RESPONSIBILITIES OF THE NONPROFIT BOARD OF DIRECTORS

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INTRODUCTION

Nonprofit institutions are central to the quality of life in America and central to citizenship; indeed, they carry the values of American society and the American tradition.

Peter F. Drucker

The United States relies heavily upon the nonprofit organization to provide many of our public services. Other countries look toward their governments – to provide most public services. In the US, however, we were born out of a different tradition. Americans are “joiners” and “belongers” as no other people. The voluntary spirit and philanthropic instinct shared by citizens of the United States are unparalleled in size and scope, though the last 10-20 years has seen a significant surge in civil society organizations around the world.

Citizen participation in the US has fascinated observers from other countries. Over one hundred fifty years ago, the Frenchman Alexis de Tocqueville, marveled at the eagerness of US citizens to form associations and called it perhaps our most distinctive characteristic as a nation. He called them “great, free schools” of democracy. He saw them as the “sine quo non” – the “that without which” the larger forms of democracy and its institutions of government work.

Max Weber, the German sociologist, visited the US in 1905 and spoke of these “voluntary associations” as bridging the transition between the Old World and the fragmented individualism of the New World. He saw how crucial a social function these groups perform in US American life.

This voluntary tradition grew out of our need to form community when first establishing settlements in the New World. The constitutional Founders stressed the need for “civic virtue,” a tradition stretching back to the Greek and Roman Republics, by which individuals achieved their highest personal excellence through selfless service to the public realm.

The voluntary domain now includes a vast network of nonprofit organizations. According to the Drucker Foundation for Nonprofit Management, one-half of all adults in the U.S. work at least three hours a week as “unpaid staff,” that is, as a volunteer with a nonprofit organization. Sometimes observers refer to this domain as the “third sector” with government and business forming the other two. These voluntary organizations make up what has been referred to as our civil society that provides the social capital upon which both government and the economy rely.

Nowhere else does this ethic take on more form than through service on the governing board of a nonprofit, voluntary organization. The contribution of time and talent of board members of such organizations makes possible many important benefits to fellow citizens.

But, unfortunately, too many boards of directors are not fully versed in their social responsibilities. They may have been invited to serve on the board as a representative of one of the stakeholders of the organization and had little idea of the larger role they were being asked to play. It is important that a nonprofit board learn about their social responsibilities before they turn their attention to the internal affairs of the organization they serve.
I. THE SOCIAL RESPONSIBILITIES

Trusteeship is the holding of a charter of public trust for an institution. As the term is understood here, it represents a function carried out through membership on the governing board of an incorporated institution and is defined by law. Trustees (or directors) are legally and ultimately responsible for the institution and everything that goes on in it. Trustees are not officers of administration – not in the institution where they are trustees. Trustees are members and representatives of the general public whose trust they hold. They may be professionals and administrators in another – even in a similar – institution, but as trustees they make trustee judgments, not administrative or professional judgments.

From Servant Leadership by Robert K. Greenleaf, 1977

The “not-for-profit corporation” is a legal description given to the multitude of voluntary associations and other charitable organizations in the United States. The term is peculiar because it defines the organization by what it is not, rather than what it is. It is not a “for profit corporation,” a term used to describe the organizations that populate the marketplace.

Interestingly, outside of the US, the term most widely used to define the organizations of the civil society is “non-governmental organizations” (NGOs). Again, this definition is derived by describing what the organization is not. But while the rest of the world uses a term in relation to the political realm, in the US the term is used in relation to the market, the economic realm of society.

A closer examination of the difference between “for profit corporations” and “not-for-profit corporations” reveals less than one might think. In legal terms there are more similarities than differences. A nonprofit organization can do anything a business can with one vital difference: the excess revenue after expenses (“profit”) for a nonprofit must accrue back to the purposes of the organization, whereas in a business they may be distributed amongst its owners and/or stockholders.

Some have said that since a board of directors of a business is primarily responsible to its owners – its stockholders - then the board of directors of a nonprofit is responsible to its “stakeholders” – either its “customers” (clients, end-users) or funders. Neither is the case. In fact, by law the primary responsibility of the boards of both a for-profit and not-for-profit is to society. A corporation, by law, is an entity that exists by virtue of having been established within the context of a state government. In most states, the charter comes from the Secretary of State. The state requires that the board of such chartered entities be accountable and responsible to the Secretary of State on behalf of the people of that state.

In other words, the board of directors is first responsible to society for the organization, and its mission, purposes and activities. The use of the term “trustee” makes sense in that a member of a board of directors acts as trustee for the people in overseeing the affairs of the organization. After ensuring that its primary responsibility is being carried out, the board of directors is then responsible to the various stakeholders of the organization, its employees, its clients, its funders, its community and so forth. Most nonprofits seek to be recognized by the Internal Revenue Service as one of their more than 20 distinct nonprofit designations. Those that qualify for the 501(c)3
designation are granted “charitable tax exempt” status have additional level of social responsibility.

The 501(c)3 status has more to do with the donors of funds to the organization than the organization itself. Specifically, if a nonprofit is granted 501(c)3 status, its donors can claim on their federal income tax a deduction for a portion of the funds (or goods) donated to the organization, considered “charitable” by the IRS. Not all nonprofit organizations desire to be “charitable” organizations, for example, professional and trade associations, condominium or cooperative housing associations. Some do not seek it because of the added responsibility of extra reporting requirements to maintain the status, such as an independent audit.

Once a nonprofit has received its charitable status from the IRS, its board of directors has a “fiduciary responsibility” to the people or entities that donate monies to the organization. When a charitable organization accepts a donation, it is held accountable for using the money for the public good. The board acts as the donor’s “fiduciary”, or financial representative, and thus has a responsibility to be faithful to the individual’s interest in donating the money. This is what the IRS assumes when it receives the 501(c)3 organization’s annual report.

Another social responsibility – even if a nonprofit does not have tax-exempt status – is related to employment. The IRS considers the board to be the representative of the employer and holds it accountable for any and all representations of the organization to them. Boards may be caught off guard by the “long arms” of the IRS whenever the nonprofit employer becomes delinquent in its withholding and other tax deposits and reports. In one instance, one board of directors of a nonprofit organization spent seven years after the organization went out of business negotiating with the IRS before a settlement was reached.

As indicated earlier, whatever their tax exempt status, too many boards of directors are not fully informed of their social responsibilities. It is important that a nonprofit board of directors learn about these social responsibilities before they turn their attention to the internal affairs of the organization they serve. The remaining part of this paper provides an outline of responsibilities related to the internal operations of a nonprofit organization.

A final word: the terms “not-for-profit” and “nonprofit” are used interchangeably. There is no legally defined difference between them. In some circles there may be a difference in subtlety. The original term is “not-for-profit organization”. Due to its linguistic awkwardness it became conveniently shortened to “nonprofit organization”.

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II. THE INTERNAL RESPONSIBILITIES

Confusing Governance and Program

Nonprofit organizations are typically known by what they do. When directors meet, they talk proudly about programs they sponsor. Programs are important; but before there can be programs, there must be organizational mechanism and infrastructure to carry them out. Governance, therefore, is the soil that supports and nourishes programs.

Generally the evolution of a nonprofit begins with a group of concerned individuals who have identified something they are passionate about, a cause or concern they want to address, accomplish or correct. At first these individuals organize themselves very informally, with the same persons doing both the planning and decision-making (“governance”) and program.

Typically this first group of volunteers also becomes the board of directors and helps the organization grow from an ad hoc array of activities based on volunteer energy and passion to a sophisticated organization complete with professional staff. At the beginning the lines (and thus the board meeting discussions) between program and governance are often blurred and nearly non-existent.

As organizations mature, however, these two functions – program and governance – need to become increasingly distinct. The board needs to concentrate on governance, while the staff concentrates on program. The volunteers assist staff and may serve on the board.

But what often happens is the original volunteer directors confuse their roles; especially when an organization has outgrown the original founders’ capacity to manage. The perception is that program has tangible rewards, while governance seems distant. So, in both young and small organizations, directors tend to become involved in program. They may hesitate to relinquish that role, even when their board function becomes more demanding. This may paralyze the organization and can lead to director burnout.

Sometimes, it becomes necessary for these program volunteers to step aside and allow the governance to be taken over by more qualified executives. At the same time, the role of program volunteers in supporting and working with staff may change to provide room for staff to evolve programs beyond the original notions of the founders.

The separation between governance and program is not absolute in any organization. Often directors help with fund-raising activities and staff should help the board with its governance work. Nevertheless, it is important for the board to recognize that its primary job is governance.

The chart on the next page serves as a template to understand the roles and responsibilities of nonprofit boards.
A. GUARD THE RESOURCES

Of the three basic responsibilities of a nonprofit board the one that is probably given the least attention is that of caring for the assets of the organization. This is likely due to the unfamiliarity of board members with financial statements, insurance issues and general property asset management. Unfortunately, without sufficient resources, no organization can perform its mission.

Usually when we think of the resources of an organization we think of money, and well we should. Without a steady and adequate stream of income, no organization will last long. But fundraising is not the only task. Board members are responsible for over-seeing the adequate allocation of those funds – the budget process – as well as the effective management of all the organization’s assets - such as investments and property.

In addition to the “fixed assets” of an organization, there are other, perhaps less tangible but equally important assets that need to be safeguarded: the reputation and integrity of the organization in the eyes of the public. If a board member cannot publicly defend the organization when it comes under attack by outside forces – as has happened all too frequently of recent – then that board member’s service must be questioned.

1. Ensure Adequate Resources

An organization is only effective if it has the resources to meet its purposes. Providing adequate resources is first and foremost a board responsibility. Many organizations confuse the executive role with the board’s responsibility on this score, particularly when the staff includes a director of development or professional fundraising consultant.

It is perfectly appropriate to consider the top executive the “chief fund raiser,” but the board determines what scale is required by the mission and possible to achieve. The performance of the board, executive, and director of development is intimately linked to the board’s membership and its ability to open doors, influence potential large donors, and otherwise monitor and guide fundraising initiatives. Effective fund raising is one measure of the board’s capabilities, commitment, and influence. Every board member should inventory his or her connections with potential givers.

Annual gifts from board members are increasingly expected, although sometimes provided reluctantly. The personal and collective example of board members is very important to the solicitation of contributions from others. In addition to being able to report 100 percent participation to potential and past supporters, board members are better fundraisers when they know they have done their part. The amount of personal giving by board members is less important than the fact that they have participated. Before accepting the role of board member, individuals should be committed to financially contribute to the organization.

Collective board member giving should be reported as a separate category in fundraising reports. The aggregate giving for the same period of the preceding year should also be provided. The annual goal each year should be to exceed the preceding year’s total.
2. **Manage Resources Effectively**

An important part of serving the public trust is protecting accumulated assets and ensuring that current income is managed properly. Because organizations are incorporated and granted tax-exempt status by state and federal laws to fulfill a public need, the board’s obligations go well beyond its organization’s members, constituents, or clients, to include accountability to the public at large.

Boards traditionally exercise this responsibility by helping to develop, approve, and monitor the annual budget. Indeed, this annual rite is probably one of the board’s most significant policy decisions because it sets in motion a host of programmatic, personnel, and other priorities. This responsibility should not be delegated to the board’s executive or finance committees.

The board can only monitor the budget’s implementation if it has clear, intelligible, accurate, and timely financial reports. All board members should receive quarterly balance sheets with a consolidated accounting of all assets and current liabilities. These should be prepared within 30 days of the end of each quarter by a capable in-house accountant or an external service bureau. Monthly finance reports should be provided to the treasurer and members of the finance or executive committee; in the absence of such committees, all board members should receive them. Monthly reports should show comparative figures for the same period in the preceding fiscal year and comparison to the agreed upon budget; and, above all, they should be comprehensible to board members. Board members should be proactive in suggesting improvements in the formats and presentations of financial reports. Of course, board members should be provided training in how to read financial statements and understand balance sheets and income reports.

The board should ensure that an annual audit is performed by an independent certified public accountant or accounting firm. Do not allow a volunteer board member to perform the audit function. It is also good practice for the audit or finance committee to meet with the auditor prior to the audit process and while the audit is underway.

Some boards request of the auditor that specific questions or issues be addressed in the auditor’s “management letter” (prepared specifically for the board and executive, but separately from the audit report). Finally, all board members should receive the audit report prior to the meeting at which it is discussed.

3. **Enhance the Organization’s Public Image**

The most important asset of an organization is its reputation and integrity in the eyes of the public, the level of credibility it has with its multiple stakeholders. Recent scandals on Wall Street have served to emphatically punctuate the importance of this asset. It is up to the board to serve as the organization’s champion, defenders of the integrity of the organization to the general public.

An ambitious and effective public relations program is needed to ensure a healthy public image for the organization. Clearly articulated achievements, contributions to the public good, and explanations for how gifts, grants, and other revenue sources are allocated are all part of the process. Written annual reports, timely and informative press
releases, consistent communication initiatives with community and government leaders, and timely speeches by appropriate staff and board members to civic and community groups are important elements of a comprehensive public relations strategy.

One of the most important decisions a board's top leader and its executive make is designating who should be the organization's spokesperson. This decision is normally situational, but there are advantages to having an especially articulate board chairperson or volunteer president serve this important function. Volunteer leaders who convey their commitment and dedication through advocacy and willingness to be out in front on the thorny issues command more public attention and respect precisely because they do not receive remuneration for doing so.

Boards should guard against the occasionally overzealous board member who may take inappropriate and unilateral initiatives without clearance by the rest of the board. The board's elected leaders should ensure that the board appropriately disciplines itself. No board member should represent himself or herself as speaking for the board or organization unless specifically authorized to do so.

B. GUIDE THE STAFF

The second overall function of a nonprofit board is to steer its staff and volunteers in the right direction with respect to the mission and vision of the organization. Harnessing and channeling the energies of the human lives that comprise the organization into meaningful causes is a board responsibility. The key here is to do this without micro-managing staff members.

A board therefore accomplishes this goal not by managing personnel directly, but by hiring and supporting a talented chief executive officer. The board delegates, transfers and invests responsibility for the human resources component of the organization into the hands of the senior full-time officer. Choosing the right C.E.O. is perhaps the board's single most important responsibility.

The hiring of a top-notch person as the executive director sends a powerful message to the organization's internal and external constituents as to what the board thinks about the organization's future because the executive director personifies the organization more than any other person.

The board then surrounds that person with appropriate personnel polices, and compensation schemes, and serves as a buffer for the executive during rough times that will arrive sooner or later.

4. Select, Review and Support the Chief Executive

As stated earlier, the most important decision a board makes is selecting its chief executive officer, because the choice will have a long-term impact on the organization’s development and effectiveness. While the hiring function may be shared with others who have a stake in the outcome, the final decision is the board's to make.

A carefully considered search process is essential, of course; but a prerequisite of effective executive performance is the board's recognition of its duty to provide the working environment that will enable the top
Responsibilities of the Nonprofit Board of Directors

Prior to a search process, the board should:

- Ensure the adequacy of the organization’s statement of mission and purpose;
- Identify the organization’s major strengths and needs;
- Establish specific priorities for the executive leadership;
- Articulate the characteristics, skills, and style it seeks in the new executive;
- Establish clear objectives and expectations for at least the first year of service;
- Provide an adequate compensation package and other employment terms; and
- Clarify board functions as distinct from those of the executive and staff, including the executive’s exclusive responsibility to select and supervise a management team without board interference.

Finally, the board should prepare a comprehensive job description that includes a response to the fundamental question: “Who is the organization’s ‘chief executive’? Is it the chief executive (by whatever title), or is it the board chair (by whatever title)?” Or is it some fuzzy and risky combination of both?

Nowhere else except from the board can the chief executive seek the kind of moral and substantive support he or she consistently needs. Although this responsibility is often manifested through the board’s chair, it remains a board function. Some boards have found it useful to assign this responsibility to the executive committee. But, the board as a whole should be satisfied that the chief executive:

- Receives frequent and constructive feedback;
- Is introduced to other community leaders and organizations;
- Is invited to important social functions;
- Is complimented for exceptional initiatives;
- Is encouraged to take professional and personal leave for renewal;
- Is assisted when members overstep prerogatives or misunderstand their roles;
- Feels that the board is aware of and sensitive to family situations and needs; and
- Feels that personal performance is being assessed.

With regard to informal and formal performance reviews, the board and executive should agree on purposes and processes. This delicate business benefits immeasurably if annual goals and objectives are mutually discussed and agreed on; they become the primary criteria for review through informal and candid discussion.

The formal, periodic, and comprehensive review processes can be especially challenging for everyone concerned. It is recommended that the executive or personnel committee of the board review the chief executive annually.

The most personal relationship affecting the organization long-term is that between the chief executive and the board chair. Informal monthly meetings enable the board chair to serve as a mentor and personal advisor to the executive.
5. Map Out the Personnel Policies and Compensation Scheme

Too frequently board members find themselves micro-managing the staff of the nonprofit. While board members may interact with staff members as volunteer workers, they should never presume that they are staff’s supervisors or bosses. That right is reserved for the executive only or to those the executive delegates.

While not directly involved in personnel management, board members do have the responsibility of adopting a clear set of personnel policies that govern the internal human relationships within the organization, and a compensation scheme complete with benefits that is incorporated into the organization’s annual budget.

6. Serve As a Court Of Appeals

One of the marks of an effectively managed and governed organization is its ability to avoid having its board adjudicate personnel issues except in the rarest of circumstances. Solid personnel policies and procedures, grievance protocols, and especially the clear understanding about the executive’s responsibility for hiring, developing, and releasing staff, helps ensure proper decorum in this area. Nevertheless, the time may come when the executive’s judgment will be challenged. The wise executive knows when to consult with the board and ask for its judgment involving disputes not otherwise manageable within the executive’s prerogatives.

C. DIRECT THE MISSION

The board of directors is vested with the responsibility for defining the mission of the organization and seeing to it that the professional staff members organize the programs of the organization accordingly. A common occurrence among many nonprofits is “mission drift,” which is the tendency to allow externally provided funding to determine the organization’s programs. Staff members sometimes feel trapped by a foundation’s “flavor of the day” priority, rather than staying true to the goals and purpose of the organization. Here the board serves as cautionary brakes that help the organization stay on track and true to its mission.

The key to staying on track is the periodic joint planning by board and staff members to collaboratively assess the value of the organization and to chart its future. The annual board/staff retreat is a critical ingredient in the life of successful nonprofit organizations.

7. Define the Organization’s Mission and Purposes

It is the board’s responsibility to articulate the mission. Once the mission is set, the board sees to it that everyone connected with the organization understands its raison d’être - its reason for being - precisely what it strives to accomplish. This usually takes the form of a written mission statement. The board periodically reviews the adequacy, accuracy, and validity of the mission statement. The board has exclusive domain over the process of revising the mission and has an obligation to consult with the organization’s “stakeholders,” such as its members, volunteers, staff, clients, and the public for their comment and feedback.
A widely distributed statement of mission and purpose articulates the organization’s goals and primary constituents served. It explains what makes the organization distinctive and special, presenting a compelling reason for individuals, foundations, and corporations to support it financially.

An adequate statement of mission and purpose serves as a guide to organizational planning, board and staff decision-making, volunteer initiatives, and setting program priorities among competing demands for scarce resources. It sets the stage for developing fundraising strategies and strategic planning as well as other responsibilities.

There is ample literature on what constitutes a quality mission statement, including a statement of the values and vision. It is best written from the standpoint of the “customer” or beneficiary of the nonprofit’s activities, which is sometimes the public at large.

8. Ensure Effective Organizational Planning

It goes without saying that comprehensive organization planning is critical. The difficult questions for board and staff are: 1) who should do it; and 2) how can busy volunteer board members be meaningfully involved in the process? Opinions differ on how these questions should be answered, but there is wide unanimity on at least these principles:

- Board members must be involved extensively in the planning process if they are to assume proper “ownership” of the plan and otherwise help to advise and set overall direction of the plan’s goals and objectives, including the acquisition of new resources. Their role is essentially one of asking good questions, expecting good answers, and serving as resources in areas of personal and professional expertise. This is an area of some controversy. Some feel that the planning function is the prerogative of the executive. While there may be some circumstances where the planning function is largely staff-driven, the board should, in some fashion, be vested in its outcome and results.

- The board should formally and enthusiastically approve the plan following an extended period of consultation and opportunity for revision. While some long-range forecasts can be made, it is probably best to create an annual plan with a three-year perspective. Annual progress reports by the executive keep the staff accountable and the board aware of progress on priorities.

When an organization includes a professional staff, the conduct and coordination of planning is best entrusted to it. However, this should in no way suggest that volunteer board members need not be well-informed on programmatic, financial, and managerial issues, or commit to more and longer meetings, if necessary. Yet, the organization’s executive and staff must share at least as much enthusiasm and ownership for the group’s mission as does the board, and perhaps even more because they bear the primary responsibility for implementing it.

Annually the board and key staff need to meet in a retreat mode, off-site, where they can perform the planning function. The
previous year’s accomplishments and setbacks should be reviewed as well as a current reality analysis and mission statement. A professional facilitator helps to keep the group focused and retreat productive.

9. **Monitor the Organization’s Programs and Services**

Periodically the board questions whether current and proposed programs and services are consistent with the organization’s stated mission and purposes. Given limited resources, the board must decide among competing priorities. Financial and programmatic decisions should be made together.

What the organization does for its members, constituents or clients determines its significance as a social institution. Yet a nearly universal complaint by board members is that their meeting agendas are dominated by finance and fund-raising issues. Every board must find mechanisms to ensure themselves that program and services are consistent with the organization's mission and purposes and are of high quality.

The board must weigh their own “wish list” of quality programs and services against the staff’s ability to creatively initiate and conduct them in a cost-effective manner. It is in balancing this tension that board and staff roles often become confused, especially when board members also volunteer to help out with programs. Candor, openness, and explicit job descriptions assist in negotiating an accommodation satisfactory to everyone.

Here again, the board best performs its role by asking the right questions and expecting good answers:

- Is it time to conduct a survey of constituents (or clients or members) to determine their satisfaction with programs and services? When was this last done, with what methodology, and what results? (Such a survey can also elicit suggestions to improve existing programs and services and recommend new ones.)

- How can the board and staff monitor constituent satisfaction with future programs and services in a consistent, cost-effective, and reliable manner?

- What is known about who uses each program and service? Are participation trends in the right direction in terms of both numbers and categories of people served?

- What proportion of the annual budget is devoted to programs and services as distinct from personnel costs and other expenditures? Is the balance right?

- How should information from monitoring of the organization’s programs and services be used to change its policies or priorities?
III. CONCLUSION - INTERNAL ASSESSMENT

Boards increasingly are conducting substantive reviews of their own performance in not-for-profit organizations as well as for-profit corporations. Every three to five years, the board and its executive should stand back from their usual preoccupations and reflect on how the board is meeting its responsibilities. This includes a look at how its membership composition, member selection process, organization or structure, and overall performance can be strengthened. A candid and anonymous written survey of board member perceptions in advance of a workshop or retreat can pave the way for consensus on priorities. A qualified third party facilitator can bring experience, objectivity, credibility, and perspective to the process. An overnight stay away from the organization’s boardroom combined with opportunities to socialize can build camaraderie and trust among board members and between the board and the executive.
Nonprofit Board Governance

References

Books


Workbooks


Articles

