What Every Board Member Needs to Know about Leading a Nonprofit

A Collection of Wisdom and Strategies from Industry Professionals

Thank You

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PART ONE

It's Different Out Here

It’s Different Out Here

Norwegian Cruises Lines used this as an advertising slogan a while back. It may be the perfect description of your role as a member of the Board of Directors for your nonprofit organization.

Every year a couple million folks just like you step up and give of themselves to manage the nonprofits who perform such vital tasks for our society. They give of their time, their talents, their treasures, and their connections. On behalf of those who will benefit so greatly, we say thanks.

This book is about your role as a Board Member. There is no doubt that many of the talents you have will be very valuable to the nonprofit. The experiences and skills you’ve acquired can greatly help it to be successful.

But, managing a nonprofit organization is different than running a business, a law firm, a university, a professional practice, or almost anything else. It’s not that the skills don’t transfer but the philosophy often doesn’t. It’s just different.

I like analogies and here’s one that may help: Imagine that your Board of Directors is an Olympic Track & Field Team. On your team, you have sprinters and distance runners, hurdlers and discus throwers. For each of the events, a world-class talent is on the team to compete.

And then comes the equivalent of a nonprofit organization: the pole vault.

One pole vaulting website described it like this: A combination of gymnastics, weightlifting, sprinting, and jumping, pole vaulting is one of the most technically demanding events in athletics. Pole vaulters must be fast, powerful, strong, agile, and brave to succeed in this challenging and sometimes dangerous sport.

Long-time world record holder Sergey Bubka put it this way: “One must not only run and jump, but one must think. Which pole to use, which height to jump, which strategy to use.”

One anonymous vaulter wrote this: “Pole Vaulting is very difficult for many reasons, but one reason sticks out… To be successful in the pole vault you must teach your body to go against what it is naturally trained to do. Anytime a person is scared. the body’s natural reaction is to go into the fetal position (bringing all limbs to the center of the body). To be a successful pole vaulter, you must technically do the opposite which is to extend arms and legs at takeoff and swing upside down while in flight.”

Pole Vaulting is really tricky – and hard. A popular meme in the sport is this: “Cool story, dude. But do you pole vault?”

Running a nonprofit organization is also tricky – and hard. It’s complex. It is simply different.

Consider just a couple of differences in a nonprofit vs. most other types of organizations. First, the owners of the nonprofit are the community. Not the Executive Director, not the Board, but the community. You’re a temporary manager of that community organization.

Then there are volunteers. I doubt many corporations have people anxious to donate their time to support and sustain a corporation. Law firms and doctor’s offices don’t have volunteers. How does one manage that process?

Each of the chapters in this book is written by a professional who has helped dozens if not hundreds of nonprofit organizations, by one who specializes in helping nonprofits. Many of the collaborators have also worked for and managed nonprofits. Some have also served in your role as a Board Member.

Our goal is to help you be a great board member so your nonprofit can thrive and the community need you’re tackling can be helped, or even solved!

Glad to have you on board. The water’s fine, but it is different.

Scott Evans, Editor

Scott Evans

Freelance Grant Writer and Grant Instructor

By Casey Hale

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PART TWO

About Governance and Legal Compliance

About Governance and Legal Compliance

“It is the small things in life which count; it is the inconsequential leak which empties the biggest reservoir.” Charles Comiskey

“It’s the little details that are vital. Little things make big things happen.” John Wooden

Many believe the time to call a lawyer is when their organization is facing the threat of a lawsuit or some major dispute has arisen. But during the more than two decades of working with nonprofit organizations, I have found that neglect of the small things — that is, those things organizational leaders may think are insignificant, unimportant, or unworthy of attention —typically causes the most distraction or even derails an organization from its mission. On the other hand, organizations that manage the small things well are best positioned to grow, thrive, and succeed. These organizations face the fewest organizational distractions and legal disputes. Attention to the small things is the brick, mortar, and rebar of a strong organizational foundation.

How does a board of directors (the “Board”) ensure the organization it governs is managing the small things well? Here are ten items to which any Board should pay close attention.

1. Competent Counsel and Support - Team of Outside Experts

First and foremost, organizational leaders can ensure they are positioning themselves to manage the small things by authorizing and directing the organization to engage competent outside professionals and consultants — such as legal counsel, accountants, insurance professionals, human resource consultants, fundraising professionals, etc. — who serve nonprofit organizations as a significant part of their work. Nonprofit directors and officers must have access to professionals and consultants equipped to help them navigate the unique legal, accounting, and regulatory environment in which IRC §501(c)(3) exempt organizations operate. There is too much at stake to risk going it alone or working with outside professionals and consultants who do not have the necessary nonprofit expertise and experience to guide the organization competently.

This is especially true for legal counsel. Every Board should ensure that the organization has access to competent legal counsel. When dealing with specific nonprofit corporate and legal issues, the Board should seek and rely on legal advice from an attorney experienced in nonprofit corporate legal issues. To do so otherwise risks missing issues unique to nonprofit corporations and jeopardizes the Board’s ability to carry out its fiduciary duties. Thus, every Board should ensure that the organization engages only competent legal counsel and avoids seeking or relying on legal advice from non-lawyers within the organization.

To that end, some organizations add an attorney to the Board. This is not necessarily a good alternative, however, because it gives rise to issues that would not otherwise be present with outside legal counsel. For instance, how does an attorney serving on the Board resolve the inherent ethical issue that arises when the attorney advises on a legal issue upon which the same attorney must vote as a Board member? How does the Board and an attorney serving on the Board handle a situation where the attorney gives legal advice the Board decides to ignore? Is the Board confident that the attorney, serving as a volunteer director, can assume full professional responsibility for a legal matter as required for the attorney to zealously represent the organization as client? Is it clear to the Board whether the attorney’s firm or malpractice carrier permits the attorney to represent the organization as legal counsel while serving as a volunteer director on the Board?

2. Corporate Issues - Fiduciary Duties – Personal Liability

Each Board member is responsible under the law applicable to nonprofit corporations exempt under IRC §501(c)(3) to ensure that he or she is carrying out their individual fiduciary duties as a director.

First, the duty of care requires each Board member to perform his or her duties with the level of care that an ordinarily prudent person in a like position would use under similar circumstance, including making reasonable inquires whenever necessary. This duty requires each director to be familiar with the organization’s corporate documents, major corporate policies, significant contracts, and programs and operations. It also requires Board members to attend meetings regularly and to be prepared to make informed decisions at those meetings.

Next, each director owes a duty of loyalty to the organization, which requires a director to make decisions that are in the organization’s best interest. In other words, each director must act with unequivocal loyalty to the organization’s interests and forego benefitting personally from the organization’s activities or assets. Make sure the corporation is benefitting, not a Board member.

Finally, each director must fulfill the duty of obedience. This duty requires each director to adhere to applicable law and comply with the organization’s governing documents (i.e., articles of incorporation, bylaws, policies, etc.). To fulfill this duty, each director should read and familiarize themselves with each of the organization’s governing documents.

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3. Corporate Issues - Legal documents

Third, the Board must ensure it keeps the organization's articles of incorporation and bylaws current. The articles of incorporation and bylaws, among other things, contain the organization's purposes and governance structure. Often these documents were prepared long ago and subsequent Boards allow the organization to drift from the original mission and governance practices. The Board is responsible to see that the organization's operations are strictly aligned with its express purposes and that it governs according to the framework set forth in the bylaws. Failure to do so can lead to revocation of the organization's exempt status and more often than not gives rise to internal conflicts among the directors and officers.

The Board also must ensure that policies the corporation implements are up-to-date, uniquely apply to an issue the corporation needs to address, and are enforced evenly and consistently organization-wide. The Board should avoid adopting policies that are simply duplicates of another organization's policies for the sake of convenience. Finally, the Board should be familiar with and involved in approval of all of the corporation's major contracts.

4. Corporate Issues – Corporate Formalities and Recordkeeping

Fourth, the Board is responsible to see that the organization adheres to certain corporate recordkeeping practices. (See California Corporations Code § 6320.) Corporate recordkeeping includes a duty to keep minutes of Board meetings and other similar proceedings, copies of the current articles of incorporation and bylaws, lists of members (if any), and adequate and correct financial records. The minutes must be an accurate reflection of the Board's discussion and decisions and certified by the Board's secretary to be accurate and complete. Additionally, under Federal law, the organization must also maintain, for public inspection, a complete copy of the organization's IRS Form 1023. Recordkeeping practices may seem insignificant or unimportant relative to fundraising or key programs. But without good corporate recordkeeping practices, how else will the Board demonstrate it is adhering to corporate formalities? And without such corporate formalities how will the Board show it is fulfilling its fiduciary duties?

5. Tax Exemption – Reporting Requirements

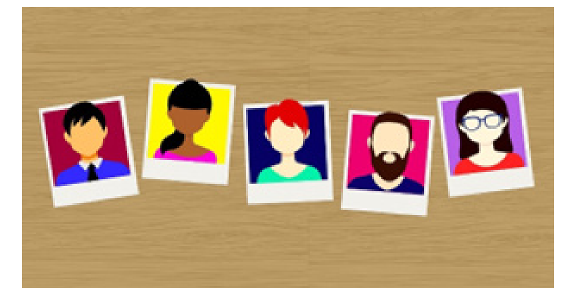
Fifth, as a nonprofit corporation, recognition of exemption under IRC §501(c)(3) is the organizational crown jewel and should be protected as such. Yet a Board's failure to doing small things may result in revocation of this exemption. For instance, a California nonprofit corporation exempt under IRC §501(c)(3) must file an annual return with the Internal Revenue Service and the California Franchise Tax Board. Failure to do so for three consecutive years will result in revocation of exemption under both Federal and California law. The corporation must also file an annual report with the California Attorney General's Registry of Charitable Trusts. Failure to file this annual report can lead to suspension of exemption.

6. Tax Exemption – Other Issues

Sixth, the Board also needs to know that exemption under IRC §501(c)(3) does not necessarily mean the corporation is exempt from all forms of taxation. The corporation will have to report and pay taxes on unrelated business taxable income ("UBTI") the corporation earns on IRS Form 990T. UBTI is any income derived from an unrelated business activity regularly carried on by the corporation. Also, the corporation will not be generally exempt from state and local sales tax. There are some narrowly drawn sales tax exemptions the corporation may qualify for. But outside of these few exemptions, the corporation will be responsible for sales tax. Finally, with regard to real property, there are exemptions available if the corporation timely files the required claims forms with the California Board of Equalization and the local county assessor's office.

7. Human Resources - Employment Issues; Volunteers

This is an area fraught with potential for liability. With human resources, the devil is definitely in the details. The Board is responsible to ensure the corporation complies with all of the state and federal legal obligations that apply to the corporation as an employer. Without solid compliance measures in place, the Board can unwittingly find itself defending the corporation against a myriad of claims, such as failure to properly classify its workers, wage and hour claims, meal and rest break claims, etc. The list of applicable employment/labor laws is lengthy, which makes the opportunities for noncompliance abundant. Violations of the law can lead to the corporation being forced to pay damages from operating funds since many such damages are not covered by insurance.



Many nonprofits rely heavily on unpaid labor in the form of volunteers or interns. While these workers are not employees, still there are legal issues the Board must pay attention to. Misclassifying a worker as a volunteer or an intern, for instance, when the worker is actually an employee, can lead to liability.

The organization can also be held liable for acts committed by the volunteer that results in harm to a third-party and for injuries the volunteer suffers as a result of the corporation's negligence.

8. Fiscal Accountability – Financial Records and Internal Controls

The Board is responsible, like with corporate recordkeeping, to see that the organization is maintaining adequate and correct financial records and books. Accurate fiscal management practices are critical because Board members and officers can be held liable should the organization make, issue, deliver, or publish financial reports that are false in any material respect. (See California Corporations Code §§ 6320, 6812.) The Board is also responsible to safeguard the corporation's assets by ensuring that adequate internal controls are established and maintained. In fact, Board members can be held personally liable if the corporation's assets are misappropriated or misused as a result of nonexistent or insufficient internal controls or the Board's failure to exercise due care or reasonable inquiry. The Board is ultimately responsible for all corporate activities, including financial management. (See California Corporations Code §§ 5210, 5231(a).)

9. Fundraising

Fundraising is a necessary part of an organization's operations and activities. For most, it is the organization's life-blood. Fundraising methods vary widely and can involve, among other things, in-person, telephone, mail, e-mail, or website solicitations across multiple or all 50 states; product and ticket sales; vehicle donations; collection bins, and even third parties soliciting funds on the organization's behalf. Each of these requires careful compliance with applicable rules, regulations, and registration requirements.

10. Organizational Risks – Insurance

From time to time, I have encountered nonprofit officers and directors who believed a nonprofit organization had no need for liability insurance. While a § 501(c)(3) organization may be exempt from taxation, it is certainly not exempt from liability risks. Every organization needs insurance sufficient to protect the corporation and its officers and directors against the liability risks they face. At minimum, an organization will need to carry a commercial general liability policy. Additionally, an organization with even one employee must also have workers' compensation. It is also advisable that every organization carry directors' and officers' liability coverage to protect the organization's officers and directors personally for claims that arise as a result of their official activities. When obtaining the needed coverages, the organization should work with an insurance agent who is knowledgeable in the area of nonprofit insurance coverages and issues. Each organization must carefully consider — with their insurance agent or broker — the specific types of insurance and policy limits the organization will need to carry taking into account, among other things, the nature and scope of the organization's activities, the number of employees and volunteers, the amount of the organization's assets and revenues, and the organization's risk profile and claims history. Organizational leaders who ignore thoughtful consideration of an organization's insurance coverage needs do so at their own and the organization's peril.

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In 2009 - 2012, Casey was named a "Southern California SuperLawyers-Rising Star" by Los Angeles Magazine – a distinction recognizing just 2.5% of attorneys under age 40 for excellence in the practice of law. Casey also serves on the Board of Directors of Enlace USA. Enlace USA equips local churches in El Salvador, Guatemala, Nicaragua, and Nepal to become leaders in their communities and to collaborate with the local community to build enduring solutions to poverty.

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Casey Hale

Attorney, Brown & Streza

By Lillian Romero Gomez

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PART THREE

About Risk Management and Insurance

About Risk Management and Insurance

"Tell me and I forget. Teach me and I remember. Involve me and I learn." By Benjamin Franklin

Risk Management and Insurance. The topic every Board member wants to pass over to the executive director or management team and at times avoid entirely. However, to effectively lead and govern a nonprofit, Board members need to have a fundamental understanding of its organization's risk and exposure. A nonprofit is a business and therefore shares similar exposure.

In my 30 plus years as an owner of an insurance agency, the most successful nonprofits collaborate with their Board Members and executive team. This means that the two are working together to mitigate its risks and exposure. That is why you as a Board member need to educate and familiarize yourself in an organization's risk management program, including insurance. Avoid just purchasing a policy without understanding what it covers and more importantly what is not covered. Working closely with an insurance broker with nonprofit experience is the best way to address your insurance needs. When appropriate call or ask your insurance broker to review your insurance program.

This article aims to provide a basic summary of what a board member needs to know to participate in its nonprofit's risk management plan. Being informed is the key to success.

1. Know Your Organization's Operations and Exposure

The Board of Directors has significant responsibilities to the nonprofit they serve and other stakeholders. While many Board members assume that their primary function is fundraising; in fact, their responsibilities and liabilities are far more reaching. Further, a Board member puts themselves in a position of legal liability/vulnerability.

Like a Board member of a for-profit organization, nonprofit board members have three primary fiduciary duties to their nonprofit: (1) the Duty of Obedience – Comply with laws and adhere to the mission of the organization; (2) the Duty of Loyalty – put the interest of the nonprofit first; and (3) The Duty of Care – to make reasonable and informed decisions. While there are many legal theories surrounding these issues, of importance is the duty of due care.

As mentioned in Casey Hale's chapter in this book, the duty of care holds for the proposition that board members be diligent in managing the organization's affairs. Further, failing to uphold this duty could expose a board of directors/board members for liability for their governing decisions. Accordingly, understanding the organization's exposures and implementing an effective risk management program is critical to following the duty of care. This comes in many forms, such as understanding the nonprofit's financial health, the functions of the nonprofit, and the exposure of the nonprofit.

Real-Life Scenario: A board member from a multi-service nonprofit wanted to know if we – their insurance broker - had any information regarding new loans (certificates of insurance) processed at the executive director's direction. This board member was concerned that he might be responsible for the payment of these loans if they could not be repaid by the nonprofit. A board member should never be left in the dark about financial issues.

2. Risk Management and The Board of Directors

Once you have evaluated your organization's exposure, engaging, and understanding the organization's risk management is the next step to safeguard the Board and the organization. The basis of risk management is anticipating what can happen in the future and acting accordingly. Risk management should be within the nonprofit Board's scope of responsibilities. Not only should the Board be working with its executive director on the organizational risk, but as board members, the focus should be on the big picture of these organizational threats: lawsuits, compliance, community reputation.

A critical risk management practice for the Board of Directors is to follow board practices to guard against the threats of lawsuits. While there is no guarantee that the Board will not be sued, good Board practices can be effective risk management. The following are a few of the most critical board practices every Board should address:

- The Board of Directors should review the financial condition of the nonprofit. Board members should understand the sources of income for the nonprofit and know where those resources are being expended. A certified accountant or CPA should prepare financials to ensure financial compliance.
- Regular attendance at board meetings will provide the board member with a thorough understanding of the operations and any concerns facing the nonprofit. Ensure agendas, and supporting documents are properly reviewed and that accurate and complete minutes are prepared for every meeting.
- Have a clear understanding of the personnel situation. Usually, it is the Executive Director and immediate leaders that have authority over all personnel matters. If the division of labor between the Board of directors and the executive director is unclear, legal issues may develop.
- Avoid conflicts of interest. If board members receive any compensation even by offering services to the organization, it may be required to be disclosed.

Real-Life Scenario: A board member had requested that a family member be hired as an employee at this nonprofit and went directly to the executive director. The executive director did not run this through the remaining Board members. The position was not a good fit, and the organization terminated the employee. This situation caused a painful rift and exposed the Board to an underlying employment claim of not the fired family member and the executive director for stress, harassment, and retaliation.

3. Risk Management Basics

Nonprofit organizations and the Board of directors have a legal and moral responsibility to ensure a safe environment for their employees, volunteers, and the community they serve. Organizations need to integrate risk management practices into all their planning and decision-making activities. Risk management is about dealing with uncertainties. It is about the potential for, forecasting risks and doing everything reasonable to control them. The following is the basic risk management model:

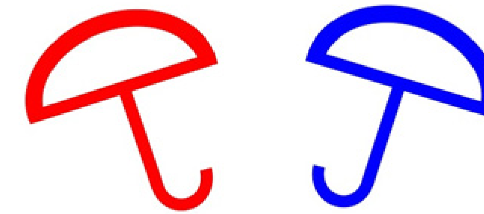
- Establish a risk management team to evaluate your organization's exposure and operations. A board member should be included in the risk management team along with other volunteers, employees, and others who support the nonprofit.
- Identity risks of the organization. The aim is to create a "master list" of threats.
- Evaluate the risks. Prioritize the items on the master list of risks so that the risk management team can prioritize the most urgent risk. The master list of risks can be sorted into low risk and high risk. Low risks are very unlikely to materialize into harm, loss, or liability, but not impossible. High risks are very likely to occur into harm, loss, or liability; future incidents are expected.
- Control the risk. The risk management team comes up with plans on how to eliminate and reduce risks to a tolerable level. Strategies are developed into an action plan that includes four approaches: (1) Stop the activity entirely; (2) Eliminate the risk by adding safeguards; (3) If the risk cannot be eliminated, find solutions to minimize the harm; and/or (4) Transfer the risk or liability. When all other risk management avenues have been pursued, the nonprofit should take steps to reduce its own liability using the following: memo of understanding, hold harmless agreements, waivers, indemnification clauses, permission slips, disclaimers, contractual collaborations, insurance policies. Consult with an attorney on the appropriate use of liability protection.
- Continuous review and updates of the risk management plan. Just because the risk management team has finished with their loss control program does not mean that the job is done. Risk management safety protocols should be continually reviewed and updated.

Real-Life Scenario: A daycare program had one volunteer located at each exit gate to make sure the children would not be able to leave the area. A volunteer had to abruptly leave due to an emergency leaving the gate unattended and unsupervised. A few children were able to leave the premises to play outside the gated area. While no children were injured, this risk was re-evaluated, and a new plan was put in place. The risk management team reviewed this area of weakness and eliminated the risk by developing a plan that required two volunteers at each gate so that if one volunteer had to leave, there would be a backup.

4. Risk Management and Insurance

Insurance should be considered as part of the organizations' risk management program. Insurance allows a business to transfer the cost of claims and lawsuits to the insurance company. Insurance coverage may also be required by landlords, funding sources, grants, contracts, agreements, and collaborations with other entities.

The Board of directors should have a clear understanding of how the organization is insured, the financial exposure of the organization, and any potential gaps in insurance. As a reminder, simply buying one policy will not cover all potential exposures. For example, your General Liability policy will likely not cover any employment claims/employee injuries and/or cyber claims. Insurance policies are specifically tailored for a specific purpose. It is also important to note that when you purchase a policy, what is covered may differ from insurance company to insurance company.



Knowing your organizations' exposure will help better protect your organization so you can share your exposure with your insurance broker. While the Board is not usually responsible for the day-to-day operations of the organization, they should be aware of their insurance program and consult with their insurance broker and attorney.

The following is a list of the most common insurance coverages carried by a nonprofit organization.

General Liability

Most organizations carry a Commercial General Liability (CGL) policy. A Commercial General Liability policy protects a business from financial loss should it be liable for property damage, personal injury, and/or advertising injury caused by the operations of the organization. The intent of CGL Insurance is to cover against lawsuits that arise from everyday business activities. A CGL policy is usually written in the following manner:

Coverage A: Bodily Injury and Property Damage Liability

- Third-Party Injury- Trip and fall injury. Coverage for medical expenses up to the policy limits and defense against bodily injury lawsuits.
- Third-Party Property Damage- Coverage for expenses from property damage caused by the business, such as an employee/volunteer damaging a visitor's technological device.

Coverage B: Personal and Advertising Injury

- Product Liability- Protects the insured against harm caused by its products, such as having a bake sale and not properly disclosing the use of an allergen such as peanuts.
- Advertising – Coverage for Libel, slander, infringement on another's copyright. For example, taking a photograph of someone and putting it on your brochure/website without express permission.

Coverage C: Medical Payments

- Medical Payments- Limited coverage for medical payments includes payments for injuries sustained by a non-employee caused by an accident that takes place on the insured's premises or when exposed to the insured's operations.

Most standard General Liability policies do not cover Professional Liability, Employee Discrimination Lawsuits, Vehicles used by the business, or Employee Injuries. Separate policies must usually be purchased for these exposures, but some coverages can be endorsed on to the General Liability policy.

Of course, additional liability coverage can be added by endorsement to a CGL. The types of coverages that can be added are special events liability, liquor liability, pollution liability, volunteers as additional insureds, non-owned automobile liability, professional liability, and improper sexual conduct. If you have various funding sources and/or collaborate with other entities, you will want to familiarize yourself with the concept of the additional insured. An additional insured is a person or organization not automatically included on the policy. Instead, it may be required by contract such as a lease or funding agreement to be added to the liability policy.

RISK MANAGEMENT TIPS:

1. To reduce general liability claims, the organization must behave lawfully and focus on the welfare and safety of staff, clients, customers, contractors, and the community.
2. Document Everything. Keep accurate records of the organization's focus on safety. For example, keep copies of communications with clients or employees about safety and loss control.
3. Train staff on risk control. Every employee and contractor should be aware of the importance of safety in their operations.
4. Identify potential hazards or risk(s) and then develop the appropriate safety plan.
5. Analyze prior claims and lawsuits to develop appropriate risk management strategies for safety moving forward.
6. Slip and fall hazards are one of the most common liability risks. Employee training is critical to reducing slip and fall claims. To help mitigate slip and fall claims, periodic safety checks should be made of the workplace, including but not limited to: Lighting, Exits, Stairs, Housekeeping, Carpeting, Floors, and Walkways.

Directors & Officers Liability (D&O) and Employment Practice Liability (EPLI)

Directors & Officers Liability insurance (D&O) covers claims arising out of the management decisions of the board members and the corporation itself. D&O coverage for nonprofits is usually written in combination with Employment Practice Liability Insurance (EPLI), which covers suits by employees for discrimination and other allegations of unfair treatment. D&O coverage for nonprofits is usually written in combination with Employment Practice Liability Coverage (EPLI), which covers suits by employees for discrimination and other allegations of unfair treatment.

Board members are generally responsible for the governance of the nonprofit corporation and can be held liable if they fail in this undertaking. Board members must put the interest of the corporation above their own. Failure to do so could limit or exclude coverage under a D&O policy.

Even with the best of intentions, the Board of directors can be held responsible and sued. The following are examples of the types of claims/lawsuits brought against the Board of directors:

- Using targeted donations for another purpose
- Failing to fund services as mandated in their mission statement
- Approving the sale of land or another asset at a discounted price to a fellow board member or another friend of the Board.
- Providing services to individuals who were outside the organization's mission statement.
- Disclosing confidential information or trade secrets.
- Failing to properly supervise the executive director.
- Regulatory Issues
- Wrongful Termination, Discrimination, Sexual Harassment, Wage & Hour

There is no "standard" D&O/ form. Each insurance company writes its own coverage form resulting in important differences in coverage. Most D&O insurance policies are written on a claims-made basis and include various coverage sub-limits and retentions. The following are a few critical items that should be reviewed:

- Defense Inside or Outside of Limits: When possible, defense outside of limits is preferred, as it will not erode liability policy limits, which will be available to pay settlements resulting from a suit. Defense inside the limits means that any money spent on legal services would directly reduce the total limit of liability.
- Duty to Defend means that in the event of a claim, the insurance carrier has the right and duty-to-defend the claim, even if the claim is groundless or fraudulent.
- Full Prior Acts Coverage: Verifies that claims arising from acts that took place before the policy's inception date are covered. For example, California recently enacted a statute, which would expand the statute of limitations from one year to three years for an employment lawsuit. An employee that comes back to sue your organization one, two or three years after the termination date could be covered with a full prior acts endorsement on your policy.
- Hammer Clause: Insurance defense and settlement clause that allows the insurance company to compel an insured to settle a lawsuit. If the insured goes against the settlement recommendations of the insurance carrier, the insured could be responsible for additional costs or litigation expenses.

Employment Practice Liability Insurance (EPLI)

Employment Practice Liability Insurance (EPLI) insures against claims and lawsuits brought by employees involving discrimination and other employment-related allegations such as retaliation, wrongful harassment, and Wage and Hour. Additionally, if your organization has five or more employees, it faces liability under the California Fair Employment Housing Act for discrimination, retaliation, and harassment for protected characteristics. There is no "standard" EPLI insurance form, allowing for insurance carriers to offer their own terms and exclusions. EPLI coverage can be purchased in the following manner: Stand Alone Policy, In Combination with Directors & Officers Liability Policy, onto the business package policy as a sub-limit of coverage, onto other insurance policies including Cyber Crime and Professional Liability.

- Wage and Hour Liability
  - Some coverages will covers indemnity and defense costs related to violations of the Federal Fair

Labor Standards Act (FLSA), which established standards for minimum wage and overtime pay. The most common violations of the FLSA include failure to pay overtime to non-exempt employees and misclassifying employees as either exempt or independent contractors. In general, most EPLI policies exclude Wage & Hour claims unless the policy is endorsed with Wage and Hour Liability coverage. In California, only a defense sub-limit is available with some insurance carriers.

- Fiduciary Liability
  - Some D&O policies will also include Fiduciary Liability coverage, which essentially covers breach of duties under the Employee Retirement Income Security Act ("ERISA") of 1974. If your organization offers benefits such as health insurance, retirement options, etc. Fiduciary Liability Insurance will protect the organization from claims of mismanagement and legal liability arising out of the role as fiduciaries.

RISK MANAGEMENT TIPS:

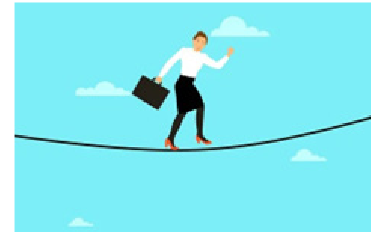
1. It starts with a strong board that cares about the nonprofit organization they serve. The Board of directors must apply sound corporate governance principles and a comprehensive review of all policies.
2. The Board of Directors should review their D&O/ EPLI insurance policy and determine if it provides the coverages and liability limits needed to protect the nonprofit organization and its Board of directors.
3. The Board of Directors should be informed of labor requirements and compliance regulations that may impact the organization. The Board should make sure that the employee handbook is current and reviewed by an employment attorney on an annual basis.
4. To mitigate Wage and Hour lawsuits, the Board should be informed of the organizations procedures and protocols involving payroll audits and practices involving timekeeping.

Abuse and Molestation Liability

The intent of this coverage is to respond to allegations of abuse and molestation. When an accusation of abuse or molestation occurs, the organizations' reputation is at stake, as well as the nonprofits' financial stability.

Despite its obvious name, it is a misunderstood coverage and frequently purchased with low limits of liability. The reason this coverage is misunderstood is because many people assume that abuse and molestation is covered under its CGL under bodily injury. That is not necessarily the case. Many times the insurance company will specifically exclude abuse and molestation but will permit it to be added by endorsement.

A few other important differences in Abuse and Molestation policies to consider:



- Abuse and Molestation Liability can be written as an Occurrence form or Claims Made. If the policy is on a claims-made form, pay attention to the Retroactive Date.
- Abuse and Molestation Liability can provide defense costs (legal costs) within the liability limits or outside of the liability limits. It is preferable to have the defense costs outside of the liability limits.
- Further, Sexual Abuse Coverage should not be confused with sexual harassment, which is more appropriately insured under a Directors and Officers liability and Employment Practice liability.

RISK MANAGEMENT TIPS:

Most insurance carriers will require the organizations to demonstrate that they have implemented a formal abuse prevention plan. The abuse prevention plan should include a policy statement that confirms the organization's commitment to providing a safe environment. Also, an effective screening procedure should be in place to ensure that all employees and volunteers who interact with vulnerable populations are suited for such work. Finally, Abuse Prevention training should be provided to all employees and volunteers who work with vulnerable populations, as well as procedures for properly reporting incidents of abuse.

Automobile Insurance - Hired and Non-Owned Automobile Liability (HNOA)

Hired and Non-Owned Auto insurance covers commercial liability expenses trigged by automobile accidents involving hired (e.g. car rental) and borrowed vehicles (e.g. employee-owned) for business use. If an organization relies on their employees or volunteers to use their own personal vehicles on behalf of the organization, there is an HNOA exposure, and the appropriates liability limits should be purchased. The nonprofit organization can be liable if their employee or volunteer is involved in an auto accident while driving their own vehicle on company time.

Hired and Non-Owned Auto Liability Insurance can be purchased as a stand-alone policy or in combination with their commercial automobile insurance or general liability insurance. HNOA does not cover physical repair expenses for the rented or employee-owned vehicle. Also, HNOA does not cover accidents that happen during an employee's commute or if they run a personal errand during or outside of business hours.

RISK MANAGEMENT TIPS:

To help mitigate automobile accidents, the organization should carry out regular vehicle record checks (MVR's) to ensure employees and volunteers have no major driving violations. Make sure the organization verifies personal automobile insurance for any staff member or volunteer who drives on behalf of the organization. Recommend personal automobile limits of at least $100,000 Combined Single Limit. Discuss liability limits with your attorney.

Crime - Employee Dishonesty

Employee Dishonesty coverage is a type of crime coverage primarily designed to insure against an employee's fraudulent or dishonest act, such as embezzlement. It compensates an organization for financial losses caused by property thefts committed by employees. Employee dishonesty coverage can be purchased as a stand-alone policy or in combination with property coverage.

A crime policy can offer separate limits for the following coverages: Employee Dishonesty coverage, Forgery or Alteration, Computer Fraud, Funds Transfer Fraud. A Volunteer endorsement can be added to the Employee Dishonesty coverage to protect again fraudulent acts of volunteers. Employee Benefit Plans can be covered under a crime policy if the name of the plan is listed on the policy.

The Board of directors should be informed of the organization's preventive measures and accounting best practices.

RISK MANAGEMENT TIPS:
Strong internal controls are the best way to mitigate employee dishonesty claims. Controls include the following:

- Thoroughly screen and obtain background information from job candidates to the extent permitted by law.
- Contractors (1099's) hired to provide bookkeeping /accounting services should provide proof of their General Liability and Professional Liability insurance.
- Create internal controls and supervision standards.
- Require and verify countersignatures on checks.
- Reconcile bank accounts monthly.
- Develop and implement audit procedures.

Cyber Liability

Cyber Insurance is designed to help protect the business from various technology-related risks. Cyber Insurance allows an organization to transfer costs to the insurance company. There is no standard policy form for Cyber Insurance. However, there is a move toward standardization (ISO has developed cyber liability forms). Most insurance policies are underwritten on a Claims Made basis and are sold as Stand-alone policies or included with other insurance policies such as General Liability, Directors & Officers Liability, and Professional Liability.

Some insurance policies will list various cyber coverages with separate limits, and other insurance carriers may offer two separate types of cyber coverages: Cyber Liability and Data Breach Insurance. Data Breach Insurance will respond to a breach of Personally Identifiable Information (PII) that gets lost or stolen, whether it is from a hacker breaking into your network or an employee error. Cyber liability helps to cover financial losses due to cyber-attacks or other tech-related risks, as well as privacy investigations or lawsuits following an attack.

The Board of directors should understand how the organization is protected from cybercriminals as well as potential in-house exposure (e.g., staff errors, disgruntled employees, lack of effective technology upgrades, etc.). The Board of directors should ask about the organization's crisis management plan, the crisis management team, and who would be responsible for dealing with any regulatory requirements?

RISK MANAGEMENT TIPS:

- Regularly back up all systems and apply the latest patches where recommended.
- Store backups separately. Make sure backups are stored on secure, separate devices that are not accessible from the company network.
- Train all staff on cybersecurity. Raise cybersecurity awareness of employees and volunteers with regular training/zoom sessions.
- Use hard-to-guess passwords and change passwords frequently.
- Secure virtual communications, e.g., ZOOM, Skype, Google Chats, etc.
- Use caution with links and website addresses
- Use and maintain preventative software programs.
- Focus on the potential cyber exposure of remote workers and their use of technology.
- Remote workstations: Never store sensitive data on personal devices.

Professional Liability

A type of insurance policy designed to protect professionals against liability because of errors and omission in performing their professional services. Professional Liability policies can be written on a stand-alone basis or in combination with other liability coverages.

There is no "standard" Professional Liability coverage form. Policies can be written on a claims-made or occurrence form, depending on the type of professional or service and insurance carrier. The most common exclusions on a professional liability policy include intentional and dishonest acts.

RISK MANAGEMENT TIP:
Consider bringing on other board members who offer similar professional services, such as another doctor if your organization is a clinic or another lawyer if your organization offers legal or social services.

Property Insurance

An insurance policy for organizations that insures against damage to their buildings, contents, and equipment due to a covered cause of loss, such as a fire.

There are essentially three causes of loss forms: The Basic, Broad, and Special causes of loss forms. The basic and broad causes of loss forms are named perils forms, they provide coverage for loss from only the particular cause that are listed on the property policy as covered. The special causes of loss form is an all risk form; it provides coverage for loss from any cause of loss except those that are specifically excluded.

Coinsurance clauses are found in many commercial property policies. The purpose of a coinsurance clause is to require policyholders to purchase sufficient fire insurance limits (usually replacement cost value) and penalize those who do not. When a policyholder does not purchase adequate insurance, in the event of a property claim, the insurer will reduce the claim payment required by the coinsurance percentage that was underinsured.

Additional coverages that can be purchased under a commercial property insurance policy include Business Income, Extra Expense, Crime, Equipment Breakdown, Ordinance Coverage, Electronic Date Processing (EDP), Valuable Papers, Accounts Receivable, Builders Risk. Discuss these coverages with your insurance broker.

Most Commercial Property policies exclude earthquake and flood. A separate policy must be purchased for these perils. Also, wear and tear are excluded from most property policies.

RISK MANAGEMENT TIPS:
To adequately insure the property of the organization, remember the following:

- Make sure that property is properly valued to avoid a coinsurance penalty.
- If the organization has leases/contracts requiring property coverage, make sure the contract is reviewed and notify your insurance broker.
- If your building is vacant for a period of time, notify the insurance carrier as coverage and be jeopardized.

Volunteer Accident Insurance

Volunteer Accident Insurance protects the organization's volunteer workforce for medical costs associated with an accidental injury, including while working on behalf of the organization. Coverage can also be included for Accidental Death and Dismemberment (AD&D). Volunteer Accident insurance can include travel to and from covered activities. Most Volunteer Accident policies are sold as stand-alone and may be written on a primary or excess basis.

RISK MANAGEMENT TIPS:

- Volunteers are a tremendous asset to the community and the nonprofits they serve. Board members should have a clear understanding of the services and operations provided by volunteers.
- A volunteer program must be managed with care to ensure its success and create an environment where they feel safe and welcomed. The following are a few basic tips to help with volunteer staff:

- Volunteers should be screened carefully.
- A volunteer handbook should be provided to every volunteer. The handbook should outline the mission of the organization, requirements of their position, who to contact if they have problems or concerns, and safety rules.
- A volunteer orientation program should be developed to make sure volunteers are trained and know what is expected of them. An effective orientation program will help the volunteer to be successful and feel welcomed.

Workers' Compensation

Workers' Compensation Insurance is a type of insurance that provides benefits to employees who suffer work-related injuries or illness. This insurance pays for medical care, wages from lost work, ongoing care, disability benefits, and funeral costs. Workers' Compensation benefits vary by each state.

Workers Compensation premium is based primarily on the estimated annual payroll, Workers Class Codes, Experience Modification (if applicable), and claim history of the organization.

Volunteers can be added to some workers' compensation insurance policies but should instead consider providing Volunteer Accident Insurance due to the cost.

RISK MANAGEMENT TIPS:

- Develop an effective screening and orientation process to maintain and inform your employees of the importance of a safe workplace environment.
- Conduct monthly/quarterly safety meetings and safety audits for all sites.
- Employees working remotely should have continuous safety training.
- Educate all managers and supervisors on accident policies, and procedures Employees must be continually trained on safety practices and procedures.
- Develop accurate job descriptions and provide this information to your medical network provider.
- Encourage Wellness. Safety and wellness go hand in hand.

This list of insurance coverages is not a complete list. Coverages should be reviewed with your attorney, human resources staff, and other members of the organization. Board members should review at least once a year a complete summary of insurance coverages. More importantly, the Board should be asking what is not covered so that they can make informed decisions. The Board of directors and executive director should work closely with their insurance broker.

Risk Management and the Pandemic – COVID-19

- In March of 2020, the World Health Organization declared COVID-19 to be a global pandemic. No one was prepared for the pandemic. Most organizations have had to move quickly to survive and face the implications of labor adjustments in the wake of COVID-19. The Board of directors and management had to face difficult choices such as reducing work hours, furloughing employees, and a reduction in

the work force. Now, the focus will return to safety in the workplace and what changes will be made in the wake of the pandemic. Additionally, employers developed an effective remote workforce, with many employees preferring to work from home post-pandemic.

- To aid in the transitioning back to office worksites, the following issues will need to be addressed:
- Protecting and supporting employee and customer health
- Ensuring appropriate physical distancing
- Ensuring property infection control
- Legal issues the Board of directors and management staff will need to consider when developing policies related to the COVID-19 vaccine.
- Compliance with CDC, OSHA, State, and local regulations will be part of the safety framework moving forward.
- Employees will need to be continually trained on new safety policies and practices.
- Employers will need to be aware of new reasonable accommodation considerations and should consult with an employment attorney to ensure compliance.

Insurance policies have not provided coverage for many pandemic exposures. Most insurance carriers have an exclusion on their policies for viruses and bacteria. Workers Compensation insurance is providing coverage for employees who become infected with COVID-19 in the workplace. Be on the lookout for insurance coverage changes in the future involving pandemic exposure. Also, in the coming years, expect new regulations and laws from both the state and federal regulatory agencies.

In summary, while the Board of directors is not responsible for the day-to-day operations of the nonprofit they serve, they are responsible for oversight and leadership. The guidelines provided above serve as a basic overview and are not an exhaustive list of risk management practices and policies.

*This article is for informational purposes only and should not be construed as legal or insurance advice.

Lillian Romero-Gomez is President of Baker, Romero & Associates, Insurance Brokers, Inc., a full-service commercial insurance agency located in Covina, California. She co-founded the firm in 1986, catering to the insurance needs of nonprofit and social service organizations. Her approach in working with clients is to focus on the human side of doing business and to provide a high standard of professional service.

With her extensive insurance knowledge, Lillian has developed strong business relationships with many of the leading insurance carriers in California, allowing for a broader range of service to her clients. She has provided insurance seminars to educational institutions, nonprofits and local business communities and has received awards for excellence in professional service.

Lillian attended UCLA, graduating with a degree in political science/public administration. She is active in her community and currently serves on two nonprofit boards. She has also received numerous awards for her dedication to volunteerism.

Lillian Romero Gomez

President, Baker Romero & Associates, Insurance Brokers, Inc.

By Audrianne Adams Lee

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PART FOUR

About Human Resources

About Human Resources, Reducing Liability when Managing Employees

For nonprofit organizations, human resources should be an essential function of internal operations.

A big misconception among the general public is that nonprofit organizations are partially or entirely exempt from employment regulations. Not true!

All organizations with employees are required to comply with any applicable laws and policies, regardless of the organization's 501(c)(3) status.

It can be challenging trying to navigate the thorny landscape of California's myriad of complex employment and wage and hour laws, as well as federal anti-discrimination regulations, the Fair Labor Standards Act, the Family and Medical Leave Act, OSHA requirements and more. The organization's HR team is responsible for and tasked with maintaining and documenting the organization's federal, state, and local compliance.

Below are the Top 10 areas to assist in creating a healthier, more compliant organization and culture.

1. Hire for Cultural Fit when hiring the Executive Director

When hiring an executive director, cultural fit is a critical component. Aligning with company values is important for any organization. However, the nonprofit world is more mission-based than the private sector. Professionals in the nonprofit sphere tend to be more motivated by altruism than money. It is important to hire a director who understands and emphasizes the wider workforce and embraces the collective mission.

The Executive Director should strengthen the vision and reinvigorate the mission with new ideas rather than trying to overturn prior efforts and bend the company to their will. The team will get on board more quickly with a leader who is as committed to the cause and the spirit of the organization as every other employee.

2. Update your onboarding process for new employees

Protect your recruiting investment, make sure your new hires feel welcome and that they come home on the first day excited to return! Onboarding is a prime opportunity for employers to win the hearts and minds of new employees. Don't waste it.

Onboarding is a magic moment when new employees decide to stay engaged or become disengaged.

It offers an imprinting window when you can make an impression that stays with new employees for the duration of their careers.

Most companies provide news hires with a kind of chaotic and disorganized experience on their first day – such as using outdated materials, not understanding basic questions new hires may have such as where to park, where the lunchroom is, how to obtain needed supplies; and lack of introductions to co-workers. New employees are prone to jump to premature conclusions. As they make their way through the organization, those early experiences get magnified and calcified. This sets the stage for an early exit.

Concentrate on culture and connection. Onboarding is the perfect time to tell stories about the organization's history, values, people and big-picture vision for the future.

3. Provide each employee with a job description

Ensure your employees know what is expected of them.

Developing job descriptions is an essential part of managing a business from an HR perspective. It assists placing employees in the positions based on the criteria and skill requirements of the job, which is especially helpful when promoting within the organization.

Defining roles and responsibilities enables not only finding the right person for the job but improving the employee's experience and job satisfaction. Ultimately it supports the efficiency and effectiveness of your organization.

An accurate job description documents the responsibilities, the competencies, and the skill/experience/education required for a company position. They are essential to evaluate work distribution, organize departments, recruit quality candidates, and set standards for employee reviews.

4. Pay the Executive Director accurately and fairly.

The executive director's salary should make the organization competitive in the market for talent. Look at the salaries of comparable nonprofits in the area.

The salary is fair in the context of other salaries in the organization. How much are other employees making? How distant or how close do you think is appropriate?

The ED's salary should send the appropriate signal to the ED, to the staff, and to others. Words are important, but so is money. Praising an executive director while keeping his/her compensation flat ends up conveying a message that the board doesn't really value his/her work. In the same way, giving

an inadequate executive a raise while quietly considering her termination sends a mixed signal you may later hear about in a wrongful termination lawsuit.

Neither the ED's salary—or other salaries—should cause financial stress on the organization. The board has a responsibility to keep the total costs of the organization (including the executive director's salary) in an affordable range. On the other hand, when hiring a new director, it may be appropriate to invest "venture capital" in offering a higher salary.

Remember too, the ED's compensation will be show up in public documents. This can impact donors, grants, public perception. Too low or too high each sends a different message.

5. Be consistent in what you say and write; Document, Document, Document

Consistent documentation is essential to properly evaluate employees and avoid liability connected with disciplining and terminating employees. Accurate documentation allows decisions to be made with as much information as possible. It also ensures there's a lasting record of the reasons for a termination or disciplinary action, even if memories fade or the decisionmaker leaves the company and cannot be located. Finally, documentation allows companies to be more consistent in their decision making, thereby reducing the risk of perceptions of favoritism or discrimination.

Employee documentation is generally both positive and negative. It is factual, not judgmental. It describes events as they occur, not based on the beholder's opinions and thoughts about the event. The documentation also describes the actions that were taken in notable instances such as providing formal employee recognition or taking disciplinary action.

It is important to always create documentation as close to when the incident occurs as possible so that records are timely, detailed, and accurate.

6. Maintain an updated & legally reviewed Employee Handbook – one of your most important business documents

An Employee Handbook is a valuable communication resource for both the employer and the employee. It provides guidance and information related to the organization's history, mission, values, policies, procedures and benefits, in a written format.

It is also viewed as a means of protecting the organization against discrimination or unfair treatment claims. It is an easily accessible guide to the company's policies and practices as well as an overview of the expectations of management.

7. Deal with performance concerns early & often – "Hire Slowly / Fire Fast"

The "hire slow, fire fast" mantra doesn't necessarily mean you have to take months to bring someone on board, or that you fire employees based on knee-jerk reactions.

Hire Slowly

To hire slow means to hire with intention, not reaction. If you give yourself permission to hire slow, you can take the time you need to hire for the right fit.

Hiring is the most important thing in a business. If you don't have the right people, the entire experience is missed.

Benefits of hiring slowly:

- By hiring too fast, you end up making poor hiring choices. When you're in a rush to fill openings to respond to growth, you make mistakes. Unfortunately, many companies adopt the attitude of, 'hire any intelligent body, or we'll lose business--we'll sort everything out later.'
- It is critical to make sure people fit in with culture and team. Be bold and strong on one side of the spectrum, so that people know clearly that they are either a perfect fit or a lousy fit for your culture.
- You may find a way to avoid filling that position altogether. For example, if you take the hiring process slow, your current team could evolve to take on the responsibilities you were looking to add.
- You can be more certain about making a legitimate offer if you have taken the time to vet the candidate completely. For example, maybe they really need a big title, but don't care as much about benefits? Or perhaps they need a big salary, but don't care so much about title?
- Team is everything. If you have the right team in place everything clicks better, projects get completed more efficiently, life is happier, etc. You don't need to spend time dealing with drama.

Fire Fast

Firing fast in a considerate manner means parting ways with the employee and giving them a soft landing to ease the transition because of the hiring fit error so that they can move on and find another job.

To fire fast is to acknowledge that we're all human and make mistakes. But we can have a bias toward giving someone ample forgiveness and time and hoping things will turn around. It's tough to make a call that things are not working and that it's time to part ways.

When you or the employee have made an error in the hiring process, firing fast means to confront the issue head-on and have difficult conversations. As I have said before, the ability to have tough conversations is essential for leaders. It takes courage and vulnerability for leaders to admit that they may have made a hiring mistake.

And it isn't compassionate to keep one person that makes the whole team struggle as a result. A bad actor can poison the rest of the team - the longer they stay around, the more their negativity affects others. We need teams in which everyone can trust each other to do a great job. If "hire slow, fire fast" sounds harsh, consider how harsh it is to allow a whole team to be held hostage by someone who should not have been hired in the first place.

It can be hard to make these decisions that will impact the organization negatively in the short-term, as you will be short-staffed again and will have spent time and money onboarding a new employee. But in the long-term, it is ultimately for the organization's benefit if the employee is not a fit.

8. Provide training for supervisors – supervisors are either your best asset or biggest liability

The management team of an organization can have the single largest impact to the success of the business. A good (or bad) manager or supervisor affects employee performance and satisfaction, productivity, efficiencies, turnover, and the overall health of the organization. If your company is to be financially viable, it goes without saying that investing in training is a smart move.
Additionally, training your supervisors is essential to keeping your company out of the courtroom. Having Supervisors trained in basic employment law compliance helps mitigate risk. Moreover, training Supervisors how to engage and empower their employees can lead to increased productivity and employee retention.

Training often gets pushed aside due to budget constraints. However, training, especially when delivered early in a supervisor's career, can be one of the best uses of time and money.

Be aware of legally required trainings too, such of harassment training. Board member should be included in these trainings, not just to protect the organization but themselves as individuals.

9. Maintain an Open-Door Policy for handling employee grievances – you want them to come to you before reaching out to an attorney.

Having an open-door policy means employees are free to talk with any member of management (including Board members) at any time. A common problem many organizations suffer from is cloistered and unavailable leadership. This creates a siloed effect where decision makers rarely understand the situation on the ground and as such are unable to make the best call. But by inviting a more open dialogue between managers and employees, companies have greater insight into the day-to-day work and to the company as a whole.

An open-door policy is a great way to make sure important information and feedback reaches management who can take that information and make changes when needed. It also builds trust among employees, establishing a more loyal worker base, and an overall more productive team. It is also an excellent tool for companies to encourage cross-discipline collaboration. Once different managers and workers are interacting, they will inevitably see new ways in which groups can collaborate and think outside the box.

Additionally, an open-door policy enhances problem-solving skills of both employees and management. The organization benefits from an increase in shared information and feedback, and employee trust is generated from successful experiences with a wider range of management. When it works, it's a solid win for all participants.

10. Ensure a safe and healthy work environment – not doing so could be one of your biggest costs of doing business.

All workers desire to work in a safe and protected atmosphere. Health and safety is a key factor for all types of organizations in order to promote the wellness of both employees and employers. It is a duty and moral responsibility of the company to look after the employee's protection.

Workplace safety is crucial, regardless of a business, its size or its industry. Without the proper workplace safety measures in place, a company puts its employees, customers, brand reputation and revenues in danger. Additionally, failure to teach employees how to maintain a safe work environment may lead to on-the-job accidents, injuries and, worst of all, fatalities.

A safe and healthy workplace not only protects workers from injury and illness, but it can also lower injury/illness costs, reduce absenteeism and turnover, increase productivity and quality, and raise employee morale. In other words, safety is good for business. Plus, protecting workers is the right thing to do.

Why should I hire an HR consultant?

You can put a lot at risk by attempting to handle all elements of compliance on your own!
Since nonprofits are funded solely through donations and grants, it can definitely be a challenge for new or growing organizations to find the time or resources to build out a dedicated competent HR department. However, guidance from an HR expert can play a major role to an organization's continued growth.

Working with HR consultants or professional online services will be your best bet if you have no experience handling compliance issues for your organization.

Additionally, nonprofit HR consultants can help to evaluate the current state of your culture and develop long-term strategies for strengthening it in the future.

- HR consultants should act as a partner to your organization. Make sure your consultants take the time to get to know your organization and genuinely understand your mission and audience. This way, they have all the context they need to finalize their HR strategy recommendations.

- Your team should understand the purpose and scope of any changes you implement with your consultant. Members of your staff might not be familiar with the full scope of nonprofit HR and its responsibilities, so clearly communicate new developments across your organization.

- Ask for documentation and training. When you partner with an HR consultant, you're working to improve your HR strategy for the present and as your organization grows. Make sure you have everything you need to ensure long term success before your engagement with the consultant officially ends. Having documentation and training materials from the HR consultant can help you better communicate new processes with the rest of your organization and act as resources if you come into any new issues.

Partnering with a nonprofit human resources consultant can do great things for your organization, but make sure that your organization is ready to make the most of the engagement. This way, you avoid any confusion or wasted time. Following the best practices above can help keep you on the right track and ensure success for your nonprofit HR strategies.

What do I look for in a Nonprofit Human Resources Consultant?

Here are some top things to consider in your HR consultant:

- Experience working on projects similar to your organization, ideally in terms of both mission and size. This helps ensure that the consultant fully understands your particular circumstance and unique pressures.

- How they describe their methods or general approach when you reach out to discuss their services and your project. As with practically any important project or initiative, a flexible and individualized approach is always more effective than a one-size-fits-all solution.

- Strong communication efforts, including quick responses to your questions and thorough explanations of key concepts.

- Make sure that the consultant's work had a lasting impact on the performance of their previous clients' human resources programs, not just a one-time fix that shortly wore off.

Hiring a nonprofit human resources consultant can be a game changer for the organizations that are ready for their services. Take your time to conduct your research, and you'll be sure to find the perfect partner.

Audrianne Adams Lee, President and Founder of HR NETwork, Inc. brings over thirty years of human resources experience and expertise from Fortune 500 high-technology and service companies including Marriott, ADP, Epson, and Western Digital. Audrianne has an extensive background and "hands-on" experience in the design and implementation of HR leadership and management training programs that help define leadership role clarification and motivate their employees towards increased business performance. HR NETwork, an HR outsourcing company, was designed to partner with businesses, relieving them of the burden and confusion of the complicated and highly regulated Human Resources systems and employment laws.

Audrianne holds a Bachelor's degree in Personnel Management. She is a certified Senior Professional in Human Resources, as well as certified in compensation development and design, including full scale pay-for-performance programs. She has an extensive background in developing and facilitating corporate training programs, including certification as a Franklin/Covey trainer, including 7 Habits for Highly Effective People and Principle Centered Leadership.

Audrianne Adams Lee
President and CEO, HR NETwork, Inc.

By Janet Fohrman

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PART FIVE

About Finance

About Finance

Every year, you need to do a deep dive into the details and approval of the budget.

By so doing, you'll be able to better guide the agency and catch any red flags during the course of the year.

Consider providing annual financial literacy training to your board during board orientation. This is a great opportunity for new and returning board members alike to ask questions, deepen their knowledge, and ultimately make better decisions throughout the year. Hire an outside professional firm to do this. They will be objective and be able to see through any inconsistencies.

1. Don't Rely on a Finance Committee

Too often, boards rely on the wisdom and experience of their Finance Committee. Too often these Finance Committees are populated by people who have great financial backgrounds but have never dealt with the budgeting and financial operations of a nonprofit organization. At our firm, we literally train CPAs to sit on Nonprofit Boards of Directors. Operating a nonprofit financial system is really different than that of a for-profit corporation or other institution.

2. You – sitting right there – YOU need to be familiar with the Budget

Each person on your board should be familiar with the annual operating budget. This should include the budgets for individual programs, and the budget broken down by grants, if applicable. Presenting and approving the annual budget in this way will help you evaluate performance throughout the year, and also better tell your organization's story with the numbers.

Ideas for action:
- Board reviews and approves annual operating budget before start of the year.
- Break down annual budget by program and by grant.

3. Cash OR Accrual? No, Cash AND Accrual. Don't Be Fooled.

Here's why you need to understand cash vs. accrual accounting: if you don't understand the difference, you may be fooled by a budget and your financial statements.

A Cash basis system is recognizing income and expenses when they are received and spent – Receive $ in July, account for it in July. Accrual basis is recognizing income and expenses as they are earned – receive a check in July for the Gala that takes place in September / Account for it in September.

A true story: One of our clients received a $1 Million grant to build a tennis facility. They received the money and put it into their bank. Using the cash method of account, their bank account showed $1 Million in "extra" funds. The board (and staff) proceeded to spend this $1 Million on everyday operations – payroll, rent, etc. When the time came to start building the tennis facility, much of the money was gone. Had they used an Accrual method, they would have easily seen that the $1 Million would not be able to be used until the construction project had begun.

Your board should be trained on cash vs. accrual reporting, and approve the annual budget on both a cash and accrual basis.

4. Know Your Critical Numbers / Put Them on a Dashboard

The things you measure are the things the organization will pay attention to. In the example above, if the board had the $1 Million future expense on their "dashboard", they would have planned appropriately.

A high-level dashboard report helps the board see and understand the most important metrics for your organization at a glance. Helpful dashboards are easy to read and include financial metrics like current cash vs. current liabilities and cash projections, as well as mission-related data like program outcomes.

Whatever data you include, your dashboard should make sense for your organization, and be updated frequently enough to keep the board well-informed throughout the year. We recommend monthly, along with your financial statements.

5. Pay Attention to Cash Reserves.

Plan as we might, we can never be fully rid of uncertainty. One of the most important tools nonprofits have for dealing with this uncertainty is cash reserves. Your board should understand the importance of reserves and set a specific target for both operating and building maintenance reserves.

Some common guidelines: operating reserves should equal an absolute minimum of 3 months' (and ideally 1-2 years) of the organization's monthly operating cost (more if you have reimbursement-type grants).

In addition, have cash reserves for your building maintenance reserves. Here's a quick rule of thumb: your building maintenance reserves should equal your current accumulated depreciation of the asset. For example, let's say carpeting for your operation costs $10,000. The carpet will be depreciated fully (needs to be replaced) in 10 years. You need to save $1000 per year over this time period in order to be prepared to spend $10,000 when the carpet will be replaced.

6. Know the Purpose of Your Cash Reserves

Cash reserves are the safety net for a nonprofit organization. Have an ample supply and you and your fellow board members can sleep at night knowing you have prepared for any eventuality. An ample supply of cash reserves for a mid-sized nonprofit would be 6-18 months of your annual operating budget.

7. You could be personally responsible for anything that goes wrong in a nonprofit. Scary, eh?

I know what you're thinking – Hey! We're covered by our Directors and Officers' insurance policy. Sure, many things are covered with the D&O policy, but consider just a couple of things that aren't: 1) willful negligence and 2) not really examining the annual budget.

If your ED does something awful and is guilty of fraud or worse, you may be on the hook. If you just rubber-stamp the budget and don't really examine it, the appearance to the IRS is that you didn't do your fiduciary duty.

One of our clients was having serious tech problems that the ED didn't want the board to be aware of. The ED directed funds earmarked for the payment of payroll taxes to be used instead for rent and tech repairs. The board was not informed that payroll taxes were not being paid. Result: Board members had their personal bank accounts seized by the IRS! True story!

8. Compliance. Be Sure It's Happening!

Your board should not make any assumptions when it comes to meeting annual filing requirements with governmental entities and funders. The federal government and your state government require annual reporting and filing of documents (tax returns, registrations, etc.). Some grant funders (government or private foundations) require reporting of activities in order maintain funding in multiple year grants.

Consider maintaining a board master compliance calendar showing deadlines for important filings and the current status of each. Sometimes, it can be helpful for the Treasurer to maintain such a calendar and report to the board regularly.

9. You have Legal Requirements in Governance and Accounting Policies.

Your board is responsible for setting and maintaining the organization's policies overall, and especially in critical areas like conflict of interest, whistleblower, CEO compensation, and record retention. Each year, make it a practice to review these policies and discuss any changes or updates. This is a great way to stay informed and proactive related to changing risks and opportunities for the organization.

10. What will you do in the case of Fraud - or a Windfall?

It may be hard to imagine, but theft by an employee or volunteer happens to nonprofits of every size and mission focus. The Association of Certified Fraud Examiners reported that in the past 12 months nearly 200 nonprofits were victims of fraud. The average loss was more than $600,000! In 40% of the cases the perpetrator was the top executive, in 35% of cases a manager or supervisor and in 23% of cases a lower-level employee. It really happens!

Your organization should have a clear, actionable fraud policy, including a step-by-step procedure that the board will follow if fraud is discovered or suspected. In addition to helping the organization deal with fraud if it happens, having a written fraud policy can be a very powerful deterrent, as well.

Similar to a fraud policy, your board should have a clear policy and procedure for a financial windfall, or the sudden inflow of unexpected funds. Consider who on the board should be involved (for example, Treasurer, Finance Committee, Investment Committee, etc.), and what kind of controls should be in place to promote holistic decision-making and safeguard the organization as a whole.

Sadly, a windfall often leads to financial mismanagement. Wise board have a plan that involves immediate investment, formulation of a plan and execution.

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Janet Fohrman

CEO, Fohrman & Fohrman, Inc.

By Jeffrey Wilcox

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PART SIX

About Governance

About Governance as Community-Centered Stewardship

When a community member is asked to serve on the board of a community impact organization, a number of images about the work that lies ahead comes to mind. It can range from an assumption of acting as a boss or participating in a policy-making process to asking lots of friends for money and a significant number of meetings.

Over the years, even the title of people who serve on boards has evolved from one of a trustee to one of a director. Some organizations believe that a board's primary role is fundraising while others view the work as a community check and balance system for use of charitable and taxpayer funds. Every board has its own culture; and it takes time for any board member to realize what they have signed up for in the name of adding to the quality of life in a community.

No matter what the positions are called, we know that the most successful nonprofits and their boards have a few attributes in common:

1. The board understands it is governing a community cause not a proprietary corporation.

While there's no argument about a nonprofit being a business, where there is disagreement is the business model that's at work. Nonprofits, by decree, are nonproprietary and must achieve a social profit in addition to a financial profit in order to survive and ultimately thrive. Community causes, unlike private-sector corporations, have some subtle differences that influence their operations, policies and business models:

- Volunteers, rather than employees, comprise a significant portion of the human resource portfolio.
- Consumers of services are generally least likely to be the largest investors in the service.
- The concept of "stakeholder" replaces the notion of "stockholders" as a broad range of influencers impact the ultimate success of the nonprofit business model in carrying out its purpose.
- Government regulation and use of taxpayer funds for operations is significantly higher in nonprofit organizations that may or may not be influenced by board action.
- Community input and involvement in creating business strategy directly affects community reputation, endorsement and support.
-

Virtually every nonprofit started as a cause before it became a corporation. Every board is well served to create an orientation process that makes it very clear what the business model of the organization is in order for the board to provide the optimal governance to a cause that is in business to impact quality of life in a community.

2. The value of governance is measured in its outcomes not its activities.

Every organization is at a different place in its history and has a unique role in community life. Large or small, new or old, governance assures that an organization is serving its purpose in an accountable way. At Third Sector Company and in our Board Chairs Academy program, we emphasize the following five outcomes of any type of governance that should be regularly measured:

Outcome #1: An effective and efficient infrastructure of paid and unpaid people working together to achieve a community goal.
Outcome #2: The organization is having a measured impact on the quality of life in a community.
Outcome #3: The organization guarantees a reasonable level of resiliency and sustainability.
Outcome #4: The mission of the organization is advanced through advocacy efforts that result in charitable giving, policy-making, and persuasive campaigns that call for actions of people, organizations and government to enhance quality of life.
Outcome #5: A next generation of leaders is being cultivated for the future of the organization.

3. The intent of governance is citizen-led stewardship on behalf of the community.

A nonprofit board is comprised of community people who share a common motivation to achieve a quality of life outcome for the community. In order for that to occur, successful boards understand that their board, therefore, should be reflective of the community that it serves. The diverse voices of people who want to help and those who are being helped come to a common table to create policy and understanding that offers community benefits far beyond simple service delivery.

As community stewards, board members recognize that their primary responsibility is to be the voices of the community and to form relationships with the community, acting as liaisons, and assuring all contributors and participants in the mission advancement process that the organization is moving forward in a participatory, transparent and accountable fashion.

4. Governing an organization isn't about managing it.

One of the most significant challenges boards and nonprofits face is the dilemma of understanding the differences between governing the organization and trying to manage it. The hiring and support of paid professionals is one of the most important roles of a board. Boards assure employees, beneficiaries, and the community that excellent and accountable management structures are in place and respected by all. When boards take on the job of management, the responsibilities of governance are weakened. Governance has an obligation to stand behind the leaders they have employed and a responsibility to help them be successful.

Generally speaking, once policies have been approved, management is in the lead role when it comes to four specific functions of the organization:

Lead Role #1: The carrying out of policy with constant monitoring and recommendations for modifications based on situations and changes in law and society.
Lead Role #2: Resourcing the functions and strategies of the organization including the hiring, valuing and evaluating of staff and directing the roles and support functions of volunteer structures.
Lead Role #3: Planning, evaluation and direct oversight of the program, service and administrative functions of the corporation.
Lead Role #4: Identifying and overseeing processes that resolve conflict, facilitate long- and short-term planning, assure consistent messaging in the marketplace and introduce best practices in nonprofit management and governance to the corporation.

5. Community-centered leadership focuses on success over strategy.

Given the changes that have occurred in society over the past three years, nonprofit leaders have come to realize that traditional strategic planning has been significantly impacted by COVID-19, a widening political gap in society, the remote workplace, and generational transference from Baby Boomer to Millenial and Generation Z-led organizations.

To quote Stephen Covey, "Success Planning" is an approach where diverse people begin their planning with the end in mind. People agree on the end-game first before concentrating on a series of tactical action steps. "What should our organization look like to the community a year from now?" becomes the driving force behind Success Planning. Success Plans are simple single-page documents that outline the aspirations of an organization over a stated period of time, the driving forces that have the greatest impact on its success and a published set of benchmarks to achieve the stated success goals.

Many boards approve an ambitious community goal as the basis of their Success Plan and then view the operations work as a community campaign to achieve that goal.

6. The demonstration of philanthropy rests with the Board of Directors.

Philanthropy is rooted in the sharing of monetary resources, the giving of time, the free imparting of knowledge and the offering up of community relationships to advance the cause. Boards approve and evaluate plans that cultivate human and financial capital and encourage and applaud generosity. Governance understands the multitude of traditions that exist in giving and assures that human generosity of all kinds is cultivated in and for the community.

In our opinion, a culture of community philanthropy emerges when board members understand they must lead by example of what giving can look like in a diverse community. Boards set the standards for recognition. They also give voice to those who are helped by thanking givers personally on their behalf.

7. The boardroom is an incubator for the next generation of community leaders.

Readying a new generation of community leaders for the stewardship of important causes isn't something that happens in school. Today's boardrooms must welcome all the generations that are present in a community to share life experiences, opinions and resources to achieve something extraordinary together. The mission of a nonprofit is often an important link that brings generations together which are often kept separate in work and society.

It is the obligation of governance to open pathways for the next generation of leadership to be a part of a deliberate succession planning process that assures a continuity of leadership for their organization and all community entities.

8. Governance is ultimately responsible for ending institutional racism in an organization.

It is a board obligation to assure that every statement and activity of the organization reflects a demonstrated commitment to operating a diverse, inclusive, equitable and accessible nonprofit organization which includes a governing manifesto of intolerance towards racism and oppression. The founding cause of the organization was rooted in assuring a social justice and the board is obligated to uphold and advance that deliberate action aimed at ending institutional racism.

Today, nonprofit boards are taking significant pride in establishing DEI (Diversity, Equity and Inclusion) work groups and training, and creating policy statements that respect the experiences and offerings of all people to make the nonprofit successful.

THE BOTTOM LINE:

One of the greatest joys in life is helping others. Board service is one impactful way in which community people can form meaningful relationships with diverse individuals and organizations and feel as though their efforts have made a difference in the quality of life for all.

Having come through very difficult years in the third decade of the twenty-first century, we now know that nonprofits can thrive when:

- The "cause" comes before the "corporation"
- The focus is on "outcomes" versus "activities"
- The driver of governance is "stewarding" versus "directing"

- The goal is “governing” and not “managing”
- The future is driven by “success planning” over “strategic planning”
- The meaning of philanthropy is “demonstrated” versus “dictated”
- The board room is viewed as a “leadership incubator” as opposed to a “leadership clique”
- The board takes a stand to end conditions that have inhibited belongingness and full participation by all.

Jeffrey Wilcox, CFRE is a nationally-recognized pioneer in the field of nonprofit executive development, retention and transition. Founder of Third Sector Company and its Interim Executives Academy and Board Chairs Academy, Jeffrey is an author, columnist and popular speaker on succession planning, board and staff talent development and retention, and strategic interim leadership solutions for nonprofit charitable organizations, trade and professional associations, and congregations. He is the former Senior Vice President of Community Development for the United Ways in Los Angeles and Phoenix, the former Nonprofit Columnist for the Long Beach Business Journal, past president of the Orange County Chapter of the Association of Fundraising Professionals, and was named Alumnus of the Year by the School of Business, Economics and Government at Seattle Pacific University where he chaired the Executive Advisory Board for four years. In 2022, Jeffrey was presented the Innovation Award by the Washington Society of Association Executives.

Jeffrey Wilcox

Founder & CEO, Third Sector Company

By Randy Brinson

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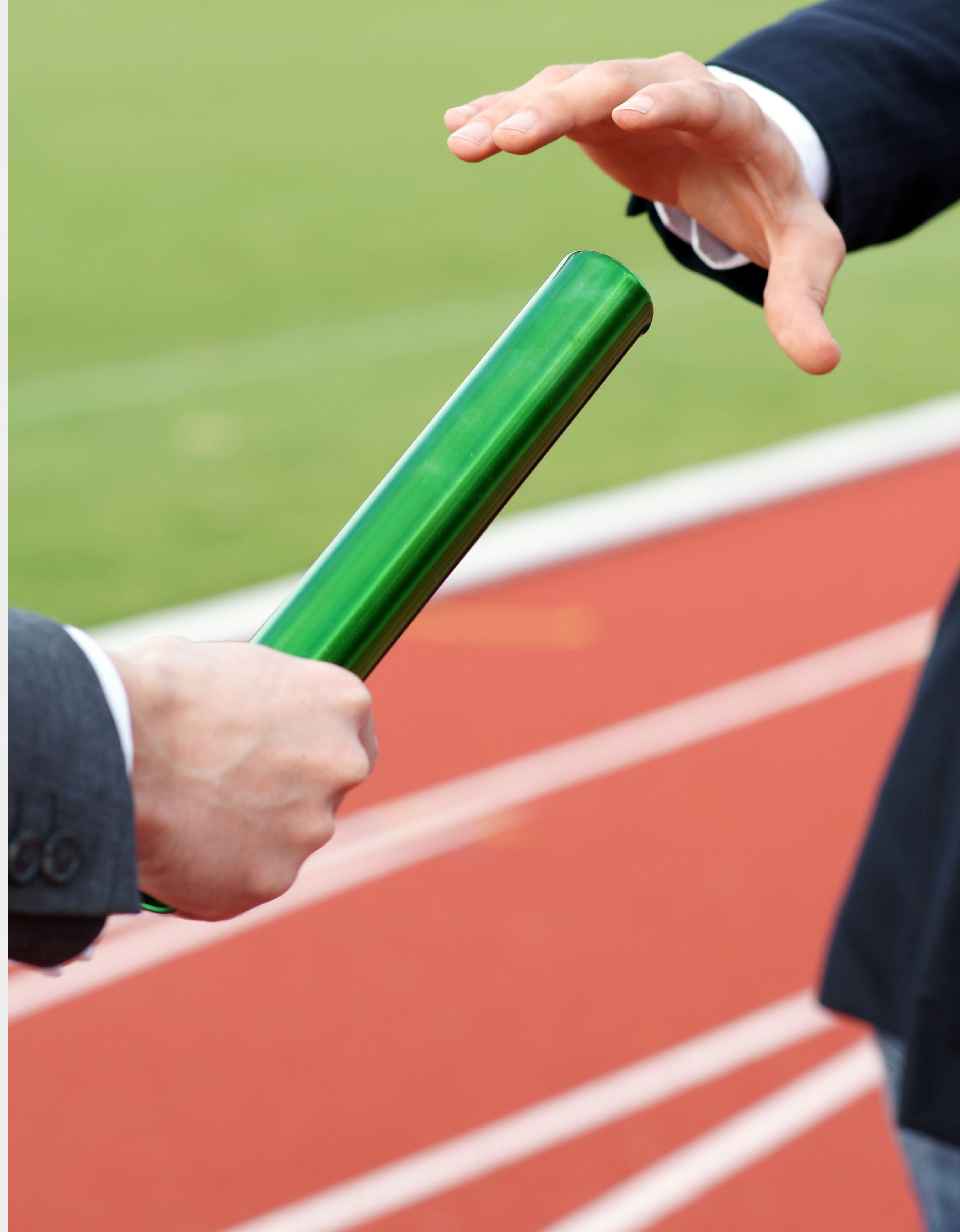
PART SEVEN

About Succession Planning



About Succession Planning

In many organizations, the term "succession planning" means figuring out how to respond to a future vacancy in the chief executive position. At Third Sector Company, our definition is more fundamental: it's about growing people in their service to the community. Succession planning supports people and fosters leadership continuity throughout the organization, thereby sustaining the advancement of its cause. This work isn't confined to periods of executive transition; it's ongoing. Which means succession planning should be embedded in the organization's culture.

Succession planning isn't just for the executive director role; it's valuable for any senior position where a vacancy could pose a critical threat to your cause. But don't stop at the senior level. An organizational culture that supports the growth of all staff is extremely powerful. Not only can this help your teams execute more effectively, it also sends a positive message about how you value their contributions, and helps reduce turnover throughout the organization. Finally, succession planning is not just for paid positions. Every nonprofit relies heavily on volunteers, starting with their board. The most effective boards are those with effective board leaders, and intentional practices that help volunteers move through the leadership pipeline make all the difference in the world.

What does a comprehensive succession plan look like? We suggest focusing on the following components:

1. A clearly stated definition of what "Succession Planning" means to your organization.

Informed by facilitated discussions, this section declares how your nonprofit values people while stating a clear understanding of what succession planning is at your organization and how it is essential to advancing the cause. We strongly recommend that you carve out special time for this process, such as in a retreat setting. Keep in mind that succession planning discussions can be sensitive for the people involved because succession implies change, and that can feel threatening. The goal is to foster a culture that values the concept of leadership continuity throughout the organization.

2. Strategies for managing unexpected vacancies in key leadership positions.

This section should read like an "In Case of Emergency" manual to minimize disruption when unexpected leadership transitions occur, whether in paid or volunteer positions.

A great way to minimize such a disruption is to pre-assemble an "Agency Information Inventory" that includes all the information a new leader would need to be effective. Banking information, notes on the organization's legal affairs, payroll records, and the status of grants and government contracts are just some of the critical information to include. Review and update the inventory every year during your annual budget process, and make sure it is securely stored.

Use annual performance reviews to ensure job responsibilities are aligned with organizational goals, keep job descriptions up to date, and make upcoming departures less of a surprise. During the annual review process, develop contingency plans to identify who would step up to keep things running for each position if it were to be vacated unexpectedly.

A key tool for managing unexpected vacancies is professional interim leadership. Rather than rushing to fill a vacant chief executive position, hire a professional interim executive director to pave the way for your next permanent leader. The best interim leaders are capacity builders, and they understand their primary purpose is to prepare the organization for success with its next leader.

3. A set of board-approved policies specific to leadership succession and transitions.

We recommend you adopt several policies and practices, including:

- Chief Executive Succession Policy – This lays out the steps your board would take if the chief executive position were to become vacant for any reason.
- Regular Compensation Reviews – Keep executive compensation up to date with the market to help retain the chief executive. And if that person leaves, know how much to budget to attract and retain the replacement.
- Annual Executive Performance Reviews – These are most effective when they relate to organizational goals and when they focus on criteria which everybody agrees to in advance. Regular reviews align expectations and improve performance, which can increase job satisfaction and help reduce leadership turnover.
- Board Self-Assessment – Your board has more credibility in evaluating your chief executive if it also assesses its own performance on a regular basis, looking in the mirror and asking how it can perform its governance role better.
- Board Leader Succession – Create a "career path" to the role of Board officer through committee leadership, mentoring, training, and term limits on officer positions.

4. An accounting of talent recruitment directives, retention strategies, and human resource practices aimed at advancing, celebrating, and respecting all people in the organization.

This section of the Succession Plan commits the organization to key human resources practices for the strategic recruitment, retention, recognition, and advancement of talent. Examples could include information about completing annual performance reviews and board assessments, professional and board development strategies, whistleblower protection, and a conflict resolution process, among

others. For many organizations, an employee handbook and volunteer handbook document the content of this essential component.

5. Specific strategies to grow and advance the pipeline of talent needed to achieve the goals in the strategic plan.

This section makes a formal link between the organization's overall strategy and the role that succession planning has in assuring the strategic plan is adequately resourced with both financial and human capital.

There's a lot here; where to begin? Every nonprofit is different, so the best way to ease into succession planning is to start where it makes the most sense for your organization. Since leadership continuity is an ongoing process, you can begin with any of these five components. Be patient. Your goal is to work through all five of them eventually, but you can take them in whatever order you think best.

Remember, succession planning is much more than how to fill a vacancy at the top of the organization. It's about organizational sustainability and safeguarding the future advancement of your cause. And it's most effective when it fosters talent development and leadership continuity throughout the organization.

Randy Brinson is Third Sector Company's Senior Strategist for Board and Executive Leadership Development. Certified in nonprofit board consulting (BoardSource) and leadership succession planning (Third Sector Company), Randy is a trusted partner in chief executive searches and leads governance trainings, board retreats and strategic planning activities. He also has interim leadership experience and is passionate about helping organizations build capacity to better serve their missions.

Randy Brinson

Senior Strategist, Third Sector Company

By Randy Brinson

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PART EIGHT

About Executive Performance Review

About Executive Performance Review

One absolute requirement for a successful executive review process is that it must be collaborative. The board-executive relationship is, after all, a partnership, the purpose of which is to advance the organization's cause. As partners, both parties have a vested interest in the executive review process, and it will only succeed for both if they share in its design and implementation. Here are ten tips to help make that goal a reality.

1. Ensure all parties agree that the purpose of executive performance review is to foster successful performance in the chief executive role, which in turn helps advance the organization's cause. Articulate this purpose in a board policy that provides for annual reviews of the chief executive's performance.
2. Establish consensus on the organization's strategic priorities for the year ahead. Identify clear organizational SMART goals that are Specific, Measurable, Achievable, Relevant, and Time-bound.
3. Clarify the board's role (governance) vs. the chief executive's role (management of operations) so that each party understands its specific responsibilities for working in partnership with the other to advance the cause.
4. Agree on the four or five executive competencies that will be most significant in advancing the organization's priorities in the year ahead. Collaboratively figure out what resource(s) could be leveraged to address any gaps that may exist in the chief executive's skill set. (For example, hiring a consultant to support a major initiative, or delegating leadership of a key project to a senior staff member who has the necessary expertise.)
5. Co-create an executive performance plan for the year ahead that reflects the organization's goals and relevant executive competencies. It is critical that the board and chief executive agree on the plan's details, so that everyone is on the same page and can pull in the same direction.
6. Monitor progress throughout the year and adjust the executive performance plan as needed. Celebrate achievements and address challenges as they happen, rather than waiting until the end of the year. There should be no surprises for either party at the end of the review cycle.
7. As the performance period draws to a close, provide an opportunity for the chief executive to submit a self-assessment for the board's review before they complete their assessment of the leader's performance.
8. When assessment results are reviewed with the chief executive, also take the time to discuss and plan for the leader's future professional development.
9. Review emergency succession plans for the chief executive role. This can include discussion between the chief executive and board chair about what steps the organization might take if the position unexpectedly becomes vacant during the year ahead. This also would be a good time for the board to review and affirm its policy that lays out the steps it should follow during an executive transition (or adopt such a policy if one doesn't exist).
10. Conduct a separate, market-based executive compensation review that demonstrates a commitment to talent retention by providing a competitive compensation package.

Randy Brinson is Third Sector Company's Senior Strategist for Board and Executive Leadership Development. Certified in nonprofit board consulting (BoardSource) and leadership succession planning (Third Sector Company), Randy is a trusted partner in chief executive searches and leads governance trainings, board retreats and strategic planning activities. He also has interim leadership experience and is passionate about helping organizations build capacity to better serve their missions.

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By Joan Greatrake McBride, CFRE, FAHP, MBA

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PART NINE

About Fundraising

About Fundraising

Fundraising. It's the process of securing charitable contributions from individuals, businesses, charitable foundations and other entities so that a nonprofit organization can fulfill its mission. Along with fees for service, government contracts and investment income, fundraising is one of the major ways nonprofits fund their work. Yet for many board members, fundraising is a great mystery.

In a nutshell, fundraising provides opportunities for interested stakeholders to make charitable investments in causes that they truly care about. Assisting with fundraising activities is a key way that board members can help grow and evolve a nonprofit's mission and reach.

In an effort to "de-mystify" the fundraising process, here are 12 key concepts that every nonprofit board member should know about fundraising.

1. It's all about the organization's mission.

The mission is an organization's reason for being. Whether it's solving homelessness or providing affordable after school programs, a nonprofit's mission defines what problem or need in society is being addressed, who is being served, and how they will be served.

It's important to note that not everyone will have the same passion for your organization's mission that you and your fellow board members do. It's your organization's job to find those that DO have a passion for your mission, then engage them in a meaningful and appropriate way.

2. Successful fundraising relies on building genuine relationships

Building and growing relationships with donors is critical. It's like courtship. You find someone with common interests and values, you get acquainted, and you take the relationship to increasing levels of commitment over time.

Likewise, a nonprofit organization must provide opportunities for a potential donor to become acquainted, which may then result in a first gift (i.e. a first date). Additional gifts are like subsequent dates. And while not every donor relationship will end in engagement or marriage (and some never get beyond a first date), those who continue to remain in the relationship may eventually make a major or planned gift, which demonstrates a true and abiding commitment to the organization.

It's also important to note that relationships must be genuine and sincere, an important fact to remember when retaining staff to manage your fundraising efforts. There's not a place for used car salesmen in fundraising.

3. It's hard work

In a traditional sales transaction, a buyer purchases a product or service that they need or want. The fundraising transaction is much different. By making a contribution, the donor isn't addressing his or her own need or want. Instead, donors demonstrate that they are committed to enhancing someone else's well-being, transforming their communities, saving lives, and more.

As a result, raising funds for an organization is very hard work. Some people and businesses are simply not philanthropic. There are also many worthwhile organizations competing for the same philanthropic dollar. Nonprofit budgets are also typically much tighter than those of major corporations. All of these factors - and more - make for very hard, albeit fulfilling, work.

4. It's a team sport

When professional fundraisers interview for a position, they are often asked to give an example of a significant gift they secured. More than likely, however, they were part of a team that helped secure that gift. Most major gifts are made after the donor meets with several organizational leaders (both staff and volunteers). It's this team that typically made the gift possible – not just the fundraising executive.

Another way that fundraising is a team sport is the roles that volunteers and staff play. Whenever possible, it's always best for peer-to-peer solicitation to take place, meaning that another donor - often a board member or volunteer leader - asks for the gift. It's the role of staff to serve as coach, providing the solicitor with the tools and training needed to close the gift. It's also critical that board members and other fundraising volunteers make periodic gifts that are personally meaningful to them. After all, if board members don't support the organization they serve, why should anyone else?

It is also a good practice to recruit a Fund Development Committee, comprised of community volunteers (including but not limited to board members), that can work closely with relevant staff to manage the more detailed aspects of the fund development process.

5. The fundraising process isn't just about asking

There are actually four major steps involved in the fundraising process. As a board member, you can be involved with fundraising by assisting with any of them:

- Identification. Identifying those individuals, businesses or organizations that might be interested in supporting your cause. For a university, that may be alumni or businesses that hire a number of the university's alumni. For a nonprofit hospital, that may be former patients and their families. As a board member, you can also help identify potential donors from your own contacts and spheres of influence.
- Cultivation. Building relationships with smaller, annual donors may take place almost entirely through online or through hard copy communication, perhaps with an occasional phone call. Once the donor expresses more interest in the organization through consistent and/or increased giving, that relationship should become more personal, with face-to-face meetings, on-site tours, etc.
- Solicitation. In some cases – such as a mailed letter asking for an initial gift – cultivation and solicitation take place at the same time. During a major gift solicitation process, face-to-face meetings may take place over several months or even years before the time is right to make the ask.
- Recognition. All contributors should be thanked for their gift, whether it's a thank you letter, an opportunity to name a building, or something in between. A donor recognition policy – see point 7 – will assure that recognition is consistent among different levels and types of donors.

6. The golden and platinum rules of fundraising.

The golden rule of fundraising is to ask for the gift. But the platinum rule is to have the right person ask the contributor for the right amount at the right time and in the right place. Again, this is particularly key for major gifts. They should never be rushed, and it's always best to have a peer make the solicitation if at all possible.

7. Infrastructure is important.

While the fundraising process involves identifying, cultivating, soliciting and recognizing donors, infrastructure is required to support these steps. Here are just a few examples:

- A donor data base is key to maintaining records on both potential and actual contributors (think SalesForce for donors).
- Fundraising policies and procedures outlining how gifts will be received, accounted for and recognized, among other steps, need to be developed and followed.
- Appropriate accounting systems need to be put in place
- A fund development plan that creates a road-map for the fund development program, including key strategies, timeframes, and identification of responsible staff and volunteer leadership
- A case for support, which is a white paper document which articulates why an organization merits charitable support. This template document is then used as a basis for various communications materials (such as direct mail letters, grants, major gift proposals, etc.).

8. It costs money to raise money

In an ideal world, 100% of each donor's gift would directly benefit the nonprofit's mission. However, that's simply not realistic – or smart. It simply costs money to raise money, whether it's staff salaries and benefits, office space, supplies, event expenses, digital and print communications, etc.

Once a fund development program is well-established, there are industry recommendations that a nonprofit should aim for. According to Charity Navigator (www.charitynavigator.org), at least 75% of a well-established nonprofit's budget should typically be designated for programs, with up to 15% designated for administration and up to 10% for fundraising. A number of variables can impact these guidelines, however, such as the size, age, type and location of an organization. Additionally, the cost per dollar raised by various programs can vary significantly. Ultimately, it's important to remember that you get what you pay for in terms of quality staff and more.

9. The importance of a diversified fund development portfolio

A common fundraising mistake is not using the mix of fundraising techniques and methods available to most nonprofits. Some organizations only raise funds through special events, while others concentrate on grants. Yet like financial investments, it's critical to diversify fundraising streams as an organization grows and develops. A nonprofit should consider building a portfolio of diverse fundraising programs that are an appropriate fit, such as programs that encourage initial gifts, annual gifts, special events, grants, major gifts and ultimately, planned gifts (bequests and other types of gifts made from an individual donor's asset base, rather than annual income).

10. The magic of story-telling

Too often, organizations tell their stories by sharing the statistics they are addressing or details about how their programs and services operate. What they should focus on sharing, however, are the stories of those whose lives are impacted by their work. Testimonials are powerful and tug at the heartstrings. Learning about a homeless woman whose life has been turned around is more impactful than a litany of statistics about homelessness. While it's still important to share statistics and facts, the focus should be on how your organization has impacted the people it serves.

As a board member, sharing your own story can also be key. How did you become engaged with the organization you are serving? Why are you committing time, talent and treasure to it? Sharing your own

story can be key to helping recruit additional board members, volunteers, and donors to your cause. If you haven't done so already, take a few minutes to jot down a few ideas about how you can articulate why you're involved today.

11. Best practices are situational

Although best practices in fundraising – many of which are included here – do exist, they are all impacted by a variety of variables. The type of organization (i.e. health care, education, performing arts, etc.), the age of the organization, the organization's budget, the location and more can greatly impact how you apply these best practices and principles. It's important to keep these variables in mind when considering your own organization's fundraising strategies.

12. Potential donors aren't just those who have cash to spare

An ability to donate is just one part of the equation. According to the Linkage-Ability-Interest principal, you must also find some way to create a linkage to a potential donor, along with determining (or possibly developing) a donor's interest in your cause. So the next time you're in a board meeting and the subject of approaching Bill Gates, Jeff Bezos or MacKenzie Scott comes up, make sure to ask "Do we have a linkage? And is s/he interested in our mission – or can that interest be developed over a reasonable period of time?"

Joan Greatrake McBride, CFRE, FAHP, MBA is President and CEO of Greatrake, McBride & Associates, Inc., which provides consulting services in the areas of fund development, marketing communications and strategic planning. She was introduced to a career in fund development in 1981, when she was a junior at UC Irvine. A Certified Fund Raising Professional and Fellow of the Association of Healthcare Professionals, Joan spent the first 15 years of her career at UCI and several nonprofit hospitals. She formed her consulting practice in 1996 (later incorporated in 2003). Recognized as the Orange County Association of Fundraising Professional's 2020 Outstanding Fundraising Professional, Joan holds a BA from UC Irvine and an MBA from California State University, Long Beach.

Joan Greatrake McBride, CFRE, FAHP, MBA

President & CEO, Greatrake, McBride & Associates, Inc.

By Scott Evans

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PART TEN

About Grants

About Grants

Grants are always a popular subject at nonprofit organizations. In this section, I'll focus on corporate and family foundation grants, ones I think of as philanthropic in nature. They are given with the intent of improving the community. Government grants, no matter the level of government they come from, are decided on a much different basis.

1. Getting Grants is a Team Sport

Many are of the false belief that the secret to getting grants for a nonprofit lies in the special words a grant writer conjures up in each proposal. In reality, a successful proposal is one that simply describes the work and capabilities of an organization – and tells the story of how a foundation's investment will be used to benefit the community. Grants are given to nonprofits for responding to community needs, for being effective in their programs, for having a great reputation in the community, for having respected citizens represent and lead them and for changing lives.

2. We Need Your Help

As a Board Member, you may be in a unique position of being able to help get grants, by virtue of the personal connections you have. Typically, foundations receive about 15-20 proposal for every one that they fund. Do you know people who sit on foundation boards? Does your company do business with an organization whose executives make decisions for grants at their family's foundation? Those connections can be very valuable in getting more serious consideration for your nonprofit's grant proposals.

3. Will you be a Shepherd?

If you have the connections at a foundation, please be willing to "shepherd" the proposal to them. Your Executive Director or Grant Writer can send a copy of the submitted proposal to you for you to forward to your connection. Can you foster a conversation between the funder and your nonprofit staff?

Also, even before the proposal is made you can be a great value. Often nonprofit organizations without a personal connection to a funder are puzzled about which program to put forth in a proposal. Can you have a conversation with the foundation director or program officer to ask which program would be the best fit for proposal in this particular year?

4. Grants Aren't a Financial Lifeline

Between 5% - 10%. That's how much of overall philanthropy comes from private foundations in the USA. Very few nonprofits have revenue exclusively – or even close to exclusively – from grants. Most of philanthropy comes from the donations of individuals.

5. Private Foundations Have their Own Missions and Priorities. You won't be able to change them.

Every private foundation has a single priority or list of funding priorities. They want to invest their money in fighting homelessness or cancer or any number of societal issues. If your nonprofit's mission is not aligned with the funder's priority, please don't insist on "applying anyway" and wasting the time of your nonprofit staff and the foundation. It will be an unfruitful exercise or even worse as the foundation will see your nonprofit as one that didn't understand how THEY wanted to invest THEIR money.

6. Getting Grants is About Helping Funders Accomplish THEIR Mission

Funders have missions. The missions may focus on eliminating homelessness or eradicating some disease or any number of other passions. That is what THEY want to accomplish with their money. Your staff should make your requests for support reflect how YOU can help THEM accomplish these missions.

7. Some Funders are Strategic. Others, aren't.

Some funders fit the profile of #6 above – they are passionate about accomplishing a specific mission with their money.

Other funders, often corporate funders, have a different purpose: they want to be able to tell their customers, constituents and everyone else what a philanthropic organization they are by virtue of the great nonprofits they support. These are the organizations that often give smaller amounts to as many agencies as possible, or limit the number of consecutive times an agency can receive their funding.

It doesn't make them bad or less virtuous; they just have different motives with their funding.

8. By giving your agency money, the funder is, in effect, endorsing you

Funders are, by nature, cautious types. Their decision-makers are sometimes a generation or two away from the people who made the money that makes the family foundation possible. They've been given

an assignment: find nonprofits that can help us spend this money wisely and in alignment with the hopes and dreams of the founders.

So, they seek to choose wisely and are extremely cautious to not make a "mistake." They don't want their family or corporate name sullied by giving to some agency that gets into a scandal.

This is why your agency's reputation – and transparency - is so vitally important.

9. Grant Writers don't' have a "batting average" but nonprofit organizations do

A story: in my freelance grant writing practice I had two clients during the same two-year period. One was a local arts organization. The arts organization had a board that was stacked with executives from local corporations, banks and foundations. The arts organization fundraising and executive staff had strong connections to local foundations. As a result, most of their grant proposals were well-received – and funded. They knew the decision-makers!

At the same time, I wrote grant proposals for a foster care agency who had never received a grant from a family or corporate foundation. They had no connections to any foundations. Their board was small and more academic in nature; great and valued assets but provided little help in connecting to foundations. In a couple of years of making grant proposals, they received funding on only one.

So the arts organization had a batting average of nearly 1.000! The foster agency was pretty close to .000. Same grant writer. And here's some irony: the writing for the foster care agency was arguably better and stronger.

10. Why Do Agencies Get Grants?

- Because you helped the funder to accomplish at least part of their mission.
- Because your mission statement aligns perfectly with the funder's funding priority.
- Because you are serving people in a location that matches the funder's interests.
- Because your agency has a great reputation in your community.
- Because you've successfully served many.
- Because you have a proven track record of fundraising from a variety of sources.
- Because you have a proven track record of helping people with your programs.
- Because the program for which you proposed support sounds like a logical and reasonable approach to the problem.
- Because the people who created your program are leaders in their field.
- Because the people who execute your program have great qualifications.
- Because one of your board members, a community leader, knows one of their trustees, also a community leader, and can make the case for your organization.
- Because there is a real problem that you're solving.
- Because your agency is capable of serving more people – and you have a plan to do it.
- Because your agency has a history of serving the people the funder wants to help.
- Because your founders were responding to a real community need when they created your organization.
- Because your employees are adequately but not outlandishly compensated.
- Because your organization is financially strong, not desperate for funding.
- Because you have real, objective and positive outcomes.
- Because your agency doesn't always succeed but does always learn from mistakes.
- Because while you can't solve the entire problem for ALL people, you CAN solve it for some.
- Because you are changing lives.

Scott Evans is a freelance grant writer, teacher and Administrator for the Orange County chapter of the Association of Fundraising Professionals. In his grant writing practice, Scott has helped dozens of Orange County nonprofit organizations to secure funding, including the arts, social services, and higher education. Scott works with clients to develop their stories of success and to translate them into proposals funders will be interested in reading. He also teaches the Grant Writing Certificate course for OneOC.

Scott came to the nonprofit sector in 2004 after a successful career in magazine publishing and served for many years as the Director of Development for the Pediatric Cancer Research Foundation.

In his spare time, Scott enjoys tending his California native plant garden, painting, and writing an occasional poem. Occasionally, Scott delivers a one-day workshop for small and start-up nonprofits titled "How to Raise Your First $250K".

Scott Evans

Freelance Grant Writer and Grant Instructor

By Barbara Kimler

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PART ELEVEN

About Public Relations

About Public Relations

1. What exactly is Public Relations?

Here's the technical definition of Public Relations (PR); "professional maintenance of a favorable public image by a company or other organization or a famous person." In broader terms, it's "the state of the relationship between the public and a company or other organization or a famous person."

Practitioners often refer to PR as earned vs unearned media (paid advertising). Generally speaking, the goal of PR is to generate positive news covered by reputable journalists so PR is considered subjective and more valuable than paid ads or marketing.

Nonprofit PR is commonly used to promote special events, new programs/initiatives, significant donations, milestones or the appointment of new leadership or board members. Although a highly effective form of PR is storytelling or human interest stories; a real example of how an organization changed the life or deeply impacted a particular individual, group or cause.

2. What's the difference between PR and Marketing?

Think of PR or media relations as one of the tactics under the marketing umbrella along with advertising, social media, website and print and digital marketing. While the formats differ, the end goal is generally the same; to help a nonprofit gain positive visibility and/or to drive people to support the organization in some way. Ideally, all messaging should be coordinated and implemented in conjunction with a strategic marketing plan.

3. Is all PR good PR?

There's another side to media coverage that relates to adversity; when an organization faces a crisis and must respond to media. In these instances, an organization would ideally have a crisis communication plan in place or hire a professional with that expertise. All PR is a form of visibility so if communications are managed well, the saying can be true.

An example is Santa Ana-based Working Wardrobes which faced employee fraud and a fire that gutted their building - all during the pandemic. This nonprofit had an excellent spokesperson (their founder/CEO) and was transparent, available for media interviews. These heartfelt reactions, timely communications with their supporters ultimately brought forth empathy and support for months to come.

4. Are there Public Relations agencies or individuals that work with nonprofits?

Yes! There are a variety of PR agencies that do nonprofit work as part of their offerings. Full-service agencies offer marketing, advertising, social media, community or legislative affairs and PR. Smaller or boutique agencies may be full-service but operate with fewer staff and are more specialized with industries served. Finally, there are independent professionals (like me) who are highly specialized and offer one-on-one services generally at more affordable rates. Some nonprofits are even lucky enough to find an agency that will do PR work pro-bono or at a reduced cost.

5. Who are the decision makers in PR?

Generally, a marketing or communication executive will oversee daily PR efforts but for smaller nonprofits, it could be the CEO or Executive Director or possibly a volunteer board member, marketing chair or a combination of all of the above. The important aspect of good PR is establishing a strong communications system among your organization so that prominent news and stories get told on a timely basis.

6. How should our organization go about finding an agency or PR professional?

It's important to know your particular nonprofit's structure and the roles and experience of your staff. Many larger nonprofits will have a PR expert on staff or may be able to afford a larger agency to manage or partly assist in this area. Your nonprofit may also have a marketing committee where volunteers can serve in some capacity. An organization's board member who may even access public relations from their company's in house team or agency.

It's important to find a firm who specializes in nonprofit work and/or who knows your industry. PR professionals are valued for their media contacts in particular industries.

The Orange County chapter of professionals - PRSA (Public Relations Society of America) - is a resource to learn more about PR and search for professionals.

7. What should we look for in a PR agency or professional?

There are many aspects to hiring a PR agency or professional, but finding someone with integrity and a clear understanding and passion for your cause is critical. A relationship between a nonprofit staff or board member and their PR professional must be open, honest and built on mutual trust with a solid communication system in place.

Whether in-house or outsourced, PR professionals should possess strong writing skills since they will author press releases, media alerts, articles and other messaging to promote your organization. PR professionals should provide referrals, samples of work, success stories and possess a great reputation and solid media sources. A great question to ask a PR agency is how they've built their media sources. Do they have their own data base, have access to media lists such as Cision or a news wire service? Another key question for an agency is who will be doing the work for the organization. You'll want to be sure you are getting a seasoned professional vs a brand new Jr account representative.

8. I'm on the board of a very small nonprofit and don't think we can afford PR

You are not alone! Most Orange County-based nonprofits are very small and many do not even have employees. In this case, I'd suggest seeking a board member with nonprofit and/or marketing expertise. You might also consider forming a marketing/PR committee or task force and seeking help from other volunteers. Local colleges and universities often can be a source of PR campaigns for one-time events.

9. Are there liabilities for board members or volunteers managing PR?

With rare exceptions, members of a nonprofit board and volunteers are protected against personal liability judgments imposed on a nonprofit by a court of law have to be paid by the organization, not individual directors. Organizations may be asked by a PR professional or agency to be held harmless if damages occur by information approved by the organization and disseminated by the PR professional.

10. Why do some nonprofit organizations get great PR and others don't?

It's no secret that nonprofits compete for donors, support, volunteers and the same is true for media coverage. The secret to media success largely depends on whether the nonprofit hires an agency or PR professional with trusted media sources; but it all begins with intention and planning. In the majority of cases, media coverage comes at the result of a good strong story pitched to a targeted media source with a great story angle.

Barbara Kimler PR launched in 2002 to fill a niche for public relations services in the nonprofit sector. Her growing client base and specialized network of professionals now provides multiple marketing-related services for nonprofits, businesses and beyond. Utilizing independent experts in industries from marketing and social media to video production and graphic design provides clients with best practice resources at the greatest value.

The former OC Register community relations manager understands how business and charitable organizations work together to impact the community in a meaningful way. Integrity is a core value of this seasoned PR professional and experienced writer who brings passion and commitment to every client she serves.

Barbara Kimler

Owner, Barbara Kimler PR

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PART TWELVE

About Nonprofit Collaborative of Southern California

About Us

In a nutshell, we help nonprofits.

We are a group of business professionals with a variety of specialties whose businesses focus on helping nonprofit organizations to accomplish their missions.

Many of us have served in the role of Board Member for nonprofits, and many of us have actually been employed directly by nonprofits.

From HR to Finance, from Fundraising to Evaluations and everything in between, we work with nonprofits to help them accomplish more and to be more effective.

The Collaborative group is the brainchild of Janet Fohrman. She wanted a way to bring professionals together to draw on their expertise in the nonprofit world. We learn a great deal from each other in our monthly roundtables, exchanging ideas of what's working and helping to know the full scope of nonprofit operations.

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What Every Board Member Needs to Know about Leading a Nonprofit

A Collection of Wisdom and Strategies from Industry Professionals

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