

The Art of Responsible Boardmanship

By Nancy R. Axelrod

What is wrong with the following statement?

The board member has important responsibilities that include shaping the future direction of the organization, evaluating the chief executive, and approving the budget.

If you found the singular subject of that statement inappropriate, congratulations. Governance is intrinsically a collective act. Board members as individuals have no individual authority over the organization. They must make decisions in formal sessions as a collective governing body. But just as boards of directors have basic collective responsibilities, board members are entrusted with individual responsibilities and obligations. This job description is frequently missing in action from board manuals and orientation programs. The results are high levels of ambiguity at best and dysfunctional behavior at worst.

The central duties of a board member can be challenging for those who are serving for the first time or who are elected by special regions or constituents.

Modeling Fiduciary Responsibilities

The principal legal requirements that apply to nonprofit boards reflect the premise that the board is ultimately responsible for the organization. The board's legal obligations depend on the actions of its individual members to meet standards of personal conduct on behalf of their organization known as the duty of care, the duty of obedience, and the duty of loyalty. The three Ds are not complex in theory. Behaviorally, they can be challenging for association board members who are serving for the first time or who are elected by special regions or constituents representing subsectors of an industry.

The duty of care requires board members to be reasonably informed about the organization's activities, to participate in decisions, and to act in good faith in their role as stewards. Unlike Woody Allen's definition of success, it means more than showing up. It is demonstrated by preparing for and participating in board and committee meetings, asking timely and substantive questions, and faithfully reviewing the organization's fiscal policies. Board members are expected

to exercise ordinary and reasonable care rather than perfect judgment as fiduciaries.

The duty of obedience requires board members to comply with applicable federal, state, and local laws and to be faithful to the organization's mission and bylaws. It is demonstrated by board members who ensure that the institution is adhering to regulatory and reporting requirements such as filing the IRS Form 990, paying employment taxes, and making decisions aligned with the organization's mission and governing documents. Since no board member can be expected to know every legal or statutory requirement, board members must often rely on experts such as lawyers to help provide the information they require to be accountable as stewards.

The duty of loyalty requires board members to be accountable to the organization above all else. In practice, it is carried out by adherence to the organization's conflict of interest policy, avoidance of personal gain or benefit as a result of board membership, and maintenance of confidentiality of board deliberations that should not be disclosed. It means that board members should not act as representatives of anything but the organization's welfare, even though they may be elected by special-interest groups within the membership. (Also see the sidebar, "Challenges in Exercising Fiduciary Responsibilities.")

Selecting and Switching Three Hats

Responsible board members can be mindful of fulfilling responsibilities without discharging personal authority over the organization by consciously swapping at least three hats that they wear during their terms—one for governance, one as a designee, and another as a volunteer—as appropriate. This discipline can help influence perception as well as behavior.

CHALLENGES IN EXERCISING FIDUCIARY RESPONSIBILITIES

The challenge of learning to put the interests of the organization before one's personal or professional interests is illuminated in the following observations from new board chairs who have attended ASAE & the Center's Exceptional Boards program during the past few years.

"It is difficult for board members not to allow their votes to be unduly influenced by loyalty to their denominations."

"After the board votes on a controversial issue, disgruntled association members will often contact individual board members to complain and to find out how board members voted. I try to help new board members understand that the best response we can give them is to explain how the board tried to do what was best for the organization in arriving at this decision."

"I learned that one of the hardest parts of becoming the chair is to become the spokesperson for important positions the board takes that do not necessarily reflect my personal or professional views."

The governance hat is worn when the board takes actions on its collective responsibilities, such as hiring the chief executive and approving the budget. While individual board members have no legal authority, they can contribute by asking good questions, listening to understand differences among multiple viewpoints, challenging assumptions in a spirit of inquiry and civility, and encouraging the board to review adequate information (rather than rely on opinions) to inform its decisions. Perhaps most important of all, board members should not put personal interests above institutional interests when making a decision or supporting majority decisions after they have been made by the board.

The designee hat is worn when individual board members are asked to serve in a leadership position, act as ambassadors for their organizations, or undertake special assignments on behalf of the board. For example, individual board members might be asked to chair a task force, serve on a board committee or as a liaison to an association committee, speak at a forum, or attend a meeting at a peer organization. In all of these cases, service on the board is one of the reasons that this assignment has been delegated to the individual. It does not usually grant that person the board's proxy. Nor does it grant the designee the right to micromanage staff or expend resources on an activity that has not been approved in advance.

The volunteer hat is worn when individual board members serve in a direct-service capacity to the organization that does not necessarily relate to board service. For example, board members might be asked to provide their professional "day job" discipline expertise as a speaker at a workshop or to volunteer at a fundraising event. The volunteer hat is similar to the designee hat, because both roles usually involve implementation rather than policy formulation or decision making. Board members should avoid acting or speaking for the entire board or the organization, unless authorized to do so. While many board members recognize that they do not have governance authority under the designee or volunteer hat, they will be better prepared to interact responsibly with others when they understand that their words tend to be perceived as the board's voice.

Creating a Statement of Individual Board Member's Responsibilities

Whether a board member operates in governance, designee, or volunteer mode, the rub is to figure how to add the greatest value within the authorized scope of authority. Board members who meddle in the professional staff's domain or request special favors of the staff (without prior consultation with the chief executive, board, or appropriate committee chairperson) require labor-intensive remedial attention and divert critical resources from mission. Board members who operate as lone rangers preempt authority belonging to others, increase legal liability, and undermine the board's corporate authority.

An explicit statement of individual board member respon-

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sibilities adapted to the association's governance needs provides a pragmatic governance tool to new and more seasoned board members alike. It can define expectations before board candidates accept nomination. It can also clarify the baseline criteria for reviewing the performance of incumbents who are eligible for reelection or appointment for another term. At the end of the day, board culture and human behavior have a profound impact on the board's performance and effectiveness. When individual board members model constructive written rules, there is a greater chance that a board will move from an assembly of elected individuals to a high-performing, accountable governing board.

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WRITING A STATEMENT OF BOARD MEMBER RESPONSIBILITIES

If your organization does not have a written statement of board member responsibilities, consider a session at an upcoming board meeting that asks the board the following questions:

1. What are the board members' fiduciary responsibilities, including ways they can avoid conflicts of interest or perceptions of conflicts of interest?
2. What are board members' responsibilities regarding meetings (before, during, and after)?
3. What are board members' responsibilities regarding relationships with staff?
4. How do we expect board members to interact with association members?
5. What other general expectations do we have of board members?

Here's a tip for board orientation or board development programs: Keep this individual board member job description alive on an annual basis by describing the actual ambiguities, opportunities, or tensions that individual board members face in fulfilling their responsibilities in the form of mini-case studies.