Enhancing the Nonprofit Governance Model: Legal Pitfalls and Best Practices

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Venable LLP, Washington, DC

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Agenda

- Introductions
- Legal and Practical Considerations
  - The Basics—Governance Legal Issues
  - Roles and Responsibilities of Directors and Other Leaders
- Ten Tips on Effective Governance and Board Relationships
- Conclusion
Legal and Practical Considerations
Governance Legal Issues

- Governance basics
  - Nonprofit vs. tax-exempt
  - Corporate protection

- Nonprofit corporate hierarchy of authority
  - Nonprofit corporate law (statute and common law)
  - Articles of incorporation
  - Bylaws
  - Policies
Governance Legal Issues

- Board rules of the road
  - Board is generally only permitted to act in a meeting (but UWC, telephone meetings)
  - State of incorporation governs, regardless of location of headquarters (but note foreign corporation filings)
Governance Legal Issues

- Governance Hierarchy
  - Board of directors
  - Executive committee
  - Other committees of the board
  - Advisory committees, task forces, etc.
  - What about staff?
  - What about officers?
  - What about individual directors?
Governance Legal Issues

- Governance legal duties
  - Duty of care
  - Duty of loyalty
  - Duty of obedience
Ten Tips on Effective Governance and Board Relationships
1. Manage Expectations at the Outset

- Board member roles and responsibilities
- Training and orientation
2. Establish Partnership with Board Chair

- Ideal relationship is one of mutual respect and support

- Open communications—game plan for each meeting
3. Governing Documents Should Be Flexible, Understandable

- Bylaws cannot address every possible eventuality

- Keep bylaws clear and easy to read

- Use policies to help cover gaps
4. Choose Your Battles

- Line between “strategy and mission” and “implementation” is not always clear
- Recognize different approaches and be patient
5. Don’t Tolerate Abuses

- Actions in conflict of interest, contrary to the best interests of the corporation

- Speaking/signing on behalf of the organization when not permitted

- Splinter groups and whispers
6. Put Directors in the Best Position to Do Their Jobs

- Materials should be clear, provided well in advance, and tailored to the audience.
- Dashboards, graphs, etc.
- Regular strategic planning and “big picture” exercises
- Time for discussion
7. Attend to the “Farm System”

- Committees, task forces, and other volunteer opportunities
- Note attendance, contributions, willingness to roll up sleeves
- Establish policies to reward contributors with favorable consideration for board openings
8. Make It Worth Their While

- No compensation, but plenty other intangible benefits are possible
- Recognition and visibility
9. Seek Full Participation

- Work with board chair to manage discussion at board meetings
- Encourage committee, task team leadership and participation
- (Gently) manage/regulate the extroverts
10. No Surprises, Please

- “This is the first I’m hearing of this…”

- Give board the chance to make mid-course corrections

- Have a well-thought-out plan for resolution
Questions?

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