SQUIRE PATTON BOGGS

10 Best Practices for Non-Profit Corporate Governance

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1. **Oversight and Accountability**: The board of directors of a non-profit corporation must engage in active, independent, and informed oversight of the activities of the corporation, particularly those of senior management.
   a. As part of the responsibility to act with the duties of good faith, due care, and loyalty, directors are expected to be actively involved, and not simply "rubber stamp" recommendations or abstain from decisions. Independent directors should take care, however, to ensure they do not cross the line – their duties are to provide oversight and strategic direction, not to micromanage day-to-day functions.
2. **Independence**: Directors should be selected based on their ability to provide independent judgment.
   a. Every non-profit corporation should have a nominating/governance committee composed entirely of directors who are independent in the sense that they are not part of the management team and they are not compensated by the corporation for services rendered to it, although they may receive reasonable fees as a director. The committee is responsible for nominating qualified candidates to stand for election to the board, monitoring all matters involving corporate governance, overseeing compliance with ethical standards, and making recommendations to the full board for action in governance matters.
3. **Corporate Ethics**: Each board of directors is responsible for overseeing corporate ethics. Ethical conduct, including compliance with requirements of law, is vital to a corporation's sustainability and long-term success. To establish an ethical corporate culture, the board should consider the following actions:
   a. Communicated to personnel at all levels of the corporation a strong, ethical "tone at the top," set by the board, the chief executive officer, and other senior management, establishing a culture of legal compliance and integrity.
   b. Assign to the chief executive officer or other officer the specific task of serving as the compliance officer
   c. Adopt a conflicts of interest policy
   d. Include ethics-related criteria in employee qualification standard and in employees' annual performance reviews
4. **Training and Awareness**: It is essential for the board to be fully aware of the various federal and state regulations governing non-profit organizations, as well as the latest industry standards and guidance.
   a. Directors will benefit from training during onboarding and also ongoing periodic training to understand the legal requirements tax-exempt organizations are required to follow. Key training issues include director duties and liability, ethics, lobbying or political activities, tax shelter transactions, and funding including the public support test.
5. **Assessment and Evaluation**: Every non-profit corporation with substantial assets or annual revenues should develop and implement a three-tier annual board evaluation process whereby the performance of the board as a whole, each board committee, and each director are evaluated annually.
   a. It is not enough to simply assess the board, but to also take appropriate action in response to issues that may be uncovered during the evaluation. The board should also develop and implement a similar process for review and evaluation of the chief executive officer on an annual basis. Finally, as part of the assessment of board composition, it is good practice to evaluate the diversity of skills, experiences, and backgrounds of the directors to ensure a cross-section of valuable perspectives.
6. **Auditing**: Every non-profit corporation with substantial assets or annual revenue should be audited annually by an independent auditing firm.
   a. The corporation should change auditing firms or the lead and reviewing audit partner periodically to assure a fresh look at the firm's financial statements. The audit committee should be composed of completely independent directors and should set rules and processes for complaints concerning accounting and internal control practices. It is responsible for hiring, setting compensation, and overseeing the auditor's activities.
7. **Financials**: The chief executive officer and the chief financial officer of every non-profit corporation should review Form 990 or Form 990-PF and other annual information returns filed by the non-profit corporation with federal and state agencies.
8. **Written Standards**: Board oversight is exercised through authority that is adopted and standardized in the appropriate charters, policies, and procedures.
   a. Common written standards applicable to boards include board charters, committee charters, conflict of interest, executive compensation, financial reporting, investment participation, fundraising, expense reimbursement, document retention, and whistleblower. These written standards should be periodically reviewed and updated as the organization and industry standards evolve.
9. **Documentation**: Every non-profit corporation should adopt a written policy setting forth standards for document integrity, retention, and destruction.
   a. Meetings should be documented through minutes with an appropriate level of detail that captures decisions but does not create greater exposure for liability. Furthermore, it is important to keep in mind that the Sarbanes-Oxley Act provides that whoever alters or destroys a document with the intent to obstruct the investigation or proper administration of any matter within the jurisdiction of any federal agency or department is guilty of a felony. This provision applies to individuals within non-profit corporations as well as business corporations.

10. **Direct and Open Issue Reporting**: Every non-profit corporation should adopt a written policy to permit and encourage employees to alert management and the board to ethical issues and potential violations of law without fear of retribution.

    a. The Sarbanes-Oxley Act treats as a felony any discharge, demotion, or harassment of an employee who provides to a law enforcement official true information about the potential commission of a federal offense. Similarly, directors with information and analysis relevant to the board's decision making and oversight responsibilities are obligated to disclose that information and analysis to the board and not sit passively. Senior management should recognize and fulfill an obligation to disclose – to a supervising officer, to a committee of the board, or to the board of directors – information and analysis relevant to such person's decision making and oversight responsibilities.

    b. Any attorney providing legal services to a non-profit corporation who learns of evidence that the attorney reasonably believes indicates a material breach of fiduciary duty or similar violation shall report that evidence to the chief executive officer of the non-profit corporation and, if warranted by the seriousness of the matter, to the board of directors.

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