Private Bank

Successful and rewarding nonprofit board service

Guidance and governance best practices

Citi Private Bank
Philanthropic Advisory

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The joy of giving your talent and time to nonprofit organizations

Philanthropy comes in many forms of giving - time, treasure, and talent. One of most rewarding forms can be the giving of your talents. Serving on the board of a nonprofit organization, whether a family foundation or public charity, is a two-way street benefitting both the organization and the individual board member. It provides board members the opportunity to do even more for the causes they care about.

Working alongside other board members with a similar passion about a particular cause, they draw from their personal and career expertise and experience. Providing direction, oversight, and stewardship, they help to drive the organization's impact. In return, working in this collaborative setting enables the board member to develop and grow numerous skills in communication, leadership, interpersonal relations, and problem-solving, just to name a few.

However, it is important to understand the responsibility that comes with board service. It can also include a legal responsibility that may carry personal liability to the board member. Bringing about a clear understanding of the role and responsibilities of a nonprofit board member is the subject of this whitepaper. It is aimed at providing guidance to you, if you're a current or prospective board member of a nonprofit, and outlines expectations of what is required.

Establishing the policies and practices to provide transparency and accountability goes a long way in helping board members fulfill their responsibilities to the organization, themselves, and the public in general. We hope this paper proves to be an informative guide and assists you in that objective.

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Fiduciary standards and basic tenets of serving on nonprofit boards

Sound governance practices create a solid underpinning for any organization, and this is especially true in the nonprofit sector. They provide the critical building blocks for a successful organizational foundation. Over the years, nonprofit organizations have grown in size, diversity, and complexity. They are typically supported, at least in part, by governments, private foundations, public charities, and by the generosity of donations from the public. To that end, it is essential that each of these stakeholders have confidence and trust in the nonprofits with which they partner.

> In 2009, the US federal government incorporated for-profit governance and transparency best practices in the revision of the annual tax filing required by most public charities.

Much of the new information required was focused on the internal governance of the nonprofit, including the role the governing body plays in the organization, and the interaction between the members of the governing body as well as the interaction between the governing body and officers or other key employees of the organization.

While each country is different in terms of legal requirements, the role of the members of the governing body of the organization is typically bound by a fiduciary duty, essentially that the members are in a position of trust. In fact, in some countries the term 'trustee' and 'board member' are used interchangeably to describe someone in a position of governance. While in other countries they have slightly different meanings and carry differing degrees of service and accountability.

For example, in the UK, trustees are sometimes referred to as governors, councilors or management committee members; however what matters is the role, not the title, as the Charities Act of 2011 describes a trustee as a person having the general control and management of the administration of a charity. In the US some states have enacted charitable trust laws that hold a trustee to a higher fiduciary standard than a member of the board of directors, whose fiduciary standard is derived from state nonprofit corporation laws.

The important takeaways for those charged with the governance of a nonprofit organization are to understand the jurisdictional legal requirements of their service as well as the fiduciary standard to which they will be held accountable. For purposes of this paper, the term 'board member' refers to directors or trustees of the governing body of the organization, with the understanding that there may be legal distinctions between those titles.

To help the governing body of nonprofit organizations better understand its roles and responsibilities, there are several best practices that can guide them as individuals and a collective body to become more effective leaders of their organizations, while providing the clarity and openness demanded by the various stakeholders.

> Board members are literally the 'face' of the nonprofit and in part, represent the organization's public image.

The saying "The buck stops here" in the context of board service is typically meant that board members have the ultimate responsibility for the nonprofit; a responsibility that cannot be delegated to others. "Tone at the top" is another saying that comes to mind when thinking about board service. This typically describes the nonprofit's general ethical culture that is established by the board.

While fiduciary standards differ depending on jurisdiction, they represent the basic tenets of how a board member carries out their roles and responsibilities to the nonprofit. Three very common fiduciary standards are the duty of care, the duty of loyalty and the duty of obedience, as outlined below.

The duty of care

The duty of care requires the individual to act in good faith with the reasonable care that an ordinary person would use in the same circumstances. This manifests itself through board members staying up to date and involved in the nonprofit. It would include things like attending all board meetings, voting regularly during those meetings, and understanding the risk and control environment of the organization. While governing documents of the nonprofit may provide for the use of committees or other professionals, it is incumbent upon board members to place reasonable reliance on their work, not blind faith; they may trust but verify.

The duty of loyalty

The duty of loyalty is to the nonprofit organization, in that the individual must act in the best interest of the nonprofit to the exclusion of their own or others' personal interests. A conflict of interest generally arises when the board member's personal interests could compromise their judgement, decisions, or actions to the detriment of the nonprofit. Annual disclosure statements completed by board members as well as the organization's conflicts of interest policy are tools used to define, identify, and resolve such conflicts.

The duty of obedience

The duty of obedience is meant to ensure that individuals comply with the applicable laws and regulations in carrying out the mission of the nonprofit, and that the assets are used in fulfillment of that mission. This presumes the person has a knowledge and understanding of the laws and regulations governing their actions and that of the nonprofit.

Collectively the board leads the nonprofit, providing direction, oversight, and stewardship to the organization. The mission of the nonprofit, the articulation of its charitable purpose and principles, is the ‘North Star’ by which the board steers the organization forward. This mission should be guarded by the board to ensure the activities of the nonprofit are in furtherance of its stated mission.

It should be reviewed periodically as there are times when the board must decide whether the mission is still relevant or whether it needs to be revised. The strategic planning process can help the board define where it is and where it is going, helping it to articulate mission, vision, values, long-term goals, and the action plan to help the organization get there.

Oversight and procedures for enforcing policies

Providing direction to a nonprofit also requires the board to hire, review and evaluate the executive leadership of the organization, as the Executive Director reports directly to the board. Additionally, the board should also assess its own performance, have a succession plan, which may include term limits, and a pipeline for future board members. A matrix of desired board member characteristics can be helpful to fill gaps in board expertise and diversity.

Monitoring and mitigating risk are the central themes to the board's oversight role. This not only includes compliance risk, but also financial, reputational, operational, economic, and security/fraud risks as well. On a practical level this could include considerations for use of committees to support boards, compliance with local or foreign labor and human resource laws, fundraising requirements, insurance needs, including indemnification of officers and directors, volunteer policies, observance of donor restrictions, data privacy, and cybersecurity, just to name a few.

In general, establishing policies and procedures designed to monitor and mitigate risk that are documented, reviewed, and updated on a periodic basis tend to be more effective and easier to administer. It is critical that procedures are implemented to enforce policies, for them to truly be effective.

Please bear in mind that certain jurisdictions require specific provisions that must be addressed in various policies. All policies should be reviewed by legal counsel and are typically approved by the board. Below is a sampling of some of the more common policies that boards can consider.

Conflict of interest

Board members, officers, and employees should be bound by the conflicts of interest policy. This policy requires those with a conflict or a potential conflict to disclose this information and it prohibits the board member with the conflict or potential conflict from voting on any matter associated with said conflict.

It should articulate the process used by the nonprofit to manage conflicts and how the nonprofit determines whether board members have conflicting interests. It should address family and business relationships with other board members, officers, employees, and the organization.

Annual disclosure statement

While not a policy per say, annual disclosure statements are used in conjunction with the conflicts of interest policy. They are completed by board members to help identify potential conflicts. The disclosure statement typically requests information about board members and their immediate family members. Disclosures include positions held at other organizations, owned and controlled businesses, and relationships with other board members, officers or employees, among other things.

Investment policy statement

For those nonprofits that accept donations to their endowments or have long-term investment funds, the investment policy statement provides the roadmap for the investment of the fund. Typical provisions include objectives and goals of the fund, delegation and assignment of responsibility, asset allocation, risk management, benchmarking, performance review and evaluation, and costs and fees.

Whistleblower policy

Adopting a whistleblower policy signals to employees, volunteers, board members and the public that the organization is open to hearing concerns and complaints about its practices. It shows that the nonprofit values transparency and accountability practices. It is meant to protect whistleblowers from retaliation and articulate how problems are investigated, identifies the internal or external parties to whom information can be reported and the path to resolution.

Document retention and destruction policy

An effective document retention and destruction policy will help ensure accurate financial statement and tax return preparation, while safeguarding against improper disposal of documents. Determination of what is stored, the retention period, when the retention period begins and ends, and how physical and electronic documents are destroyed vary by country. Data privacy regulations play a critical role in development of this policy.

Compensation policy

The process for determining compensation of CEO, executive director and other key employee roles should be articulated in the compensation policy. All components of compensation, for example salary, bonus, contributions to retirement accounts, insurance premiums paid by the organization, and housing and car allowances should be taken into consideration. Comparative data should be used to evaluate and review compensation. The annual evaluation process for the individuals covered by the policy should also be included as part of the compensation policy.

Code of ethics

The code of ethics statement is sometimes referred to as the code of conduct or statement of values. The purpose of adopting such a statement formally is to provide employees, volunteers, and board members with guidelines for making ethical choices and to ensure that there is accountability for those choices. This policy can signal the nonprofit's commitment to ethical behavior and that generally bodes well with the public.

Gift acceptance policy

The primary purpose of a gift acceptance policy is to provide the guidelines to staff and the board around the types of gifts accepted. However, it is also helpful in managing donor expectations. Maintaining discipline around the gifts the organization will accept and steering clear of those they choose not to accept can help avoid unnecessary risk, expense, and liability. The policy should identify those that are authorized to approve various types of gifts and steps required in the gift acceptance process.

Taking into account some of the common policies outlined above, board members ensure the organization has the resources required to fulfill its mission, in line with their stewardship role. Not only financial resources, but operational resources as well, such as personnel and technology. Board members also typically approve overall budgets and are engaged in the audit process and approval of tax filings. If permitted by governing documents of the nonprofit, committees of the board can be established. Some common committees include Finance & Investment, Compensation, and Audit.

Committees can be comprised of a subset of board members or non-board members, depending on the governing documents, and generally they have an industry expertise within the committee to which they serve. Overall, the role of committee(s) is to oversee the management of the day-to-day operations and make recommendations to the board for approval. They provide assistance to the board, but do not assume the responsibility for final approvals on issues. Such a responsibility rests with the full complement of board members.

A gratifying experience that's not to be taken lightly

Nonprofit board service can be such a fulfilling and gratifying experience, enabling you to devote time, treasure, and talent to causes you truly care about. However, as we have outlined, such service should not be taken lightly, and carries multiple considerations that need to be borne in mind.

The art of compromise, shared decision making, strategic thinking, and creativity skills are just some of the beneficial by-products learned, developed, or honed when working collaboratively with other board members.

And of course, knowing the personal legal obligations of board service are important. Successful board members also know the importance of understanding their roles and responsibilities vis-a-vis one another, the organization and management.

Empowered with this knowledge and using the tools of well-defined governance policies and practices, boards place the nonprofit's they serve in prime position to provide the transparency necessitated to instill the public's trust and confidence in the organization.

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Karen advises families, foundations, and endowments on philanthropic strategic development and best practices to meet their philanthropic goals.

Prior to joining Citi, Karen spent 17 years with Geller & Co., and since 2007, served as the Director of Finance and Philanthropic Operations for a private foundation in their multifamily office practice. Her experience includes not only advising clients on their philanthropic giving strategies; she is also well versed in private foundation finance, operations, grants management, governance, and compliance. She has extensive experience working with ultra-high net worth individuals on their personal charitable giving, charitable giving through donor advised funds, and political giving.

Karen is a 21/64 Certified Multigenerational Advisor. She is a member of the Planned Giving Council at Lincoln Center for the Performing Arts, a Coalition Building Partner for the Generosity Commission, and a member of the Finance Council and volunteer at her local parish. Karen is a Certified Public Accountant (CPA) and received her Bachelor of Science degree in Accounting from Binghamton University. She resides in New York City with her family.

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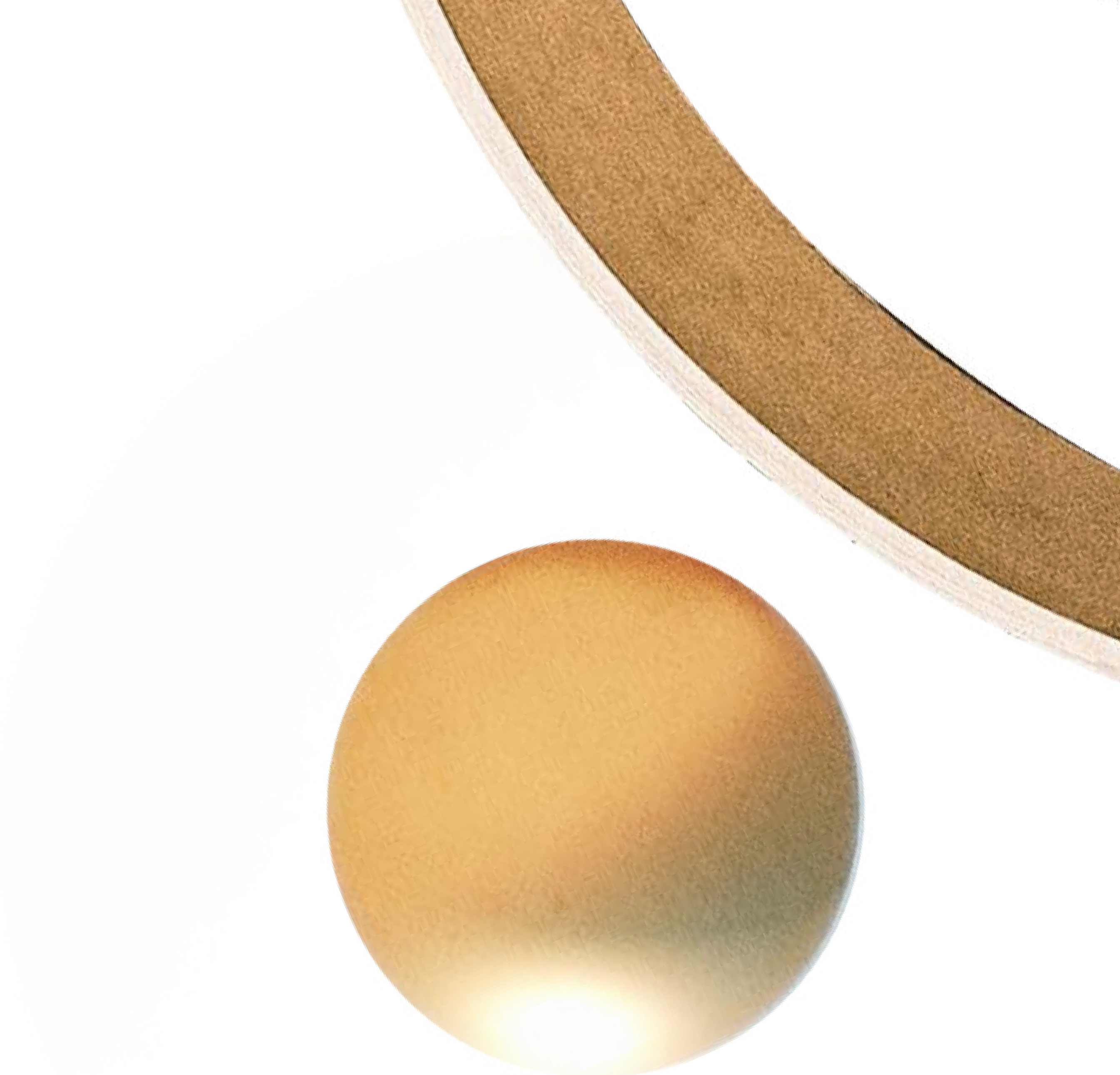

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