

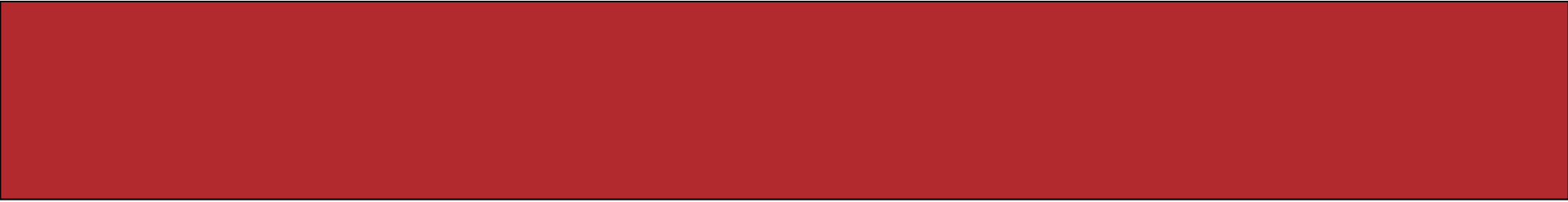


Navigating the Line – What to Do When Nonprofit Boards Overstep into Operations

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Moderated by Erum Mirza (General Counsel of the District of Columbia Bar)



“Effective governance by the board of a nonprofit organization is a rare and unnatural act.”

Barbara E. Taylor, Richard P. Chait & Thomas P. Holland, The New Work of the Nonprofit Board, Harv. Bus. Rev. 36 (Sept.-Oct. 1996).

How Common are Governance Problems?

69% of organizations experienced serious governance problems in the last decade.

Source: “The Sorry State of Nonprofit Boards,” *Harvard Business Review*, Sept. 2015, quoting the “2015 Survey on Board of Directors of Nonprofit Organizations,” by David F. Larcker, William F. Meehan III, Nicholas Donatiello, and Brian Tayan.

Governance Self-Assessment

- Historical Context
- Existing Structures (i.e. Bylaws, Policies)
- Role of Management vs. Board
- Board Recruiting Process
 - Diversity
 - Board Training/Orientation/Mentoring
 - Fiduciary Duties

Role of Nonprofit General Counsel

- Who is the client?
- Disputes
- Outside Counsel

Common Board Issues

- Overactive Board
- Founder Syndrome
- Absentee Board

Overactive Board – Common Symptoms

Example Scenario:

- Organization X lost its longtime CEO and went through a long search for a replacement.
- In the meantime, what started as well-meaning Board members lending a hand turned into operational micromanagement.
- Board members began to implement individual opinions, form factions, and go rogue.
- New CEO was only supported by a portion of the Board, and she was largely ignored as certain Board members continued to interfere with operations.

Overactive Board - Strategies

- Clear Delineation - Board vs. Management
- Strategic Planning
- Rules Enforcement
- Board Nomination Process
- Consultants/Mediators
- CEO Hiring/Evaluation
- Succession Planning

Founder Syndrome – Common Symptoms

Example Scenario:

- Long-serving founder, both a Director and paid member of management, treats Organization Y as his passion project, with the mission indistinguishable from his persona.
- Founder is given outsize power in the Bylaws (i.e. corporate member, certain veto rights, etc.).
- Founder is very set in his ways on everything from how the Board should operate to what deference the management owes to him.
- Historically, Organization Y has had business and other interactions with Founder and for-profit companies connected to his friends and family, and Founder largely dictates his own management salary.

Founder Syndrome - Strategies

- Succession Planning
- Term Limits
- Board Diversity
- Strategic Planning
- Clear Roles for Founder
- Effective Conflict Review/Resolution
- Know When to Step Away

Absentee Board – Common Symptoms

Example Scenario:

- Organization Z has been around for over 100 years, and now has over 100 Directors.
- Directors are largely unengaged, with many given a seat in exchange for donations/fundraising.
- In addition to confidentiality concerns, Organization Z's mission is starting to drift after management turnover has resulted in different, largely unchecked, strategic directions over the years.

Absentee Boards - Strategies

- Examine Structure and Processes
- Board Size and Makeup
- Committees
- Recruitment Process
- Orientation/Training/Mentoring
- CEO Evaluation/Executive Sessions
- Regular Self-Assessments

Takeaways

- Bylaws and Policies
- Board and Committee Structures
- Training/Orientation/Mentoring
- Succession Planning
- Regular Self-Assessments
- Role of Outside Counsel/Experts

Additional Resources

- Independent Sector, *Principles for Good Governance and Ethical Practice*, 2015.
- BoardSource, *Leading with Intent: A National Index of Nonprofit Board Practices* (Washington, D.C.: BoardSource, 2015)
- Hopkins, Bruce R., *The Law of Tax-Exempt Organizations* (New York: John Wiley & Sons, Inc., 2011)

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