

## **ASK THE NONPROFIT PROFESSIONAL GOVERNANCE AND BOARDSMANSHIP**

### **What laws govern nonprofit organizations?**

In the United States nonprofit organization statutes are enacted by the state, not federal or local government. Normally statutes regulating nonprofits are separate sections. In Arizona, where the ASU Lodestar Center is located, the statute is Title 10, Chapter 19 and it can be found at the following Web site:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=10>

Laws providing tax exemption to nonprofit organizations are enacted by the federal government through the Treasury Department and the IRS. These laws are explained in Publication 557, available through the IRS Web site:

<http://www.irs.gov/publications/p557/ar01.html>

Additionally, some local governments such as cities and counties may impose laws that impact nonprofit organizations. These often refer to registering as a fundraising entity before undergoing solicitation activities, imposition or exemption from sales taxes, etc.

### **Can a nonprofit be owned or organized by an individual?**

A nonprofit may be organized by an individual, but a board of directors will be required to receive tax exempt status from the federal government. However, a nonprofit may not be owned by an individual. Nonprofits are not owned by anyone; the board of directors carries the legal and fiduciary responsibility for the entity and is responsible to the public for assuring legal operations. The minimum number of board members is set by state statute. Arizona requires five board members.

Nonprofits do not need to be incorporated to receive tax exempt status from the IRS, but it is usually recommended. (See the FAQ: Risk Management) They will, however, need a board of directors.

### **How often should nonprofit boards meet?**

State statutes speak to this issue. Normally at least one meeting is required as an annual meeting. According to BoardSource (an association that provides information for boards of directors), “The board should meet only as many times as are required to fulfill its role and it should hold meetings wherever the setting is most conducive to quality board work.” An organization should look closely at the responsibilities of the board and meet only when they are meaningfully addressing one or more of them. Prevailing practice is that boards meet on a regular schedule and address issues on a planned basis over the organization’s calendar or fiscal year.

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Generally, an organization in the first phases of its organizational life meets more frequently, but as staff is added the board may meet less.

**What are the responsibilities of board membership?**

This is a complicated question and any present or prospective board member is urged to access one or more of the sources listed at the end of this FAQ.

Briefly, the primary responsibility is to govern as well as support the organization. Directors should understand the following in carrying out their responsibility:

- Vision and Mission
- Policy
- Strategic Planning
- Fiduciary
- Resource Generation
- Community Liaison
- Government Relations
- Employer of CEO/Executive Director
- Board Development
- Leadership

**What is the best size for a board?**

The answer given by BoardSource is, “As few board members as are necessary to fulfill the board’s role in the organization today.” Generally, governance practice has been moving toward smaller boards, and it is important to note that there is no “right” number. Some say the ideal size may be between 7 and 15. It is common for nonprofits to have large boards that are formed to have “representation of constituents or stakeholders/donors” as well as “the need to feel ownership.” On the other hand, some boards are very small, with only 5 members. There are strengths and weaknesses on either end of this spectrum; each organization needs to determine for itself what size and organization will best serve to further its vision and mission.

If the decision is made to have a large board (20+), then adequate resources must be dedicated to service the board including sub-organizations such as an Executive Committee so that members know and are involved in deliberation and decision making.

**Should the board have committees?**

As with so many things the answer is, “it depends.” Common practice has adopted the “minimal” rule—keep committees to the minimum number that best meets the board’s responsibilities. Having said that, many nonprofit boards of any size require an Executive Committee with well defined authority. It is interesting to note that, with the nearly universal availability of e-mail, current board practice cites less need for an Executive Committee.

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The other common committee for nonprofits is the Finance Committee. This committee helps the board carry out its fiduciary responsibilities. As nonprofits grow in size and complexity, boards have been delegating much of the technical oversight to a Finance Committee, which has greater expertise. But the overall financial responsibility remains with the board. It should be noted that the nonprofit accountability requirements have been increasing. Many funding sources now require annual certified audits. A frequently seen guide for moving to annual audits, rather than financial reviews, is when a nonprofit's budget reaches around \$350,000.

In response to the nonprofit implications of the American Competitiveness and Corporate Accountability Act of 2002, commonly known as the Sarbanes-Oxley Act, nonprofits are establishing Audit Committees that comply with this law. Some smaller nonprofits develop joint Finance/Audit Committees that then adjourn to reconvene as the Audit Committee. Care must be taken to assure independence of the Audit Committee in this case. Larger nonprofits usually create separate Audit Committees. Many accounting firms offer written guidance for the operations of the Audit Committee. See the Independent Sector explanation of how the Sarbanes-Oxley Act affects nonprofits at <http://www.independentsector.org>.

The ASU Lodestar Center has identified an additional committee, the Board Development committee, as a growing best practice. This committee replaces the traditional Nominating Committee and is charged with the responsibility of board recruitment, nominating, education and evaluation. Its purpose is to assure the quality of the Board and, thus, assuring the future of the organization.

Other common committees are personnel, resource development, and planning. Having said that, it is true that the more divided up a board becomes the more difficult it is for the board to have informed responsibility for the organization. Therefore, committee formation should be done sparingly and with care.

**What other structures will help a board accomplish its work?**

Many boards of directors operate with task forces that augment a limited number of committees. These increasingly popular structures are timelined with precise expectations for what needs to be done and when it will be reported to the board for discussion and action. Many task forces operate for three months, and some up to a year. But they allow persons to focus on a topic for a short period of time and then move on to another type of work within the board.

**Can people not on the board serve on committees and task forces?**

Many boards of directors invite community members to serve on committees and task forces. This often brings specific, needed expertise to help address an issue. It also introduces the organization to more people who may, at some time, like to serve on the board.

**Where can I find additional information?**

The Web site of BoardSource, Inc. has an excellent question and answer section.

<http://www.boardsource.org/>

The Web site of Free Management Library has a section on Board of Directors.

<http://www.managementhelp.org/>

The Web site of Independent Sector keeps boards informed on laws and legislation affecting nonprofit governance. [www.independentsector.org](http://www.independentsector.org)

Andringa, Robert C and Engstrom, Ted W. *Nonprofit Board Answer Book* (*BookSource, 2007*) [www.BoardSource.org](http://www.BoardSource.org)

Duca, Diane J. *Nonprofit Boards: Roles, Responsibilities and Performance* (New York: John Wiley and Sons, 1996)

Chait, Richard P *Governance As Leadership* – BoardSource, Inc. (New York: John Wiley and Sons, 2005)

Committee on Nonprofit Corporation, American Bar Association *Guidebook for Directors of Nonprofit Corporations*. Second Edition (American Bar Association, 2002)