



**CORPORATE GOVERNANCE:
A BALANCE OF OPENNESS, TRANSPARENCY, AND ACCOUNTABILITY**

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During the past five years, more and more trade associations and professional societies have been forced to recognize that proper corporate governance is a requirement not an option. The impetus created by the Sarbanes-Oxley legislation which applies primarily to for-profit corporations has caused association executives, attorneys and accounting firms to rethink governance requirements for non-profits. More and more accounting firms are including paragraphs in association management letters strongly recommending that non-profit organizations adopt strong corporate governance policies designed to ensure that the organization operates openly; that the organization's process for decision making is transparent; and that the officers, directors, and staff recognize that they are fully accountable to the membership. Association law firms are following their accounting brethren in recommending that associations adopt such policies. When faced with similar recommendations from both outside accountants and lawyers, a Board of Directors, in recognition of its fiduciary obligations, has a duty to review the practices of the association and adopt appropriate governance procedures.

For some associations, codes of ethics, written conflict of interest policies, openness, transparency, and accountability have been woven into the framework of

their corporate governing structure for many years. However, for of other associations, usually smaller associations, this may not be true. If you are serving as the Chief Staff Executive of an association that has not come to realize its proper corporate governance responsibilities, it is your duty to move your organization into the modern age. Here are some specific steps that you should take:

1. Code of Ethics. Adopt a corporate Code of Ethics. Sample Codes of Ethics exist on various association websites and your accountants or attorneys will be able to provide you with examples that will be applicable to your organization. Your Code of Ethics will spell out the commitment of your officers, directors, and staff to fully meet their respective responsibilities to the association. It will explain certain obligations and responsibilities and describe the manner in which your officers, directors and staff are required to ethically operate on behalf of the corporation. Each year, every officer, director, and staff member should sign an acknowledgement that she/he has read and understands the Code of Ethics and agrees to abide by its terms.

2. Conflict of Interest. Every association should have a Conflict of Interest Policy. The Conflict of Interest Policy should define actual and apparent conflicts of interest. Every year, officers, directors and staff should agree in writing, to abide by the Conflict of Interest Policy. Once a year at Board meetings, the association's CEO or counsel should review the Conflict of Interest Policy and Board members should confirm that they fully understand the policy and agree to conform to its revisions.

3. Openness. Openness should be an essential part of your association's governance culture. In this context, "openness" means that as the association operates as a tax-exempt organization for the public benefit, its actions should be open for review. As a general rule, members should have access to Board minutes, Executive Committee minutes, and the association budget. Copies of the association's contract with its Chief Staff Officer should be made available to every Board member. With the exception of certain personnel-related items, Board members should have access to every "nook and cranny" of the association's existence. Another exception would be where an individual Board member has a conflict of interest that would require that the Board member not be made privy to certain information. However, the culture of the organization should assume that everything is public unless there is a clear and convincing reason not to disclose.

4. Transparency. Transparency should become a keynote of your corporate structure. Transparency relates to how the association operates. How does a member get nominated for a seat on the Board of Directors? How does a member get appointed to a committee? How are Committee Chairs selected? How are the policies of the association established? Who writes the association's standards and certification programs? How does the association deal with allegations that a member has violated the industry or professional Code of Ethics? What is the association's policy for reimbursing expenses of officers and directors? Which officers and directors have received payments from the association for services rendered?

The answer to all of these questions and to similar questions should be publicly available to association members and usually to other interested persons. In the not too distant past, many associations had cultures pursuant to which decisions regarding key volunteer posts and Board memberships were made in dark rooms and only announced after the decision making process had been completed and no changes were possible. Such practices would no longer be tolerated. A transparency of process is essential.

Conclusion

Some of the ideas expressed above may cause concerns within your membership. As an example, a director may have assisted the association in obtaining industry-wide insurance coverage utilizing an insurance brokerage in which the director has a financial interest. The association

knows that it got a very good deal through the efforts of this director. The director may not want his involvement to be made public. Nevertheless, a full disclosure must be made of the fact that the director has an ownership interest in the agency and the nature of any remuneration going from the association to the agency. We are not suggesting that utilizing the services of the director in an "arm's length" transaction for the benefit of the association is wrong. However, we are stating that there is a need to disclose the relationship.

Here is another example. In the past, some association CEOs would limit disclosure of the terms of their contract to the association Executive Committee. That is no longer acceptable. The contract of the association CEO must be made available to all members of the Board. Associations do not have an option of whether or not to do

this. Each Board member has an obligation to know all of the significant financial obligations of the association including the obligations established in the CEOs contract. Board members are entitled to review the entire contract.

Don't feel that you will be the lone fighter in the battle to bringing your association's governance practices up-to-date. You can utilize IRS publications, advice from your attorneys, advice from your accountants, and advice from organizations such as ASAE for support. This is an issue that you must address and address now. If you don't do it, one day you are going to walk into a Board meeting and your Board will ask you why your association does not meet modern governance requirements and then the blame will fall on you. Don't let that happen. Act now.