barnes, LLP

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- You may **join the audio** by selecting the radio button for either “Telephone” or “Mic & Speakers.” If you are using telephone, please dial in with the conference line and audio pin provided.

- If you are having any technical issues, please let us know in the chat box.

- We will have time for **Q&A**. Please enter your questions in the chat box at any time.

- This webinar is being recorded, and we will distribute the **recording** after the webinar.

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Engaging Your Board

Massachusetts Nonprofit Network
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What is Governance?

- Board members need to understand their job responsibility...
  “Nonprofit Governance”
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.
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.
In practice, governance means:

- Strategic Planning
- Financial Oversight
- Fund Raising
- Program Implementation
- Selection, Evaluation and Setting Compensation of CEO/ED
Governance does not mean:

- Performing staff functions
- Getting mired down in management or administrative details (micro-managing)
Legal Responsibilities of Directors/Trustees:

- Duty of Care
- Duty of Loyalty
- Duty of Obedience
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.
Translation...

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

Put the organization first
How can directors satisfy the duty of loyalty?

Follow the rules:
- Conflict of Interest
- Confidentiality
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
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
Confidentiality

A director should keep confidential all matters regarding the organization that are not public information.
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
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
Special Duties of Directors – A Closer Look:

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

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

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

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