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Mary Tschirhart is a Professor of Public Administration at The Ohio State University. She served as Director of the Institute for Nonprofits and Professor of Public Administration at NC State University from 2008-2013. She has published extensively on nonprofit topics including board governance. She recently co-authored a text titled *Managing Nonprofit Organizations*. Dr. Tschirhart has served on six nonprofit boards in a variety of roles, including president, and led a nonprofit as its executive director.

Module 2



Goals for this Module

Participants should be able to:

- Define the Board of Directors legal responsibilities
- Define legal compliance
- Prepare an orientation process for new members that includes legal and financial responsibilities, and time commitments
- List three strategies for retaining board members



Disclaimer

This presentation is for educational purposes only and is not intended to be construed as legal advice.

Seek professional legal counsel for advice on issues pertaining to your nonprofit.



Sample Contents of an Orientation Program

- Mission, Vision, and Values of the Organization
- Current Programs of the Organization
- Financial State of the Organization
- Board Policies/Personnel Policies
- Staff Introductions
- Legal Responsibilities
- Organization Bylaws
- Expectations regarding Financial and Time Commitment
- Schedule of Board Trainings
- Board Committees



The Board's Role

- **Stewardship of the organization's financial and human resources**
- **Developing and revisiting the mission, vision and values as appropriate**
- **Ensuring mission, methods, and resources are aligned in ethical and efficient means that are in the best interests of stakeholders**
- **Accountability for legal, financial and strategic activities of the organization**



Legal Demands


Act as **FIDUCIARY** to fulfill mission
by meeting **THREE** standards

1. Duty of Care
2. Duty of Loyalty
3. Duty of Obedience



Duty of Care

Make well-informed decisions for nonprofit

- Hold adequate meetings
 - Prudently review facts
 - Consult experts as needed
 - Follow bylaws regarding quorums and voting
- 
- A photograph of a woman with long dark hair, wearing a white button-down shirt, sitting at a desk and writing in an open notebook with a blue pen. She is smiling slightly. The background is a plain, light-colored wall.



Duty of Loyalty

Make decisions in best interest of nonprofit

- Stand behind board decisions or resign
- Set aside own personal and business interests
- Comply with conflicts of interest policy



Duty of Obedience

Ensure nonprofit stays true to stated purpose

- Make decisions to stay within bounds of formal mission
- Accept gifts only from donors whose intent matches mission



Tripping Hazards

A board member can be sued for:

1. Failure to follow the laws
2. The organization not paying payroll taxes
3. Violation of federal and state anti-discrimination laws
4. Acting outside of his/her board authority
5. Breaching any of the fiduciary duties
6. Employment claims



Protection from Liability

- **Comply with laws**
- **Avoid private inurement**
- **Director's and Officer's insurance**
- **Follow Board policies**
- **Confirm that the bylaws contain an indemnification provision**



General Laws

- **Federal laws, including tax, transparency, and employment laws**
- **State corporate laws regarding nonprofit organization and operation**
- **State tax and employment laws**
- **State charitable solicitation laws**
- **Laws regarding prudent investments**



Compliance

- **Comply with Sarbanes-Oxley**
 - Protect whistle-blowers
 - Follow rules regarding document destruction
 - Avoid criminal liability
- **Comply with State Laws**
 - Self-dealing?
 - Audit committees?
 - Prohibitions on loans?
- **Stay Informed about Requirements and Restrictions**



Do any of these violate board legal duties? Are they unethical?

- **When a board does not have a quorum at a meeting those in attendance still make governance decisions**
- **Board decides to accept gift intended by donor for one purpose but plans to use funds for a more immediate need without informing the donor**
- **Board awards contracts to board members' firms without an open bidding process**
- **Board does not give executive director an annual performance appraisal**



Directors and Officers Insurance

- **Provides financial protection for board members in the event they are sued in conjunction with the performance of their duties as they relate to the organization.**
- **Having employees opens management up to employment practices lawsuits - which usually can be covered under D & O insurance.**



Reflection

What were you told you would be doing when you were recruited to the board?

What do you tell those you are recruiting?



Recruiting/Retaining Board Members

Make sure they know their responsibilities

- Legal**
- Financial**
- Time Commitment**



Recruiting/Retaining Board Members

**Make sure they feel
welcome and included**



Recruiting/Retaining Board Members

Assignments should have a clear goal, timeline and end product or result.



Recruiting/Retaining Board Members

Each member should know they make an important contribution.



Recruiting/Retaining Board Members

**Stay in touch and
keep them involved!**



Evaluation

What are the key points of this module?

- What did you find most useful?
- What can we improve upon?
- Other items you want us to cover?



Curriculum Modules

Module 1: Foundations for Transforming Board Practice

Module 2: Legal and Recruitment Issues for Nonprofit Boards

Module 3: Governance and Board Structure

Module 4: Enhancing Board Engagement

Module 5: Constructive Conflict

Module 6: Thinking Strategically

Module 7: Asking the Right Questions

Module 8: Board Meeting Communication



Curriculum Modules

PDF copies of the curriculum modules are available for viewing on the

NC Thrive portal:

<http://communitydevelopment.ces.ncsu.edu/local-government-nonprofits/>



Resources

Black, H. (1968). *Black's Law Dictionary (Rev. 4th ed.)*. St. Paul, MN: West Publishing.

Mann, R., Roberts, B. (1992). *Smith and Roberson, business law (14th ed.)*. Mason, OH: South-Western Cengage Learning

Bianco, L. and Muscheid, K. (2013). *What Nonprofit Directors Need to Know: Legal Responsibilities and Best Practices*, Eau Claire, WI: National Business Institute.

