



Not-for-Profit Board Governance:

Modern-Day Best Practices in an Ever-Changing World

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Overview

- Lessons learned
- Board responsibilities
- Strength in diversity
- Financial stewardship
- Audit Committee focus
- Who is your financial expert?
- Risk mitigation
- Regulatory concerns
- Modern-day best practices



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What Do We Mean by Governance?

According to Wikipedia:

“Non-profit governance focuses primarily on the fiduciary responsibility that a board of trustees/directors has with respect to the exercise of authority over the explicit public trust that is understood to exist between the mission of an organization and those whom the organization serves.”



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Top 15 Board Governance Mistakes

1. Failing to understand fiduciary duties
2. Failing to provide effective oversight
3. Deference to the Executive Committee, board chair, or the organization's founder
4. Micro-managing staff
5. Avoiding the hard questions
6. Insufficient conflict management
7. Lack of awareness of laws governing tax-exempts
8. Operating with outdated, inconsistent governing documents



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Top 15 Board Governance Mistakes

9. Airing disagreements outside the boardroom
10. Failure to cultivate board diversity
11. Recruiting and selecting board members without due care
12. Failing to educate and motivate board members
13. Failing to document actions appropriately
14. Failing to review program effectiveness and efficiency and task appropriate follow-up actions
15. Failing to hold executives (and nonparticipating directors) accountable



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From the Headlines

- Coopers Union
- Sweet Briar
- Hull House
- West Virginia University
- Lemington Home for the Aged
- Fiesta Bowl
- NY Metropolitan Council on Jewish Poverty
- Ronald Perelman, chairman of Carnegie Hall resigning due to “troubling lack of transparency)
- 4 cancer charities run by extended members of the same family utilize donations for personal use



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Lessons Learned: Hull House

- Management sugar-coated the situation
- Staff always maintained a positive attitude
- Board failed to understand the magnitude of the problem, until it was too late
- Board didn't understand the idea of 'living on the edge'
- Social service agencies are 'always on the brink of destruction'



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Lessons Learned: Hull House

- Revenue goals consistently unmet
- Over-reliance on government funding
- State funding continuously dropping
- Overt signs of financial distress ignored
- Board suffered from poor internal and external communication
- Staff accused the board of "not understanding how nonprofits really function"
- Board's reluctance to be transparent
- Mission drift



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Lessons Learned: Fiesta Bowl

- Long-Term Misuse of Funds
- Indirect Political Contributions
- Extensive Unreported Lobbying/Legislative Expense
- Board – Little Financial Information, No follow-up on issues
- Board – “Heard no evil, saw no evil, and spoke no evil”



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Lessons Learned: Fiesta Bowl

- Fined \$1M by BCS
- Ex-CEO sentenced to jail, ordered to pay restitution
- IRS still considering options, tax-exempt status, intermediate sanctions
- Tostitos still sponsors event
- Board and staff turnover



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Lessons Learned: MET Council on Jewish Poverty

- Long-term executive director steals more than \$5M over period of 20 years.
- Involved other senior staff
- Whistleblower policy key in detection
- Involved, active board
- Investigation and trial still ongoing



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Lessons Learned: Lemington Home For the Aged

- Failed nonprofit nursing home in Pittsburgh area
- 2 former officers and 14 former directors held liable for breach of fiduciary duties
- Operational issues at home
- Very poor financial records
- Little or no board/director oversight after the vote to close



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Board Objectives

- Set strategic objectives to be accomplished
- Create policies to guide the implementation of activities designed to assist the entity in meeting its strategic objectives
- Serve as content matter experts and a sounding board for the chief executive
- Hire the chief executive and monitor his or her progress toward meeting strategic objectives
- Set its own governance processes and assess its performance in meeting its objectives
- Assume responsibility for the entity's compliance with laws and regulations and provisions of funding source agreements



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Board Responsibilities

- Legal
 - Develop and maintain articles of incorporation and bylaws
 - Obtain and maintain tax-exempt status
 - Approve and safeguard legal documents
 - Report to government as required (Form 990)
 - Keep records (minutes and audits, if necessary)
 - Hire and evaluate executive director



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Board Responsibilities

- Financial
 - Obtain financial resources
 - Create a development plan
 - Assist staff with fundraising
 - Manage resources
 - Approve final budget
 - Monitor fund balances, revenue, variance to budget
 - Make investment recommendations
 - Set wage scales and benefit programs
 - Obtain financial review or audit



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Board Responsibilities

- Planning
 - Develop and communicate who is to be served, to what end and at what cost
 - Approve goals and objectives which monitor and assess organizational progress under your mission
 - Sets the strategic direction for the organization



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Board Responsibilities

- Leadership and Continuity
 - Renew itself; members and leaders
 - Assure linkage to beneficiaries, benefactors and strategic partners
 - Reflect the community served
 - Train, encourage and inform its members
 - Assess board performance



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Board Responsibilities

- Personnel
 - Executive director: hire, manage and review
 - Personnel policies
 - Compensation
 - High-level grievances



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Board Responsibilities

- Policy Making
 - Define the organization
 - Define the process of governance
 - Define the nature of the workplace
 - Define the resources managed



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Board Responsibilities

- Public Relations and Marketing
 - Linkage and connections to media and other critical partners
 - Goodwill: explain and interpret
 - Visibility
 - Ambassadors for the organization



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Board Responsibilities

- Organizational Assessment and Evaluation
 - Are we doing what we say we are doing? Can we do it better, and is change needed?
 - Organizational excellence – stability, efficiency, timeliness, creativity, etc.
 - Is the workplace productive, welcoming, efficient
 - Evaluate the programs, people, and process at least on a yearly basis



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Strength in Diversity

- Homogeneous Board
 - Group think
 - Near-sightedness
 - Troubles connecting with donors and constituents
 - Opportunities missed
 - Grantmakers increasingly focused on diversity



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Strength in Diversity

- Diverse Boards
 - Composed of individuals with a variety of skills, perspectives, backgrounds and resources
 - Race, culture, ethnicity, gender, age and generational issues



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Strength in Diversity - Strategies

- Communicate
 - Don't assume board agrees
 - Open, thoughtful discussion to consider how organization, community and constituents might benefit from diversity
 - Board members must consider if they are ready to identify, confront, and work to eliminate their personal biases, blind spots and prejudices



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Strength in Diversity - Strategies

- Act – develop a case and plan for change
 - Write a compelling case statement
 - Develop a plan that includes strategies, concrete goals, objectives, tasks, and a timeline
 - Numeric goals? Target vs. quota
 - Create a pipeline
 - Local chamber of commerce, members of other nonprofit boards, search firms



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Strength in Diversity - Strategies

- Monitor and measure results
 - Stay focused on objectives and goals
 - Monitor progress
 - Survey staff, constituents, and other stakeholders
 - Takes time and commitment



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Fiduciary Responsibilities

- A fiduciary duty is defined as the obligation to act in the best interest of another party.
- Includes:
 - Evaluating financial policies
 - Approving annual operating and capital budgets
 - Reviewing and analyzing financial information



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Board Responsibilities

- Financial
 - Obtain financial resources
 - Create a development plan
 - Assist staff with fundraising
 - Manage resources
 - Approve final budget
 - Monitor fund balances, revenue, variance to budget
 - Make investment recommendations
 - Set wage scales and benefit programs
 - Obtain financial review or audit



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How would you evaluate your Directors ability to...

- a) Read and understand the organization's basic financial statements;
- b) Ask informed questions about the organization's use of resources and its financial soundness, including its liquidity position;
- c) Understand the entity's investment strategy and ensure that it is consistent with strategic goals;
- d) Read, understand, and approve the annual budget;
- e) Ensure that all necessary filing requirements and tax obligations have been met; and
- f) Review IRS Form 990, ideally before it is filed



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Audit Committee Financial Expert?

Sarbanes-Oxley defines an Audit Committee Financial Expert to be a person with the following attributes:

- (1) An understanding of financial statements and GAAP;
- (2) An ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
- (3) Experience preparing, auditing, analyzing or evaluation financial statements that present the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;
- (4) an understanding of internal controls and procedures for financial reporting; and
- (5) An understanding of audit committee functions.



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Who is your Financial Expert?

- According to the Association of Certified Fraud Examiners, the types of fraud schemes that were committed against organizations could have easily been seen by a member of the Board with a financial background:
 - Billing (28%)
 - Check tampering (22%)
 - Skimming (17%)
 - Expense reimbursements (16%)
 - Payroll (16%)
 - Cash on hand (12%)



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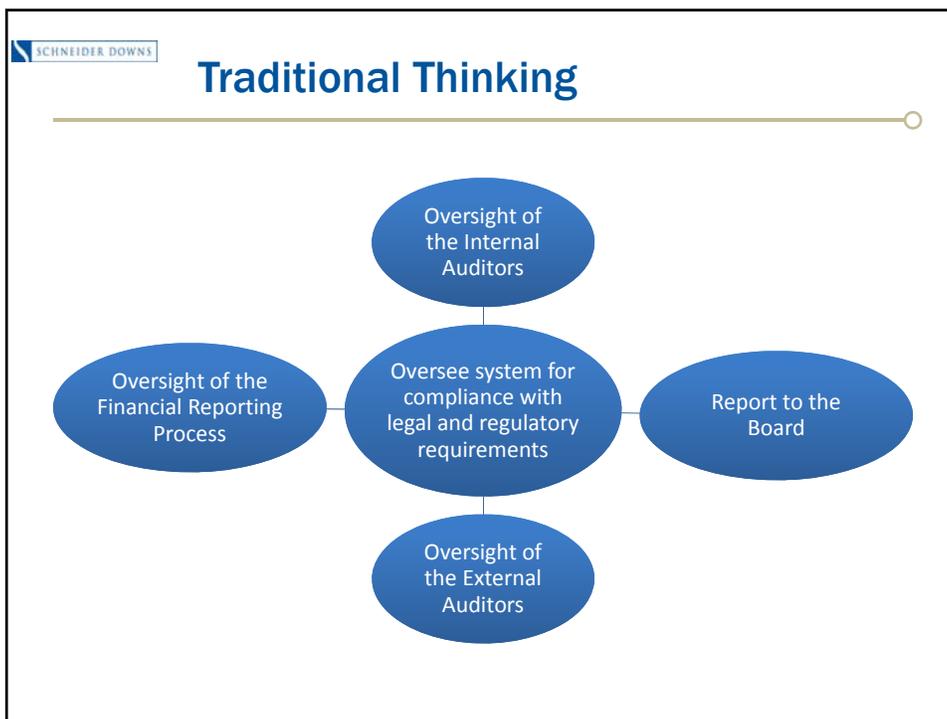
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The Role of the Audit Committee

- Critical tasks
- 2015 Governance Survey
- Related-party transactions and conflicts of interest
- Fraud prevention
- Enterprise Risk Management
- Oversight of Technology, Cybersecurity and Data Privacy



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 **AICPA Not-for-Profit Toolkit**

2010	2015
a) Integrity of the organization's financial statements	a) Integrity of the organization's financial statements
b) Internal control over the financial reporting process	b) Internal control, including over the financial reporting process
c) External auditor's qualifications, independence, and performance	c) Independent auditor's qualifications, independence, and performance
d) Compliance with legal and regulatory requirements	d) Internal audit function's qualifications, independence, and performance
e) Review of (or delegation thereof) the IRS Form 990	e) Organization's risk management and overall governance process
	f) Organization's ethics and compliance program, which includes legal and regulatory requirements
	g) Review of (or delegation thereof) the IRS Form 990

 **Critical Tasks Required of an Audit Committee**

- Risk monitoring
 - Conflicts of interest and related-party transactions
 - Whistleblower reports
 - Anti-fraud programs
 - Compliance with laws and regulations
 - ERM
- External auditors
 - Qualifications, independence, and performance
 - Planning
 - Audit results
- Internal auditors
- Communication to the Board



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Vs. the Role of the Finance Committee

- Monitor the application of resources
 - Approval of the annual budget
 - Review financial performance
 - Establish and oversee compliance with financial policies and procedures
- In the absence of an investment committee...
- Approve significant transactions
- Communication to the Board



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Risk Mitigation

- Reputational Risk
- Financial Risk
- Technology Risk
- Operational Risk
- Mission Risk



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Enterprise Risk Management (ERM)

- In September 2004, the Committee of Sponsoring Organizations (COS) of the National Commission on Fraudulent Financial Reporting of the Treadway Commission published the ERM Framework, which defines ERM as:
 - “a process, effected by an entity’s board of directors, management, and other personnel, applied in a strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.”



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Board’s Role: 5 Responsibilities

- 1) Influencing and concurring with the entity’s risk philosophy and risk appetite;
- 2) Determining overall strategy (e.g., Are strategic decisions in alignment with entity’s risk appetite?);
- 3) Ascertaining the extent to which management has established effective enterprise risk management in the entity;
- 4) Reviewing the entity’s portfolio of risk;
- 5) Being apprised of the most significant risks and ascertaining whether management is responding appropriately.



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Regulatory Concerns

- Form 990 “Suggestions”
 - Conflicts-of-interest
 - Whistleblower
 - Document Retention and Destruction Policy
 - Gift Acceptance Policy
 - Process to Review Form 990 Before Filing
 - Executive Compensation
 - Disclosure of Governing Documents
 - Related-Party Transactions
 - Public Disclosure Rules
 - Interested-Party Transactions



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Regulatory Concerns

- Affordable Care Requirements
- Employment Requirements in General
- Unrelated Business Income
- Foreign Activity and Foreign Accounts
- Donation Tracking
- Grant Writing Rules
- Organizing Document Compliance
- Lobbying Issues
- Political Activities



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Regulatory Concerns

- State Compliance
 - Bureau of Charitable Organizations
 - Donations and Fundraising
 - Sales and use tax filing/exemption
 - Audit, Review and Compilation requirements
 - Multistate Filing



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The 21st Century Board

- Board evaluations
- Exercise independent judgment
- Ask reasonable and responsible questions
- Challenge your committee structure
- Roles and responsibilities
- Assess compliance with current laws and regulations
- Strategic planning
- Risk management
- Board education



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 **The 21st Century Board – Key Policies**

- Conflict-of-interest policy
- Whistleblower policy
- Document retention and destruction policies
- Executive compensation policy
- Internal controls (including anti-fraud)
- Lobbying and politics
- Code of ethics
- Gift acceptance policy
- Expense policies
- Social media
- Information technology policies
- Chapters and branches
- Joint ventures



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 **The 21st Century Board**

- As members of leadership:
 - Be open to transparency and full disclosure
 - Board orientation and education
 - Initiate the conversation
 - Open lines of communication
 - What keeps you up at night?
 - Are your Directors informed....



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The 21st Century Board

- Can each of your Board members, succinctly and clearly:
 - Talk about the mission of your organization
 - Discuss the primary revenue sources and funding obligations
 - Articulate the strengths and weaknesses of the programs you operate



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