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**Corporate Governance - -
Establishing the Proper Structure for
Your Board of Directors**

GKG Law, P.C. Association Law
Educational Series

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STATUTORY REQUIREMENTS

- Corporations are established pursuant to state law
- State requirements have variances
- All states require that a corporation have a Board of Directors
- May be called by other names, i.e., Board of Trustees or Board of Governors
- Usually a minimum of 1 or 3 directors
- Directors must be individuals

BOARD RESPONSIBILITY

- By statute, Board is responsible for managing the affairs of the corporation
- Board has financial responsibility
- Board has corporate governance responsibility
- Board has regulatory compliance responsibility



DIRECTOR RESPONSIBILITY

- Directors have fiduciary responsibility to the corporation
 - Must actively participate in Board meetings
 - Must review financial information
 - Must understand regulatory issues
 - Must understand association policies
 - Must understand Articles of Incorporation and Bylaws
 - Breach of Fiduciary Obligations can create personal liability

DIRECTOR RESPONSIBILITY (2)

- Directors have a duty of loyalty
- Directors must meet COI requirements
- Directors can reasonably rely on experts
 - Lawyers
 - Accountants
 - Financial planners
 - Professional staff

However, Directors must review reports by experts.

How Big Should Your Board Be?

- Board must have sufficient members to function efficiently but not be so large as to be ineffective.
 - Small organization with one primary task may function best with small number of directors
 - Large organizations with multiple programs may function best with a Board of 15 to 20 members
 - Very large organizations may want a large Board but such Boards are not functional and should be discouraged.

Obtaining Best Board Members

- Board members will be leaders in industry or profession.
- They are busy individuals with tight time schedules.
- They will not serve on Boards where they have no input or responsibility.
- They need to be given work or they will drop out.
- The Association Executive is responsible for organizing the Board's activities.

Educating Board Members

- Invite new Board member to Association offices.
- Provide education on Articles of Incorporation, Bylaws, tax exempt status, antitrust, association policies.
- Introduce them to key staff members.
- Ask for input regarding their special areas of interest.
- Ask if they have any issues that they want to work on.
- Have a mentor program at the Board level.

The Board Meeting

- The parameters of conducting Board Meetings are established by statute
- Generally, Boards must meet in person or via a media that permits Board members to hear one another discuss an issue, i.e., telephone conference calls
- Electronic means - - SKYPE

The Board Meeting

- Board can only vote by written consent in limited circumstances
 - As permitted by statute, Board member must be given proper notice
 - At least a quorum votes
- In most states, Board members cannot vote by proxy



The Board Meeting (2)

- A quorum must be present at Board meetings
 - Statutory quorum
 - Bylaw quorum
- Chief Staff Officer/Executive Director present as Ex Officio non-voting member
- Should be a written agenda
 - Agenda should include a consent calendar
 - Agenda should have time intervals and identify those responsible for each subject matter

The Board Meeting (3)

- Board books should be sent out well in advance of each Board meeting.
- Board books should include all reports.



The Board Meeting (4)

- Staff must establish a culture that requires all Board members to read the Board Book before the Board meeting
- Staff should not have a major speaking role at Board meetings
- Chairman of Board should run the meeting
- Agenda items should include discussions limited to issues that require Board action

The Board Meeting (5)

➤ Normal action items include

- Financial reports
- Investment decisions
- Hiring a new Chief Staff Officer
- Budgets
- Legislative and regulatory policies
- Accreditation and certification programs
- Litigation
- Long Term Planning



Boards Should Not Micro Manage

- As a general rule, association shall report to Association Chief Staff Officers and Chief Staff Officer reports to Board
- Staff members other than Chief Staff Officer should have very limited rolls at Board meetings
- Operational decisions should not be made by Board. Board sets policy. Chief Staff Officer implements the policy.

Board Meeting Schedule

- Typical Board should have two or three face-to-face meetings per year and two to three conference call meetings per year
- Face-to-face meetings should be one full day meeting or two half-day meetings
- Typical half-day meeting schedule
 - Day One - Begin at Noon and stop at 5 pm to be followed by a Board dinner
 - Day Two – Begin at 8 am and conclude at 2 pm



Eliminate Potential Dissention

- Don't spend time on developing programs unless you are confident funding will be available
- Always under-estimate income and over-estimate expenses for budget purposes
- Don't be afraid of controversial issues
 - Bringing such issues to the table ends up defusing the issue
 - Use legal counsel as a shield

Board Ambiance



- Board members are generally high maintenance individuals and should be treated as such.
- Board table should not be so small that members are crowded.
- Board room acoustics should be good - - supply microphones when needed.
- Board room temperature must be comfortable.

Board Ambiance (2)

- Board chairs must be comfortable.
- Take breaks and have good snacks.
- If Board meeting is a one day meeting - - meet at central airport hotel - - otherwise a hotel where you can have a Board dinner or an event - - theatre, ball game, museum.
- Let Board members develop a rapport.

Board Rewards

Board members serve without compensation but they are entitled to get their egos massaged. Special badges at meetings and conventions.

Recognition by Association when term is over:

- Clock or wall plaque with inscribed “Thank You”
- Article in magazine
- Special briefcase
- Table recognition at association meal functions
- Press Release to Local Newspaper



Reevaluate Functionality Every 5 Years

Take a step backwards

Survey the Board

Ask what are we doing right

Ask what are we doing wrong

Fix the problems

How to Fix the Problems

Some Association Executives tell us that they have dysfunctional Boards, but they have been able to get the Boards to change.

How to Fix the Problems

We have a solution: GKG Law has a program for problem Boards

- We meet with the staff and analyze how the Board functions
- We meet with the Board and explain the responsibilities of individuals serving on the Board of the non-profit

How to Fix the Problems

- We discuss our analysis of how the Board currently operates

How to Fix the Problems

- We make recommendations for changes that
 - Will enable the Board to operate more efficiently
 - Provide individual Board members with specific challenging projects based on their areas of expertise

How to Fix the Problems

- Eliminate time spent at Board meetings listening to reports that don't require action
- Enable the Board members to actively lead the association

How to Fix the Problems

- As part of this process, we assist in the definition of the relationship between the Board and the staff, and the role of the Chief Staff Officer as the person who directs all staff activity

How to Fix the Problems

At the conclusion of the meeting, we get the Board to agree to have the staff develop a plan for revising the way the Board functions and submit the plan to the Board for approval.

Conclusion

Boards are composed of truly gifted individuals.

Boards are most productive when the talents of the Board members are fully utilized.

If the Association staff takes more than 30% of the time of any Board meeting, you have a problem.

Your Board includes the leaders of your industry or profession.

Your job is to assist them in assuming the leadership role.

Questions:



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