Understanding Governance: What Are Boards
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Presentation Overview
- Governance
- What are boards
- Why are there boards
- What do boards do
- Working with boards
- Getting the most from your board

Jim’s Experience
- 20 Years Not for Profit (NFP) Management
- ED/President of 3 NFPs
- 11 Years NFP fund Raising Experience
- Service on several NFP Boards
  - Served in several positions including board chair

Keith’s Experience
- Ph.D in Health Policy and Administration
  - Cognate area management and organizational theory
- Serving or served on 15 NFP/Public Boards
- Chair of a National Committee
- Consultant to several NFP boards
- Wife was ED of a NFP for seven years.

Learning and Retention
- 10% Read
- 20% Hear
- 30% See
- 50% See & Hear
- 70% Say & Write
- 90% What We Do
  - From: Jensen, Brian 1996 and Schiller, Pam 1999

Where to Start
- In the beginning
- Start with a basic and thorough understanding of board responsibilities, functions, duties, and obligations.
Question of the Day
- Why is understanding board governance like making macaroni and cheese from scratch?

Where to Start
- It can lead to more effective outcomes
- Board is ultimate decision maker for the NFP.

An Effective Not For Profit
- Has the ability to fulfill its mission through a blend of sound management, strong governance, and a persistent rededication to achieving results.

Key Point
- Courts are looking at not for profits to determine if they have used best corporate governance practices.
- This session is important in protecting the organization, the board, and yourself.

Difference Between Public Board, Corporate Board, NFP Board
- Public originate with legislature and are appointed by a public executive; they oversee the application of legislation and are custodians of the public trust – receive no additional $$.

Difference Between Public Board, Corporate Board, NFP Board
- Corporate are self appointed and are expected to look after the best interests of the shareholders who seek profit and ROI. Receive additional $$. 
- Not for profits are self appointed and have an obligation to honor the promise of the donors and supporters of the organization as expressed in the “mission.” They have an obligation to appear trustworthy to their constituents and receive no $$. 

What Is A Not For Profit

- Not for profits (NFP) are founded for a compelling purpose that serves the public benefit and operates to accomplish a well-defined mission.

Why NFPs Granted Tax-Exempt Status

- Saves government money on a public good
- May be more effective and efficient in service delivery.

Purpose of the Board

- The NFP Board sets the direction of the organization, ensures resources, and provides oversight.

What is a Not-for-profit (Non-profit)

- As applied to any private entity, no part of the net earnings of such entity accrues or may lawfully accrue to the benefit of any private shareholder or individual.

Governance

- Not-for-profit
  - An incorporated organization which exists for educational or charitable reasons, and from which its shareholders or trustees do not benefit financially.
  - One of the tangible features is the requirement for public benefit. This essentially means that any profits or surpluses a charity makes must be used to further its charitable purposes. Such profits or surpluses must not be distributed to owners, members or any other individual or group of individuals.

What is a Not-for-profit (Non-profit)

- A corporation that cannot issue shares and cannot pay dividends. In addition, under the Federal Tax Code Section 501 (c)(3), a non-profit corporation is eligible for certain Federal and State tax exemptions and, upon dissolution, must distribute its remaining assets to another non-profit group.
- Non-profit means not conducted or maintained for the purpose of making a profit. Instead, it operates to serve a public good. Any net earnings by a non-profit organization are used by the organization for the purposes of which it was established.
The Not For Profit Numbers Game - 2006
- 1,569,572 tax-exempt organizations:
  - 997,579 public charities
  - 118,423 private foundations
  - 453,570 other types of nonprofit organizations, including chambers of commerce, fraternal organizations and civic leagues.
  - Assets: $4,269,621,664,299 Income: $3,094,854,673,551
  - In 2006, not-for-profits accounted for 8.11% of all wages and salaries paid in the United States.

The Not For Profit Numbers Game - 2010
- 1,514,530 tax-exempt organizations:
  - Assets: $3,818,095,661,647 Income: $1,657,971,550,726
  - Decrease in numbers & value

The Not For Profit Numbers Game - 2006
- 25,263 NFPs in South Carolina.
- Total Reported Income Amount of Organizations in the State - $17,288,931,835
- Total Reported Asset Amount of Organizations in the State - $29,760,362,184

The Not For Profit Numbers Game - 2010
- 21,365 NFPs in South Carolina.
- Total Reported Income Amount of Organizations in the State - $13,798,168,482
- Total Reported Asset Amount of Organizations in the State - $28,714,592,409

Conclusion
- NFPs are big business.
- Business “rules” are very applicable to NFPs.
- The concept of Sustainability has come to NFPs.

In-class Exercise
- In your own words define governance.
- What constitutes “good” governance?
Governance

- The concise Oxford Dictionary defines ‘Governance’ as an act, manner, fact or function of governing, sway, control.
- The processes and structures that an organization uses to direct and manage its general operations and program activities.

Elements of Good Governance

- Vision – envision the future
- Direction – setting goals
- Resources – securing resources
- Monitoring – reviewing periodically
- Accountability – ensuring the efficient use of resources and reporting progress

Back to the Question of the Day

- Vision
- Direction
- Resources
- Monitoring
- Accountability
- Whose job is it to bring these “ingredients” together

Governance

- Good governance is as or more important for not for profits.
- For profits have
  - Accountability to shareholders
  - Are subject to takeovers

Governance

- Good governance – achieving desired results and achieving them in the right way.
- The Board of Directors/Trustees has the principal responsibility for fulfillment of the organization’s mission and the legal accountability for its operations.

Governance

- Not For Profits
  - Have tax privileges
  - Do not distribute profits
  - Do not have owners
  - Greater reliance for good governance on Board of Directors and CEO
**Boards = Legal Guardians of the Organization**
- Granted the AUTHORITY to make decisions on behalf of the organization.
- Must be ACCOUNTABLE for the organizational performance.

**Boards = Legal Guardians of the Organization**
- “A board needs to know that it owns the organization. But it owns an organization not for its own sake-as a board-but for the sake of the mission which that organization is to perform.”
  - Dr. David Hubbard

**Board of Directors versus Board of Trustees**
- A group of people comprising the governing body of a corporation.
- Board of Directors refers to a group of people that are elected by shareholders of a company who make decisions affecting the company’s business on behalf of the shareholders.
- The Board of Trustees is responsible for overseeing the activities of a not-for-profit organization, ranging from huge foundations to small local charities.

**Board Roles and Responsibilities**
- Set Policy and Direction
- Legal
- Financial/Accountability
- Fundraising
- Futuring
- Evaluation

**Responsibilities of Not for Profit Boards**
- Mission/Purpose:
  - A statement of mission and purposes should articulate the organization’s goals, means, and primary constituents served. It is the board of directors’ responsibility to create the mission statement and review it periodically for accuracy and validity. Each individual board member should fully understand and support it. Bears ultimate responsibility for the company’s business and affairs.

**Responsibilities of Not for Profit Boards**
- Executive Officer:
  - Boards must reach consensus on the chief executive’s job description and undertake a careful search process to find the most qualified individual for the position.
Responsibilities of Not for Profit Boards

Support Executive and Review Performance:
- The board should ensure that the chief executive has the moral and professional support he or she needs to further the goals of the organization. The chief executive, in partnership with the entire board, should decide upon a periodic evaluation of the chief executive's performance. Provide advice to the organization's management.

Adequate Resources:
- One of the board’s foremost responsibilities is to provide adequate resources for the organization to fulfill its mission. The board should work in partnership with the chief executive and development staff, if any, to raise funds, determine budgets, dues, etc.

Determine and Monitor the Organization's Programs and Services
- The board’s role in this area is to determine which programs are the most consistent with an organization’s mission, and to monitor their effectiveness. Review fundamental operating financial plans and charitable activities.

Effective Planning:
- As stewards of an organization, boards must actively participate with the staff in an overall planning process and assist in implementing the plan’s goals.
- Provide general direction for the management of the organization's activities.

Manage Resources Effectively
- The board, in order to remain accountable to its donors, the public, and to safeguard its tax-exempt status, must assist in developing the annual budget and ensuring that proper financial controls are in place.
- Promote effective organization audit procedures.

Enhance the Organization’s Public Image
- An organization's primary link to the community, including constituents, the public, and the media, is the board. Clearly articulating the organization’s mission, accomplishments, and goals to the public, as well as garnering support from important members of the community, are important elements of a comprehensive public relations strategy.
Responsibilities of Not for Profit Boards
- Serve as a Court of Appeal
- Except in the direst of circumstances, the board must serve as a court of appeal in personnel matters. Solid personnel policies, grievance procedures, and a clear delegation to the chief executive of hiring and managing employees will reduce the risk of conflict.

Responsibilities of Not for Profit Boards
- Assess Its Own Performance
  - By evaluating its performance in fulfilling its responsibilities, the board can recognize its achievements and reach consensus on which areas need to be improved. Discussing the results of a self-assessment at a retreat can assist in developing a long-range plan.
  - Often where boards are the weakest!

Business Judgment Rule
- Many courts hold NFP Board Members to this rule
- Board members act:
  - On an informed basis
  - In good faith
  - In an honest belief the action taken is in the best interest of the organization
- Protection – D & O insurance

Board Culture = Organizational Culture
- Board members take role seriously
- Act professionally and ethically at all times
- Have interests of organization above their own
- Rotate off when terms are up
- Read support materials, come prepared and make attendance at meetings a priority

Board Duties
- Duty of Care
- Duty of Loyalty
- Duty of Obedience
- Duty of Compliance
- Duty of Fiduciary
- Duty to Disclose

Duty of Care
- Directors and Officers shall discharge their duties of their respective persons in good faith with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances.
Duty of Care
- The level of competence that is expected of a board member:
  - To be informed
  - Exercise independent judgment
  - Monitor organization and activities by regular attendance at meetings and by reviewing information and asking questions
  - Regularly review and refine the mission of the organization

Duty of Care
- Does not require expertise in every area but does require a basic understanding of:
  - Principal operation and financial plans, as well as strategies and objectives of the organization
  - Key indicators to measure the organizations, board, and management’s performance
  - Recent financial and operational results

Common Sense Steps to Meeting Duty of Care
- Be informed
- Be active
- Ask questions
- Exercise independent judgment
- Discharge duties appropriately
- Perform duties diligently

Duty of Loyalty
- The interest of your not for profit takes precedence over self-interest.
- A standard of faithfulness to the organization

Duty of Loyalty
- Act in the best interests of the corporation
- Ask tough questions

Duty of Loyalty
- Balancing the interests of charitable purpose (the not for profit organization) with the interests of employees, suppliers, customers, and the community
- Distinguishing the interests of the charitable purpose and the interests of the ED
- Distinguishing the interests of the charitable purpose and the interest of the individual local society
Duty of Loyalty
- Questions about loyalty usually arise
- There is a conflict of interest or
- Board member or management takes advantage of an opportunity in the organization

Conflict of Interest Policy
- Instituting and maintaining a conflicts of interest policy is a vital step a board of directors can take to ensure compliance with the duty of loyalty requirement
- In addition, a well-crafted conflicts of interest policy is viewed favorably by the IRS
- Can be an ED’s good friend

Duty of Obedience
- Carry out the charitable purposes of the not for profit
- Operate not for profit for a public, exempt and charitable purpose, rather than for a private one
- Keep transactions at arm’s length

Duty of Loyalty
- Be conscious of potential conflicts of interest
- Follow the organization’s conflict of interest policy

Duty of Obedience
- Be faithful to the underlying charitable purpose and goals
- The mission of the organization and the means to achieve it are inseparable

Duty of Compliance
- Be familiar and follow the articles of incorporation and the bylaws
- Read all other governing documents and make sure that you and your organization is following its own internal rules
Duty of Fiduciary

- A fiduciary duty is a legal duty imposed on individuals who are in positions of trust or confidence, to act primary in the interests of others and requires, as its exercise, scrupulous good faith and candor by such individuals
- Fiduciary duties are defined by state statutes and common law (case law)

Duty of Fiduciary

- Keep your not for profit fiscally sound and make sure it operates in a fiscally responsible manner.
- Make informed decisions when you invest and reinvest assets of the organization.
- Develop fundraising goals and policies which reflect the mission

Duty to Disclose

- There is a duty to disclose all material facts upon the interested board member of any potential conflict to other members or committees who are considering a proposed transaction

Top Five Best Practices in Board Governance

- Focus
- Build knowledge
- Promote honest, open dialogue
- Formally evaluate performance
- Insist on good practices

Top Five Best Practices in Board Governance

- Focus on what matters most
  - Preserving the mission
  - Organizational Quality
  - Financial strength
  - Strategy and vision

- Build a deep knowledge of the organization
  - Visit the program site(s)
  - Meet people from throughout the organization
  - Ask for regular reports on program results
  - Stay current
**Top Five Best Practices in Board Governance**

- Promote honest, open dialogue
  - Involve everyone
  - Ask tough questions
  - Ask "dumb" questions
  - Have the courage to disagree
  - Listen to your colleagues

- Formally evaluate performance
  - Organization as a whole
  - Executive Director
  - Board as a whole
  - Operations following strategic plan

**Top Five Best Practices in Board Governance**

- Insist on good practices
  - Early setting of Board calendar
  - Regular “rhythm” to agendas
  - Adequate advance materials
  - Good meeting management
  - Plain language/clear communication

**Life Stages of Boards**

- Start out as “working” Boards where members focus on day-to-day matters in addition to strategic matters,
- Evolve to “policy” Boards where members focus mostly on strategic matters, and
- Eventually become large, institutionalized Boards that often have small executive committees and maybe many members some of which are “big names” to gain credibility with funders or investors.

**Types of Boards**

- Working Boards: These are boards that role up their sleeves and help the founders and management team of the company get the job done. They meet frequently, have animated, engaged discussions, and offer significant ongoing support and help to the key owners and managers of the company.
Types of Boards

- Reporting Boards: These are boards that meet four to six times a year for a status report on the company. If everything is going well, they tend not to have much to say. If there are problems or issues, they are often critical of the CEO and the management team. If things continue to go poorly, they often take action of some sort.
- Lame Duck Boards: These are boards that have no influence on the company. In many cases, they are simply rubber stamp exercises for the CEO or founders.

Board Attribute Exercise

- What are the five attributes of a quality board?
- Get into teams and devise your list of the five attributes