



Board Basics: Bylaws, Committees, Structures

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In partnership with



Overview

- Review highlights non-profit law
- Governance vs management
- Getting the business done
 - Bylaws & Rules
 - Structure: Committees
 - Running a meeting. What's with Roberts Rules?

Non Profit Law

some highlights

Non-profit Law

non-profit corporations

State of Ohio ORC 1702 non-profit corporation law

This is your legal business status with the State of Ohio

A registered business that is a not for profit as opposed to for-profit

“a domestic or foreign corporation that is formed otherwise than for the pecuniary gain or profit of, and whose net earnings or any part of them is not distributable to, its members, directors, officers, or other private persons, except that the payment of reasonable compensation for services rendered”

All 501c3s are non profits, not all non profits are 501cs

- “non profit corporation” is the type of business entity you are
- 501c3 (or 501c anything) is the TAX status with the IRS

Non-profit Law

Board legal responsibilities

DUTIES (legally defined)

- **Duty of Care**

- Each board member has a legal responsibility to participate actively in making decisions on behalf of the organization and to exercise his or her best judgment while doing so.

- **Duty of Loyalty**

- Each board member must put the interests of the organization before their personal and professional interests when acting on behalf of the organization in a decision-making capacity. The organization's needs come first.

- **Duty of Obedience**

- Board members bear the legal responsibility of ensuring that the organization complies with the applicable federal, state, and local laws and adheres to its mission.

Non-profit Law

Board collective responsibilities

DUTIES

- **Duty of Care**

- Each board member has a **legal responsibility** to participate actively in making decisions on behalf of the organization and to exercise his or her best judgment while doing so.
 - Attend meetings
 - Doing homework for meetings and be prepared for knowledgeable voting
 - Reviewing finances and financial policies

Non-profit Law

Board collective responsibilities

DUTIES

- **Duty of Loyalty**

- Each board member must put the interests of the organization before their personal and professional interests when acting on behalf of the organization in a decision-making capacity.
The organization's needs come first.
 - Adhering to the organizations conflict of interest policy
 - **Disclosing any conflicts of interest**
 - Avoiding the use of non-profit organizations' opportunities for **personal gain or benefit**
 - Maintaining the **confidentiality** of the information about the organization

Conflict of interest is not in and of itself illegal: self dealing is!
Your conflict of interest policy establishes a process for disclosure and voting process when board members might derive personal or professional benefit

Non-profit Law

Board collective responsibilities

DUTIES

- **Duty of Obedience**

- Board members bear **the legal responsibility** of ensuring that the organization complies with the applicable federal, state, and local laws and adheres to its mission.
 - Ensuring compliance with all regulatory and reporting requirements such as tax return (IRS 990) and renewing certificate of continuing existence
 - **Ensuring compliance with state and federal filing requirements**
 - Examining all documents that govern the organization and its operation, such as the bylaws
 - Make decisions that fall within the scope of the mission and governing documents

Non-profit Law

Board legal responsibilities

DUTIES – in practice

- have we outlined the processes for decision making? (bylaws) and are adhering to them?
 - Do we regularly have a quorum at board meetings?
 - Do we do a good job sharing information ahead of meetings?
 - When was the last time we reviewed/updated our bylaws?
- Have we outlined the processes for managing the organization? (operations)
 - Do we have policies and procedures documented?
 - Where do we keep the legal documents of the corp and who is responsible?
- Do we have sufficient checks and balances in place and shared responsibilities?
 - How do we handle money?
 - How do we provide oversight of how we handle the money?
 - Are communication responsibilities shared?
 - Do we have conflict of interest policy and code of ethical conduct?
- Do we have Director's and Officers Liability Insurance? (just in case ...)

Governance & Management

Governance & Management

Roles and responsibilities

Governance vs management

- Governance responsibility
 - What you find defined in your bylaws
 - Defines Officers vs Directors/Trustees (“at large”)
 - Defines Officer responsibilities in the governance of the organization

Important Note

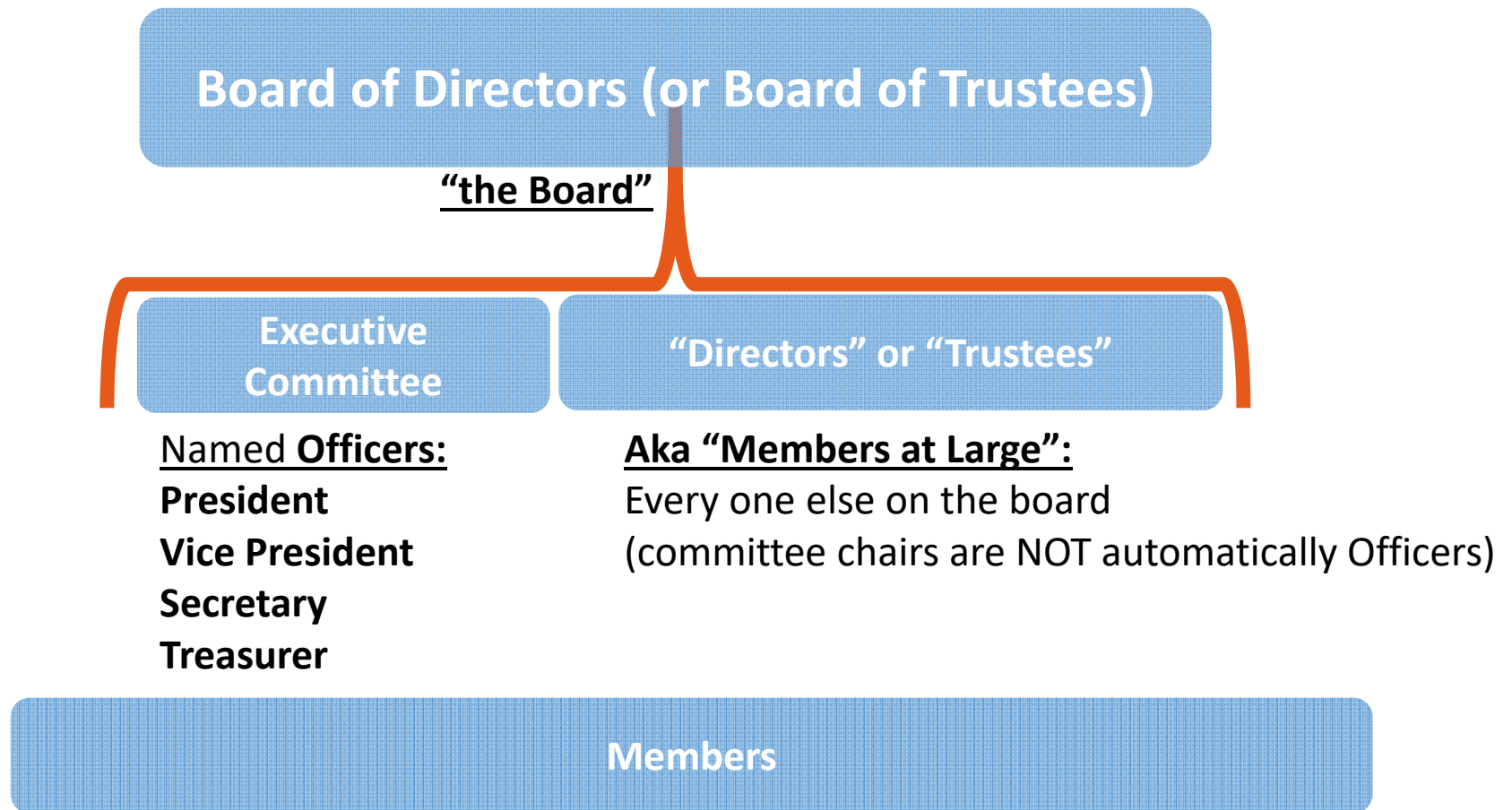
Board is a collective decision making body. Even if a Board determines to authorize specific duties to an individual Office, the decision making in that office MUST reflect the will of the Board

- Management Responsibilities
 - Assumed and/or defined in operating manual (aka Standing Rules or Policies & Procedures)

Governance & Management

Governance responsibilities

Terms used in bylaws



If you have a membership organization, these are the people who pay dues or are some other way formally recognized

Governance & Management

Governance responsibilities

Officers

- The Officers are specifically defined in bylaws and most responsible (ie liable) for the effective governance and management of the organization
- They make up the **Executive Committee** and are given the ability to make decisions in between full Board meetings – authority is delegated by the Board and rules are in place.

Minimal Officers

- **President**
- **Vice President**
- **Secretary**
- **Treasurer**

Legal minimum = 3 Officers/Board members

Additional Officers may be determined by the Board and provision in bylaws with corresponding responsibilities

Governance & Management

Officers

President

Heads up the Board and supervises board business. Presides over meetings, including recognizing members to speak, putting motions to vote, enforce decorum. Is ex-officio on committees. (whether that is voting or non-voting is determined in bylaws)

Note: Pres Appointments – should be spelled out in bylaws and should require board approval

Vice President

Provides back up to President if President cannot attend meeting. NOTE – this is NOT the same as a President-Elect unless that is specifically determined by the Board

Secretary

Records minutes and archives all board records

Keeps membership rolls

Handles Board correspondence, incoming and outgoing

Treasurer

Provides financial oversight

Keeps account of the receipts and disbursements in organization books (accounting record)

In all volunteer organizations, Treasurer, in conjunction with President, handles financial transactions

Governance & Management

Officers - Other

Multiple secretaries

Typically dividing responsibilities between Recording and Correspondence

Recording Secretary

Takes Board minutes. Archives Board records. Keeps membership rolls

Corresponding Secretary

Focus on communications. Ingoing and outgoing. Answers mail (snail or email), be 2nd point of contact. Communicates Board business and other business to members. Outreach to neighborhood residents or whomever constituents are (the people the non profit “serves”)

Governance & Management

Roles - Management

“Roles” can be designated which do not have to be a separate “office”

- Chairs of Board Standing Committees
 - Governance, Finance, Development, Membership/Volunteers
- Parliamentarian
this is typically a person who has good (or better) working knowledge of Robert’s Rules and is turned to for expertise as needed in running meetings (can also be ‘Sergeant of Arms’ – managing meetings, settling disputes)

Important to understand the difference between a Role, and a liable Office, and Board Member at Large

Of note: Officers can be committee chairs; A single individual can hold more than one Office

Governance & Management

Roles - Management

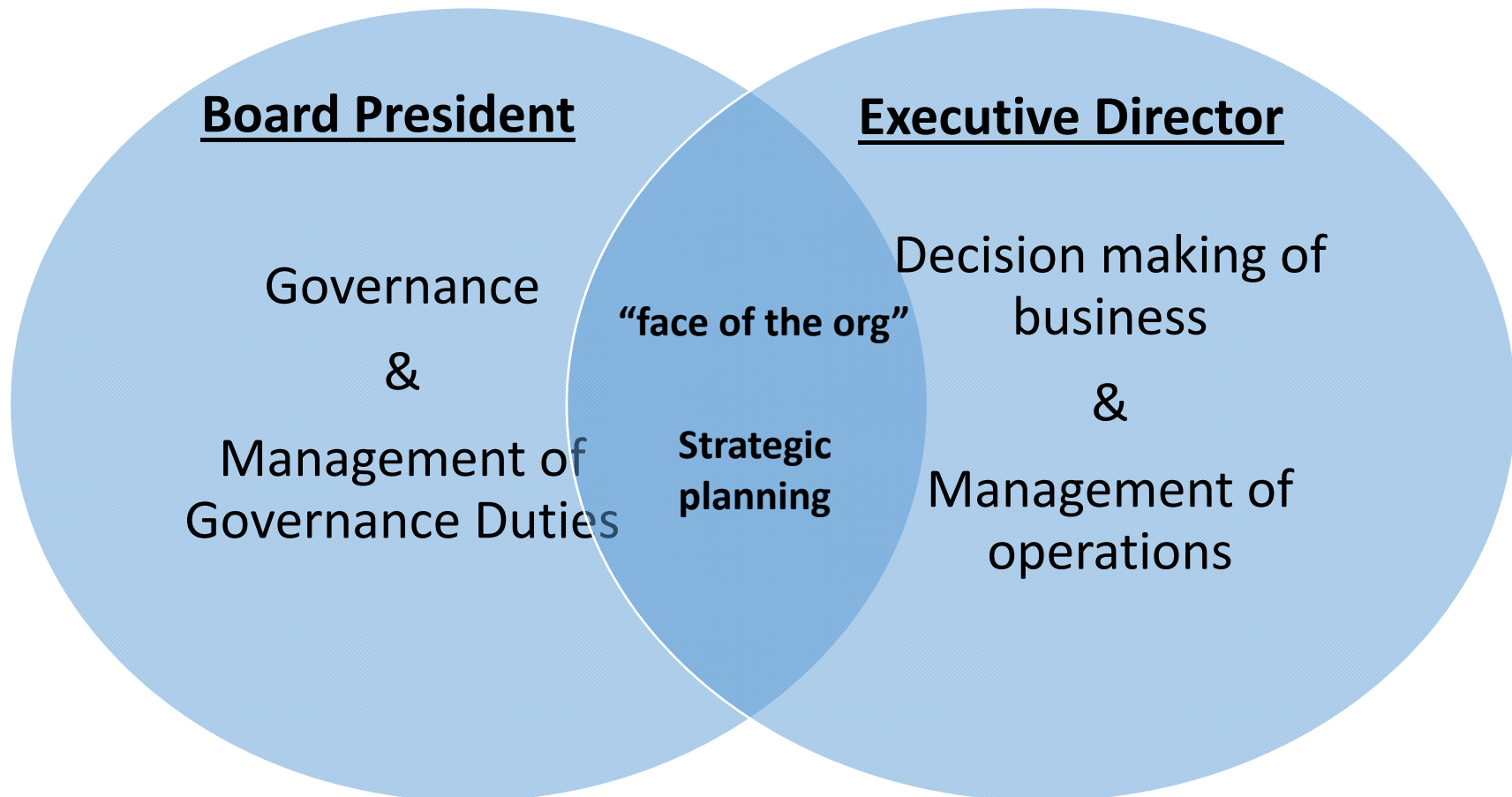
President of a Board

- the President will usually have administrative duties such as signing checks, contracts, and agreements, etc., which should be spelled out in the organization's bylaws or operating procedures
- “manages” the Board – helps to keep Board running well
- The **official voice and liaison of the organization.**
Main point of contact, by default, is the President. This includes the City, other non-profits, the media, etc
- Makes sure that any **changes** in the Board makeup and the organization are disseminated in a timely fashion
- Official representative with the City and other groups or coalitions
- Expected: to attend workshops, training, events, meetings with the City, with other non profits, with partners, etc to bring news and information back to the Board and the Members

The Board President is “the face of the organization” – however, the Board President represents the collective decisions of the Board and is not empowered to make decisions that are outside of the collective decisions

Governance & Management

Roles – Board Pres & ED



Discussion

Governance & Management

Bylaws & Rules

Bylaws & Rules

Rules

Bylaws vs Articles of Incorporation

Bylaws:

- for **governance** of your organization
- Focus on structure and high level processes for Board and membership

Articles of Incorporation:

- The **business purpose** of your organization that you define when you apply for incorporation with the State
- Basic information: name of company, for-profit or non-profit, purpose, located in, etc

Bylaws & Rules

Rules

Bylaws vs Standing Rules

Bylaws:

- for **governance** of your organization
- Focus on structure and high level processes for Board and membership

Standing Rules (aka policies and procedures/operations manual):

- For **management**
- Policies that are agreed to
- Map out processes for getting things done such as financial management, checks and balances, authorizations and responsibilities

Bylaws – amendments must be approved by majority vote of Board or of Members (spelled out in bylaws)

Standing Rules – internal documents approved by Board

Bylaws & Rules

State of Ohio Bylaw requirements

Regulations outlined by ORC 1702

“may include” and “unless provided in bylaws” - although generally accepted requirements

Meetings – frequency and place (if any)

Membership – qualifications, fees, etc

Voting – members rights and process

Method for changing bylaws

Definitions of quorum &/or majority

Board of Directors/Trustees:

Size and term limits

Election process

Process for determining officers

Listing of officers and responsibilities

Method for removing directors/officers

Bylaws & Rules

Basic Bylaws outline

Article I: The Corporation

Name, Purpose

Article II: Membership

Types, Eligibility. Definitions of Member Types (“open to ...”)

Article III: Meetings of Members

Annual, Special, Time & Place, Submission of Agenda Items, Notice of Meetings, Quorum, Voting, Civility

Article IV: Board of Trustees/Board of Directors

Number of trustees/terms, Eligibility, Election, Vacancies, Nominations, Removal of Trustees, Powers, Meetings, Notice of meetings, Submission of items for agenda, Quorum, *Electronic Voting*, Committees, Term limits, *Conflict of Interest*

Article V: Officers

Qualifications, Named Officers, Election, Responsibilities of each Officer, Terms, Removal

Article VI: Indemnification & Insurance

Article VII: Misc

Amendments to bylaws, Review of Regulations & Bylaws, Fiscal Year, Disposition of Assets, Financial Affairs

Bylaws & Rules

Bylaws Additions

Electronic Voting

Must comply with State of Ohio law.

Essentially – must have opportunity for full **discussion** – audio discussion, video discussion, etc. Group forums work, just sending an email around doesn't

U.S. STATE	ST	Meetings	Conference Calls	Email	Portal	Additional Notes
Ohio	OH	P	Y	N	Y	
Oklahoma	OK	Statute does not address, but allows for bylaws to determine meeting				

OHIO:

- **1702.31 Meetings of directors – notice.**
 - Unless otherwise provided in the articles, regulations, or bylaws, and subject to the exceptions applicable during an emergency for which provision is made in division (G) of section 1702.11 of the Revised Code:
 - (B) Meetings of the directors may be held at any place within or without the state, including by means of authorized communications equipment, unless the articles or regulations prohibit participation by directors at a meeting by means of authorized communications equipment. Participation in a meeting pursuant to this division constitutes presence at that meeting.

Bylaws & Rules

Bylaws Additions

Conflict of Interest Statement

Not full policy, but can include that XYZ will have a conflict of interest policy adhered to by all members of Board of Trustees/Directors or a general if conflict, then this:

“Conflicts of Interest. Whenever a director or officer has a financial or personal interest in any matter coming before the board of directors, the affected person shall a) fully disclose the nature of the interest and b) withdraw from discussion, lobbying, and voting on the matter.”

Bylaws & Rules

Standing Rules/Policies and Procedures

Not required, but best practice recommendations

Equal Opportunity Employee (even if no employees)

Conflict of Interest*

Document Retention and Destruction, including public vs private documents

Accounting and Banking policies

Accounting systems

Contracting and Signing authorization

Segregation of Duties (checks and balances)

*Conflict of Interest – on file for every single Board Member
Should be updated annually (initialed if no change)

Bylaws & Rules

Standing Rules Example

Document Retention

Public

IRS 990 and related

Annual financial report available to members (Balance sheet, Profit & Loss – hint, same info is reported on IRS 990)

Board meeting notices

Board meeting minutes

Private

Planning documents

Annual budget – this is considered a planning tool

Note exception – there may be exception in bylaws such as the City requires NSP projects and budget to be vote open to all residents of neighborhood

Minutes of Executive Sessions (although final decisions recorded in Board Minutes)

Addresses of board, members, volunteers, donors

Discussion

Bylaws & Rules

Committees

Committees

Structure

Standing committees

- defined in bylaws.
- Can't amend without amending bylaws

Ad Hoc

- created by Board on as needed basis
- not defined in Bylaws.
- *Recommendation:*
- Standing Committees have a Board Chair
- Ad Hoc Committees – can appoint anyone as Committee Chair

Committees

Structure (best practices)

Standing Committees

Basic **3** defined in Bylaws (permanent committees) - ad hoc committees can arise within these structures (in addition to Executive Committee)

Finance

Oversight of financial activities. Usually Treasurer is Chair. Should include President and AT LEAST one other person for checks and balances

Governance

Oversight of rules and procedures, elections and voting processes, bylaw reviews, policy review etc. Nominating committee is typically ad hoc and finite, would fit under Governance

Development

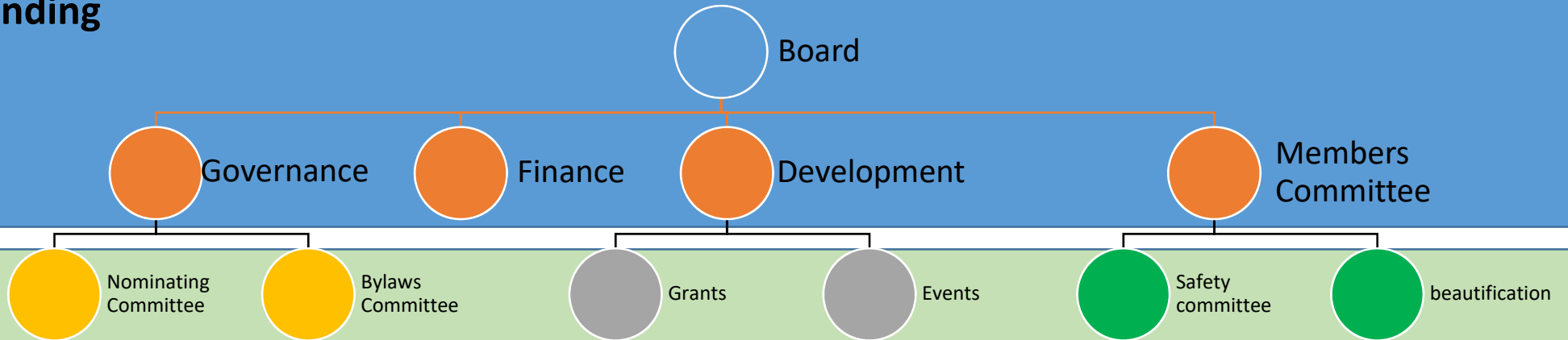
Fundraising and 'keeping the business going'. Think "all things related to incoming monies" – grants, events, funds received on annual basis, sponsorships, etc – not just "donor income"

NOTE: in the case of member organizations, in addition to the standard 3 – a standing **Members Committee** can make sense – subcommittees such as beautification, safety, member recruitment

Committees

Structure

Standing



Ad-hoc

Standing committees – defined in bylaws. Can't amend without amending bylaws

Ad Hoc – created by Board on as needed basis

Do NOT have to report to a standing committee, but organizationally can help with responsibilities

Recommendation:

Standing Committees have a Board Chair

Ad Hoc Committees – can appoint anyone as Committee Chair

Discussion

Committees

Meetings

Meetings

Order of Meeting

1. Call to order
2. Roll call
3. (Guest speakers are frequently, but not always added before business of meeting begins)
4. Approval of previous meeting minutes
5. Committee Reports
 1. Typically FYI, not voting,
 2. If a specific action needs board approval or member vote for approval, place that in agenda under business item
6. Old business
 1. Anything left over unresolved or under discussion
 2. Might include votes
7. Regular Business
 1. Regular business for body to discuss and vote on
 2. Can also vote to table for further discussion etc
8. New business
9. Announcements
10. Adjournment

Meetings

Consent agenda

- Using a consent agenda is a way to expedite routine processes in order to have time to focus on discussion of important topics
- MUST provide packet for review prior to meeting with enough time for everyone to read
 - Assumption therefore is that it has been read and you proceed to organize the meeting under that assumption
- Any item in the consent agenda may be 'pulled out' for separate discussion then proceed with approval of the rest

Very effective for Board meetings

With member organization and members' meetings, you have to strike the balance. But the focus remains on routine items that don't need discussion allowing for guest presentations, discussion of items that need action or topics that are strategically important

Moving to Consent Agenda requires very clear discussion and agreement on what should be included and how the process works. **AND THEN PUT IN WRITING**

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Meetings

Consent agenda - Example

Call to Order & Quorum Determination

Consent Agenda

- Minutes from last meeting

- Financial Report

- Committee Reports

- Other routine Reports

Guest Presentation (e.g developer presentation)

Item for discussion and vote

Upcoming issues and announcements

Adjourn

Meetings

Robert's Rules?!?

Robert's Rules were developed for very large assemblies and parliamentarian debate to

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“.. guard against tyranny of the loudest and endless arguments over procedure”

Meetings

Robert's Rules

2 purposes

1. Capture the essential information which you are legally required to document (your minutes! And the most important of that is **record Motions and votes**)
2. To make sure **everyone has the ability to have their voice heard** and decision making is fair and open

Robert's Rules tips

- Buried in the long version is a lot of 'small assembly' side notes
- Can modify accordingly
- Simple changes: eg modernize the language – but must record agreed upon changes (operations manual)
- Yes, frequently discussion happens before a motion is called. That's ok, just after a motion is called, give one more chance for discussion
- Use a cheat sheet

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Meetings

Robert's Rules

Order of compliance

1. Federal Law
2. State Law
3. Local law
4. Bylaws
5. Standing Rules
6. Robert's Rules

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Meetings

Minutes?

Minutes are a legal record of meetings and the organization.

A record of what is done, attendees and description of issues. NOT what is said.

Minutes should include:

1. Name, date and location of meeting
2. List of attendees (note presence of a quorum)
3. Time meeting was called to order
4. Conflict of Interest & Antitrust Avoidance Affirmation
5. Approval of previous meeting minutes
6. Motion text and name of maker
7. Status/results of motions
8. Time meeting was adjourned

Minutes **do not** include:

- Discussion
- Personal opinion
- Name of seconder of a motion is not necessary
- Motions withdrawn
- Entire reports (rather attach to minutes)

Meetings

Minutes

Committees – don't have to keep minutes per se, but DO have to provide summary of meeting and any **recommended actions** (note committees are not empowered to make decisions, they recommend decisions to the Board, who then vote)

When in doubt, use basic meeting minutes structure to record committee work

There does need to be a record of the purpose and goals of the Committee and who is the Chair

Discussion

Meetings



Questions?

Resources

Ohio Attorney General

National Council of Nonprofits

Probono Partnership of Ohio

BoardSource

BoardSource Governance Series Good Governance collection