

Are Your Committees Revitalized?

Committee Structures Post Nonprofit Revitalization Act

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Key NPRA Reforms

Most became effective July 1, 2014

- *Some* electronic age updates for Board, Committee & Membership Meetings
- **REQUIRED** Conflict of Interest Policy – New Definitions & Significantly Stronger Requirements
- Higher Audit Thresholds & Increased Audit Oversight
- Required Whistleblower Policies (20 or more employees and \$1M)
- Improved processes for Certificate Amendments, Mergers, Dissolutions & Consolidations, Real Estate Sales or Transfers
- Greater Authority for the AG
- Staff can't serve as chairperson (Postponed: takes effect Jan. 2016)
- Definitions for “Entire Board”
- Redesigned Committee Structures

In Building a Governance Accountability Structure...

Clearly define the decision-making, monitoring, reporting responsibilities at the board & management levels in order to know:

- ✓ *Who is responsible for what,*
- ✓ *Who makes what decisions,*
- ✓ *Who is accountable to whom, and*
- ✓ *How and in what ways?*



Committee Fundamentals

- Establish committees when it's apparent that issues are too complex and/or numerous to be handled by the entire board.
- Committees make full use of board members' expertise, time and commitment, and ensure diversity of opinions on the board.
- Committees do not supplant the responsibility of each board member.
- Committees may be relied upon to perform the due diligence functions of the Board.
- Committee authority is prescribed and limited by the Board.
- Committees may expand opportunities to engage experts or stakeholders.

Define Committee Authority

- **Research:** Committee collects information and brings to board for discussion and decision
- **Recommend:** Committee collects and analyzes the information and develops a recommendation to the board.
- **Implement:** Committee determines the best course of action and carries it out with board approval.
- **Decide:** Committee determines course of action, implements it, and then reports to board.

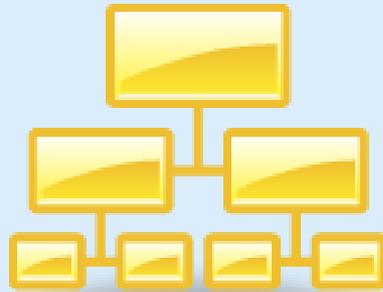
Key Questions in Committee Planning

- Why are we establishing the committee and what role do we want it to play?
- Do we want it to be able to act on behalf of the Board?
 - If so, what limits might we place on its authority?
- To whom is it accountable?
- Who will chair the committee?
- Who will report on the work/progress/recommendations of the committee?
- Do we want non-board members to serve? What should their role be?
- What role will staff play?

Committee Structure

Which committees do you currently have?

- Executive
- Personnel
- Finance
- Audit
- Finance and Audit
- Board Development
- Nominations
- Corporate Compliance
- Audit and Compliance



- Program
- Legislative
- Government Affairs
- Conference
- Membership
- Resource Development
- Marketing
- Events: Gala/Dinner, etc.
- Other?

New Rules on Committees

Committees of the Board

- Can “bind” the Board
- Comprised only Board members (at least 3)
- May include non-Board members in advisory capacity
- Appointed by majority of Board
- Cannot:
 - Fill vacancies
 - Fix compensation on board or board comm.
 - Adopt or amend bylaws
 - Amend or appeal board resolution

Committees of the Corporation

- Cannot bind the board
- May include non-board members
- Must have 3+ members
- Are to be appointed or elected the same as officers as stated in the bylaws, unless otherwise defined
- Can be accountable to the Board, Membership, or the Executive Director



Composition of Committees of the Corporation

- Can include all Board Members, all membership, all volunteer, a mix
- Best practice: Board Member to chair
- Staff function as support for committees, not voting members
- Define in bylaws how committee members will be appointed
 - NPRA Default: same way officers are appointed
- If Committees of the Corporation are advisory to staff, consider: do they need to be in bylaws?
 - Examples: Conference committee, Gala Committee

What Does Binding Mean? (Black's Law Dictionary)

What is LEGALLY BINDING?

Common legal phrase. Lawful action, such as an agreement consciously agreed to by two or more entities, establishing lawful [accountability](#). The document's signing gives the number of conditions the weight of law. Both parties knowingly understand what they are agreeing to is the other requirement to legally establish an agreement or contract.

What is ACCOUNTABILITY?

When one party must report its activities and take [responsibility](#) for them. It is done to keep them honest and [responsible](#).

What is RESPONSIBILITY?

The [obligation](#) to answer for an act done, and to repair any injury it may have caused.

Bottom Line (*IMHP*)

Binding means that there is an agreement (implied in this case) that requires nonprofits to report activities and be obligated for actions and the implications thereof.



What Activities Are Binding?

Binding	May be binding	Not an Act of Binding
Approving Policy, Budget, or Legislative Agenda	Implementing within policy or budget	Reviewing, clarifying, and discussing
Signing Contracts	Submitting Proposals	Issuing RFP
Hiring or firing Staff or retaining auditor	Supervision, progressive discipline	Interviewing, Nominating
	<i>Affirming Compliance</i>	
Activities not allowable by committee (change bylaws, dissolve, select board members, etc.)	Approving/Deciding	Recommending

Committees Most Likely to be Binding

- Executive
- Audit, Audit and Finance, Compliance
 - ✓ The board, or a designated audit committee of the board comprised solely of **independent** directors, must oversee the accounting, financial reporting processes and audit (including retaining auditor, reviewing results and management letter, and evaluation if \$1M+).
- Conflict of Interest and/or Whistleblower
 - ✓ The Board of Directors or the Audit or other committee comprised solely of independent directors of the board shall oversee the adoption, implementation of, and compliance with any conflict of interest policy or whistleblower policy adopted by the corporation.



Who Are Independent Directors

- **“Independent Director”** is a Director who:
 - has not, for the past 3-years been an employee of the nonprofit, or an affiliate, & does not have a Relative who has been a Key Employee during the same time period,
 - has not received, & does not have a Relative who has received, in any of the past 3-years, more than \$10K in direct compensation from the nonprofit or an affiliate, and
 - is not a current employee of, & does not have substantial financial interest in, or a Relative who is a current Officer, or has a substantial interest in, any entity that has made payments or, or received payments from, the nonprofit, or an affiliate, during the last 3-years, exceeding the lesser of \$25K or 2% of the nonprofit’s consolidated gross revenue.

If Over \$1M (Consider a Best Practice)

- The board, or audit committee must:
 - Review with auditor the scope & plan prior to start
 - Upon completion conduct an annual evaluation of auditor performance & independence
 - If committee – report to board on its activities
 - Oversee conflict of interest & whistleblower policy (if not another committee)
 - Controlling/Parent Corporations can perform functions of affiliates

Next Steps and Recommendations

- Define the authority, limitations, and composition of Committees of the Board and Committees of the Corporation in your bylaws.
- Determine which committees are Committees of the Board and Committees of the Corporation.
- Define the responsibilities of all committees in your bylaws.
- Appoint non-board members to committees as defined in bylaws and ensure they understand whether they are advisory or voting.

Keys to Making Committees Work

- Do not meet if there is no work to do
- Empower with information & staff
- Watch out for micromanaging tendencies
- For committees accountable to the Board, take and distribute minutes to the entire board, preferably prior to meeting
- For Operational Committees accountable to the Executive Director, reports can be in ED/CEO report
- Make timely & action-oriented reports to the board
- Respect committee work at board meetings
- Rotate members; use committees to educate