Enforcing Board Member Responsibilities

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It's impossible to be too grateful to a member of a nonprofit board. Volunteer board members donate countless hours to the causes and organizations they love. And many of the tasks for which the board's attention is required seem distant from the compelling mission at the heart of the organization. Yet most board members willingly contribute the time and intellectual capacity the nonprofits they serve require.

The generous contributions of nonprofit board members make the ambitious missions and innovative programs of nonprofit organizations possible. Even when the talents and energies of individual board members differ, the contributions of a diverse board often come together in a mosaic of service and good governance.

From time to time, however, individual members of a nonprofit board may shirk from their responsibilities; or worse, board members may behave in a manner that is unbecoming or destructive. Many nonprofit leaders are surprised, if not stunned, to witness the damage that a 'bad actor' on a board can cause. And when a nonprofit board includes more than one member behaving badly, the situation can quickly move from unhealthy to dire.

When board members fail to meet their responsibilities or behave badly the negative consequences include:

- **Discomfort**. Although it may be obvious that "someone needs to do something," a period of discomfort and awkwardness will ensue and continue until that "something" gets done.
- **Resource and focus drain**. In the wake of inappropriate action or misconduct the board's mission-driven focus will be diverted, if not drained. Instead of moving forward with ambitious plans for new programs and improved governance, energy must be redirected away from mission to getting the bad actor back on board or in a worst case scenario, off the board.
- **Collateral damage**. The actions or inaction of bad actors may hasten the departure of effective board members. It is not unusual for one or more board members to become discouraged when they witness fellow board members behaving badly. Tolerance levels differ, and one or more members may decide they no longer have the patience and enthusiasm required for board service.

This short list of the damage that bad actors can cause is just a beginning. Damage assessments range from short-term "fixable" issues to lasting harm that is hard or impossible to repair. In all cases the solution is preventing bad behavior or poor performance wherever possible, and addressing it in a timely and effective manner when it occurs. In the paragraphs that follow we explore practical approaches to enforcing board member responsibilities.

Begin Before the Trouble Starts

The first lesson in enforcing board member responsibilities is to set the stage for accountable and appropriate board conduct. Countless board chairs and CEOs have learned the hard way that most board members do not have innate governance skills, nor are they able to intuitively understand the organization's culture, operating rules, and its expectations of board leaders. To get the board off on a solid footing:

- **Provide a board job description that clearly and plainly describes the expectations of board members**. If board members are expected to raise funds, say so. If meeting attendance is required, be clear that this is the case. If questions to staff members must go through the executive director, describe the chain of command in explicit terms.
- **Schedule a board orientation and leadership training session**. Many leaders report that board training is best received when the "messenger" is from the outside, rather than a peer who serves on the board or a senior staff member. Also, make certain that the messenger is equipped to talk about governance responsibilities in general (e.g., the duties of care, obedience and loyalty) as well as nuances pertaining to your nonprofit (e.g., the board's job description, the division of labor between the board and staff, implications of the organization's recent merger or expansion, etc.).
- **Provide coaching for the chair**. The board chair is not simply a member of the board who sits at the head of the meeting table and "runs" the meeting. The chair position requires leadership ability, effective listening skills, and a stomach for tough issues, including disputes involving fellow board members. Consider ways to "position" your board chair for an effective term of service by providing the information, resources and support s/he will need to serve with distinction.

- **Establish a communications protocol**. Choose methods that work for staying in touch with the board and make certain that newly elected members understand how to stay inside the communication loop. Board portals, password-protected board Web pages and email groups offer options, but they are only effective when used consistently.

Define and Reinforce Your Norms

While the word "unique" may be a bit extreme when describing a nonprofit board, every board has one or more elements of its organizational DNA that distinguish it from others. 'Normal' practice at one board table may be unacceptable at another. To keep the peace and empower board members to perform, take the time to define and reinforce the "norms" for the board and the nonprofit. For example:

- **Develop a set of protocols for in-person and telephone meetings**. What steps and techniques will you use to encourage candid participation, keep meetings on schedule, and prevent one or more members from sidetracking or sabotaging discussion? What do board members need to know to contribute effectively to meetings? When should members expect to receive background materials and how will they be transmitted (e.g., four days prior to the meeting delivered via email)?
- **Define the relationship between the board as a whole and its committees**. Nonprofit board structures vary to a large degree, and your board members may find the structure that works for your organization to be unusual or confusing. For example, does the executive committee tackle key issues on a regular basis, or only when critical matters arise in between meetings? Is committee membership or participation at committee meetings open to all board members?
- **Explore ways to maximize board engagement and participation**. While the leadership style of your chair will differ as the occupants of that position change, there are common practices that encourage or discourage engagement and active participation. For example, a chair who arrives at every board meeting with her mind made up and "ducks in a line" is likely to garner resentment by board members who see their involvement as limited to rubberstamping the chair's plans (see the description of "the Playwright" board member in the sidebar). This unfortunate leadership style can be countered by incorporating key discussion questions into the board agenda. Inviting the board to discuss "is this the right strategy?" before proceeding to vote on any important issue is one approach.

Anticipate Trouble and Plan Accordingly

Even the nicest group of dedicated volunteers will, on occasion, sail into troubled waters. Pretending that "it couldn't happen here" or looking up and away at the distant horizon will not keep the nonprofit and its board from drifting into the Bermuda Triangle. A better approach is to anticipate difficulty related to: (1) the inability or failure of board members to perform as required or requested; or (2) unacceptable conduct. Next, consider action that will be triggered if either form of drift occurs. For example:

- **Timely follow-up concerning minimum commitments**. The Board Chair (or another board member tapped as the “enforcer”) should act without delay to inform a board member when their participation is close to falling below the nonprofit’s requirements. A phone call to the member who has missed successive meetings and is subject to automatic removal is a professional and appropriate form of intervention. The leader making the call should use the opportunity to solicit the absent member’s feedback to determine whether absences are due to unavoidable schedule conflicts or another matter, such as the member’s discomfort with discord between factions on the board. The twin purposes of the call are to gather information and determine a mutually agreeable path forward.
- **Board “interventions” to stop bad behavior before it escalates**. The Board Chair should understand and appreciate the occasional need to point out inappropriate behavior and request compliance with the nonprofit’s norms. The conversation between the chair (or the Governance Committee Chair or other designee) may involve reminding a member about the nonprofit’s norms and protocols and identifying how the bad behavior is in conflict with the norms.
- **Disclosure and formal action**. In a worst case scenario, the actions or behavior of one board member may need to be disclosed to the members of the executive committee or to the full board. An example would be when a board member is found to have violated the duty or loyalty. Consider the nonprofit whose board member compromised the organization’s negotiating position with a third-party. When the matter was discussed with the board member at the executive committee level he expressed sincere regret and provided a credible explanation for the chain of events. The executive committee was able to close the matter in a timely fashion and the board member was invited and encouraged to remain.

Addressing inappropriate conduct or the failure to live up to commitments is often difficult, even for the most experienced chair or savvy board leader. Understanding that doing so is necessary to keep the nonprofit’s compelling mission at the forefront may help ease the chair’s reluctance to “get involved.”

The chair should also recognize the importance of using the right tools for the job. Email is an “easy,” but sometimes ineffective and inappropriate way of communicating. The old fashioned method of picking up the phone is preferable when conveying difficult information to a board member. Another example of using the right tool is the importance of sending the right emissary. In some cases it may be preferable to “send” or deploy a board member who is an ally of the bad actor rather than the chair.

While there are no magic bullets for ensuring that board members do as they promise and conform to your nonprofit’s norms, there are practical steps that you can take at all stages of board service. Beginning long before trouble occurs, anticipating some of the difficulties that are common within nonprofit boards, and taking timely and appropriate action are essential elements of playing the game of governance with success in mind.

Melanie Lockwood Herman is Executive Director of the Nonprofit Risk Management Center. She welcomes your feedback on this article and questions about the Center’s resources at Melanie@nonprofitrisk.org.

Additional Resource:

My colleague Eileen Morgan Johnson of Whiteford, Taylor and Preston, LLP has authored a humorous piece on dysfunctional board ‘characters’ who often appear at nonprofit and association board meetings. Her musings (below) on the “cast of board characters” offers a lighthearted look at board roles as a helpful reminder about both the consequences of bad behavior and the need for action.