

SECTION I: GOVERNANCE PRINCIPLES

Summary

Nonprofit board members oversee an organization's policy and activities. They are responsible for assuring that the organization's work is consistent with its mission and that it complies with applicable laws. By carrying out the duties of care, obedience, and loyalty, board members help to ensure that a nonprofit uses accountable practices, develops strategies that will lead to success and sustainability, and operates in fulfillment of mission goals. Board members are also expected to make financial contributions and to utilize their personal networks to bring financial and other resources to enable the organization to achieve its mission.

Fiduciary Duties: Care, Loyalty, Obedience

While the board is not usually involved in the day-to-day activities of the organization, it is responsible for managing the organization and making important decisions, such as adding or removing board members, hiring and firing key officers and employees (more specifically, the executive director), engaging auditors and other professionals, as well as authorizing significant financial transactions and new program initiatives. In carrying out those responsibilities, members of a board of directors are fulfilling their fiduciary duties to the organization and the public it serves.¹

Nonprofit board members have three fundamental areas of legal and fiduciary responsibility, often referred to as the duty of care, duty of loyalty, and duty of obedience.

Duty of Care

The duty of care requires that a nonprofit board member participate actively in governance and oversight of an organization's activities. This includes attending board and committee meetings, reviewing and understanding the organization's financial documents, helping to frame strategic plans, identifying and managing risks as well as opportunities, and taking prudent steps to advance the organization's mission goals.

Duty of Loyalty

The duty of loyalty requires that a nonprofit board member act in the best interest of the organization at all times. This includes identifying and disclosing potential conflicts of interest before joining the board, and when they arise. When a potential conflict exists, board members must follow conflict of interest management steps as mandated by law and recommended in good governance guidelines. (Note: New York State law requires that all nonprofits have a written Conflict of Interest Policy.)

Duty of Obedience

The duty of obedience requires that a nonprofit board member work to ensure that the organization complies with applicable laws and regulations, acts in accordance with its own policies, and carries out its mission appropriately. Board members should ensure that their organization carries out its purpose and does not engage in unauthorized activities.

¹ Nonprofits in New York State are regulated by the NYS Charities Bureau. Please refer to the Charities Bureau's publication, *Right From the Start*, for more information on how boards of directors of not-for-profit corporations and trustees of charitable trusts understand and carry out their fiduciary responsibilities to the organizations they serve.
<http://www.charitiesnys.com/pdfs/Right%20From%20the%20Start%20Final.pdf>.

Mission & Values

Mission Statement

A mission statement communicates a nonprofit's purpose, what groups it serves, and how it plans to do so. For a new nonprofit, developing the mission statement is a critical first step in defining what the organization plans to do and what makes it different from other organizations in the same field.² An effective mission statement captures the essence of an organization's purpose, and it anchors the organization's not-for-profit status. It is the board's responsibility to ensure that the organization's work is in line with its mission. Board members should approve, periodically review, and monitor the organization's performance against its mission statement.

The mission should be relevant and compelling. A nonprofit's mission statement functions as its call to action. If it is clearly stated and seeks to achieve worthy goals that many other people might share, it will help the organization attract board members, employees, volunteers, beneficiaries, and donors.

Vision Statement

A mission statement may be accompanied by a separate vision statement. The vision statement can set forth the principles and beliefs that underpin the mission statement; it can also articulate a long-term, ultimate goal and reason for existence.

Tax-Exempt Purposes

Charitable organizations are eligible to be tax-exempt under section 501(c)(3) of the Internal Revenue Code if they meet the IRS' definition of a charity.³ Because they typically enjoy tax-favored treatment, board members have an obligation to ensure that their organization's mission and activities merit this special status. Board members should consider whether an organization's mission and activities remain relevant and continue to serve the public good effectively on an ongoing basis.

Embedding Values in Nonprofit Culture

Board members are responsible for establishing and nurturing a culture of integrity, a passion for the mission, a focus on achieving measurable mission-driven results, and a commitment to ethical values and practices. They do this through personal leadership and appropriate oversight over the nonprofit's staff, volunteers, and activities.

Legal Issues

Note: Information provided in this section is for general educational purposes and is not intended as legal advice. Seek qualified legal counsel to provide guidance on important legal matters.

It is the responsibility of the board to ensure that the nonprofit is registered with the State of New York and complies with all laws. Board members should be aware that special New York State laws apply to fundraising, investment policy, and other areas. Board members are also responsible for ensuring that the nonprofit maintains its nonprofit status by complying with all reporting requirements required by the state and by the federal government.

² For a useful tool to help craft mission and vision statements, refer to *Guide to Creating Mission & Vision Statements* under "Section I Resources" at the end of this section or visit <https://topnonprofits.com/vision-mission/>.

³ For more information about IRS 501(c)(3) exemption requirements, visit [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations).

Registration and Disclosure

NYS Charities Bureau Registration

Charities conducting public solicitations in New York State must register with the Charities Bureau, which is part of the Office of the New York Attorney General. They must also provide regular reports with documentation to the state. Charities are generally exempt from paying taxes, including sales tax. Charities registered with the state must submit an annual return (CHAR500), certifying their continued nonprofit status.

Charities that are required to register with the NYS Charities Bureau must make their financial statements available to the public and people must be able to obtain these statements upon request from the organization. Many organizations just make these documents available on their websites, but they are also available from the NYS Charities Bureau.

IRS Reporting

The IRS is the agency that certifies an organization's nonprofit status. Therefore a charity (often referred to by the section of the tax code that covers them as a 501(c)(3)) must file an annual return with the IRS (990 series form). Failure to do this may result in revocation of the nonprofit's tax exemption by the IRS. Smaller organizations may file simpler returns.

Multi-State Charity Registration

When nonprofits conduct public solicitations resulting in contributions from multiple states, they may be required to register with the relevant state governmental authority in each of those states.

Required Documents

Articles of Incorporation

In New York State, not-for-profit corporations are formed as provided under the state's Not-for-Profit Corporation Law. Incorporation is typically a first step in forming a new nonprofit organization.⁴ The articles of incorporation provide basic information about the proposed new organization.

It is generally required that a nonprofit's articles of incorporation or other organizing document state the general purpose(s) of the corporation (Specific Purpose Statement). If your board wishes to alter its specific purpose statement, you will need to amend these articles.

Bylaws

Bylaws are rules in a legal document that spell out how your organization will govern itself. This document explains the process by which board members and officers must be elected, establishes the board size, states how the board will function, and provides other governance details. Board members and executive directors/CEOs need to be familiar with their nonprofit's bylaws.

The board should review the organization's bylaws regularly to ensure that they are in compliance with, and do not contain anything which might conflict with, New York State or local laws governing nonprofits. They

⁴ For more information on forming a nonprofit and registering with NYS see *Not-for-Profit Incorporation Guide* (http://www.dos.ny.gov/forms/corporations/1511-f-1_instructions.pdf), Foundation Center Q&A on Incorporation (<http://grantspace.org/tools/knowledge-base/Nonprofit-Management/Establishment/articles-of-incorporation>), and the Lawyer's Alliance of NY's *Getting Organized* manual for purchase (<http://www.lany.org/publications.php>).

should also be reviewed regularly to ensure they continue to serve their organization’s mission and operations effectively. When possible, seek input from qualified legal counsel for this purpose.

Important Laws (New York Not-for-Profit Law)

Employment Law and Personnel Policy

Nonprofits operating in New York City are bound by federal, state, and city laws affecting employment and payroll practices, as well as management policies covering employees and volunteers. Board members should ensure that their nonprofit is operating in accordance with all applicable laws and regulations, and that it has established employment policies and procedures.⁵

NYPMIFA and Investment Policy

Board members should be aware of enacted special laws relating to how nonprofits can invest their funds.⁶

Board’s Role in Incurring Contractual Obligations

Nonprofit organizations should determine, and have written policies about, who will have the power to bind the organization contractually and represent it for any legal purposes. Most board members and committee members *should not* expect to have this power; it should be limited to a very small number of people who are officially vested with this authority by the organization’s executive director or CEO and its board.

However, the board *should* understand and approve the terms of major contracts that will have a significant impact on the organization. In addition, the contractual process should be protected by established internal control procedures, to guard against misdirection of nonprofit funds. This is an important part of effective governance.

Insurance

Board members should be informed about and regularly review insurance policies carried for the protection of the board, staff, and the nonprofit organization in general. Some forms of insurance are required by law, if a nonprofit is an employer. Other forms are very important for protection of the nonprofit’s board, staff, and assets against the potential cost of claims and legal perils. Evaluate policies carefully in terms of cost, deductibles, risk exposures, and coverage, and check on the underwriter’s reliability and credentials. Following this paragraph are three typical forms of insurance:

Liability Insurance: General liability insurance protects the nonprofit financially, up to payout maximums, against claims resulting from bodily injury or property damage to others during the course of a nonprofit’s business operations or employee actions. If you are planning to have special events, ensure that you can purchase coverage for them. Every nonprofit should have this type of insurance.

D & O Insurance: Directors and Officers Insurance (D&O) is a form of liability insurance that protects a nonprofit’s organization directors and officers against certain types of legal claims. Policies may vary in terms of covered events, but in general D&O policies cover the cost of defending against claims that do not involve

⁵ For resources regarding Employment Law and Practices, see “Section I Resources” at the end of this section.

⁶ For more information about New York Prudent Management of Institutional Funds Act (NYPMIFA), refer to the Charities Bureau’s *A Practical Guide to New York’s Prudent Management of Institutional Funds Act* (http://www.charitiesnys.com/nypmifa_new.jsp).

physical harm, up to certain dollar amounts. These might include lawsuits about employment matters, mismanagement, reputational matters, or other comparable harms.

Workers' Compensation and Disability Insurance: According to the NYS Workers' Compensation Board, virtually all employers in New York State must provide workers' compensation insurance for their employees. This covers workplace injury claims and other civil liabilities. New York State employers are also required to provide disability insurance for their employees, covering disability due to an off-the-job injury or illness.

The Board's Role in Setting Necessary Policies

Board's Policy Role

In its role as an oversight body, the nonprofit board sets and confirms policies that govern how the organization will be managed. In cases where a nonprofit employs professional staff, the board is not involved in direct management of the organization. However, when a nonprofit is all-volunteer in nature and has no staff, board members may take on management roles. Board policies in those instances are especially helpful in guiding how volunteer board management roles may be conducted.

NYS Legal Mandates Regarding Nonprofit Policies

The Nonprofit Revitalization Act of 2013 established requirements for nonprofit board policies. All nonprofits soliciting donations in New York State, whether or not they are incorporated or located in the state, are required to have a board-approved Conflict of Interest policy. Whistleblower policies are required for organizations of a certain size.

Conflict of Interest Policy and Related Party Transactions

The Conflict of Interest policy addresses situations where a board member might profit from the organization, for example by providing goods or services or recommending a relative for employment. The policy does not preclude board members from providing services, but ensures that any potential conflicts are disclosed and taken into consideration when decisions are made. The policy should apply to board members and officers as well as key employees who are "related parties" as defined in New York State law. The policy should clearly define what a conflict of interest is, set out procedures for disclosing a potential conflict, require related party recusal from board deliberating and voting when a potential conflict of interest exists, and require documentation of the conflict of interest resolution process. Board members are required to sign advance conflict of interest disclosure statements prior to joining a board and annually after that.⁷

Whistleblower Policy

If a nonprofit has over \$1 million in annual income and 20 or more employees, New York State law requires that such an organization have a whistleblower policy and related procedures. The whistleblower policy should establish a process for individuals to report improper conduct and violations of laws and policies in a confidential manner, without fear of retaliation or other adverse employment consequences. Under the policy, at least one individual should be appointed to investigate and administer whistleblower complaints; this responsible individual should report to the board, its audit committee, or other board-level committee. All employees, volunteers, and board members should receive a copy of the whistleblower policy.⁸

⁷ For more information about Conflict of Interest policies under the Nonprofit Revitalization Act of 2013, see the Charities Bureau's guidance document (http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf).

⁸ For more information about Whistleblower policies under the Nonprofit Revitalization Act of 2013, see the Charities Bureau's guidance document (http://www.charitiesnys.com/pdfs/Charities_Whistleblower_Guidance.pdf).

Privacy Policy and Cybersecurity

If a nonprofit organization is accepting financial donations or other personally identifiable information about consumers, it should develop, publish, implement, and monitor implementation of its privacy policy.⁹ This is especially important if a nonprofit organization collects such sensitive information through its website or other internet-based portals.

A privacy policy is a legal statement that spells out how the nonprofit organization will manage and protect the personal, private information that it collects and functions as a kind of promise to its stakeholders. When your nonprofit makes such a privacy promise, it must keep it. At minimum, a well-crafted privacy policy should do the following:

- State what information is being collected by the nonprofit from website visitors or through other channels, and how that information is being used
- Explain how an individual may contact the nonprofit to review personal information collected and request corrections
- State what security measures are in place to protect the private data
- Provide a way for the individual to notify the nonprofit that he or she does not want their private information to be shared outside of the nonprofit organization
- Allow the individual to opt out of further solicitations or contacts, if desired

It is also increasingly important for nonprofits to use the most secure data handling technologies and procedures possible when storing, transferring, and managing sensitive data. Likewise, nonprofits benefit by establishing and enforcing clear data management policies, and by training all staff and volunteers to follow them closely.

More generally, nonprofits should take care to ensure they are respecting the privacy rights of individuals when posting information or images online, whether on the nonprofit's own website or elsewhere.

Effectiveness Policy

An Effectiveness Policy is a board-approved policy stating that the nonprofit will evaluate its performance against measurable mission goals every two years, with recommendations for future actions to achieve the mission.¹⁰

Additional Policies

A nonprofit's senior executives and board may wish to establish additional formal policies for protection and management of the organization. Here are some examples:

- **Financial Management Policy:** May set forth basic guidelines for internal control procedures and prudent general management of the nonprofit's finances.
- **Document Management Policy:** Dictates which documents and e-records will be retained, and for how long. For prudent legal reasons, when this policy is in place, it is important for the nonprofit to ensure that it is followed consistently.
- **Fundraising Policy:** May set forth guidelines for the conduct of accurate and transparent solicitations for a specific nonprofit. It may also set up processes for vetting solicitation statements or new appeals

⁹ For resources regarding privacy policies and cybersecurity, see "Section I Resources" at the end of this section.

¹⁰ For more information about Effectiveness policy and a sample Charity Effectiveness Policy, see "Section I Resources" at the end of this section.

with an organization's CFO, legal counsel, or auditor to ensure that these statements comply with legal requirements and commonly accepted guidelines for nonprofit performance.

- **Risk Management:** May commit a nonprofit's senior leadership and board to a regular process of evaluating risks to the organization (ranging from lack of infrastructure and continuity risks to legal or cyber perils) and developing plans to address and manage these risks.
- **Social Media:** Specifies who may and may not represent your organization in social media, and establishes guidelines for social media conduct on behalf of your nonprofit. Be cautious when establishing a social media policy to avoid triggering legal concerns. Periodic legal review of this kind of policy is strongly advised.

Guidelines and Ethical Conduct

Nonprofit leaders need to be aware of commonly accepted guidelines for accountable practices, as well as professional guidelines that shape charity operations in important ways. Following these guidelines can help nonprofits operate effectively and achieve recognition as reputable organizations. Some guideline programs offer certification or accreditation features, which signify to potential donors that a charity is meeting high standards.

Board members should become familiar with these guidelines and codes of conduct, which offer valuable insight into effective nonprofit governance and oversight touchpoints and processes. Effective nonprofits will embed recommended practices into their operations and ensure that board and staff members, as well as volunteers, are aware of and use good governance guidelines in their work.¹¹

Development/Fundraising

Every board member is expected to make a contribution to the organization and help in the development process. Certain funders, like foundations, look hard at board participation when they are reviewing grant applications. If members of an organization's board are not willing to support it, why should anyone else? On any board, there should be a Development Committee which, with staff, helps organize board members' fundraising. As with every other section of this Blueprint, policies and regulations apply to fundraising,¹² including the following:

- **Compensation:** Under the ethics rules of the Association of Fundraising Professionals (AFP), it is forbidden for any member to be compensated a percentage of what they have raised. According to the AFP, if percentage-based compensation is accepted, the "charitable mission can become secondary to self-gain, donor trust can be unalterably damaged, [and/or] there is incentive for self-dealing to prevail over donors' best interests".¹³
- **Consultants:** In the state of New York, any organization hiring an outside fundraising firm must abide by certain rules. For example, they must have clauses in their contracts to let the nonprofit cancel the contract, and the contract must be filed with the state.¹⁴

¹¹ For more resources on such guidelines and other nonprofit planning tools, see "Section I Resources" at the end of this section.

¹² For more information on disclosure requirement for solicitation of contributions, see the Charities Bureau's notice at http://www.charitiesnys.com/pdfs/disclosure_notice.pdf.

¹³ For more information on percentage-based compensation, see AFP position paper at <https://afpcalgary.afpnet.org/Ethics/EthicsArticleDetail.cfm?itemnumber=734>.

¹⁴ For more information on NYS regulations, visit: http://www.charitiesnys.com/pdfs/statute_booklet.pdf.

- **Raffles:** Gala raffles are covered by NYS Gambling Law, and organizations seeking to have a raffle must register with the state Gaming Commission. This is not difficult or time consuming, so you need not think of canceling your raffle as a result.
- **Cause-Related Marketing:** The NYS Charities Bureau offers guidelines pertaining to cause-related marketing, as well as best practices and tips.¹⁵

¹⁵ For more information on cause-related marketing visit http://www.charitiesnys.com/cause_marketing.jsp.

SECTION I: RESOURCES

Mission & Vision Statements

- Top Nonprofits, HandsOn Network, and Points of Light. *Guide to Creating Mission & Vision Statements*. <http://topnonprofits.com/vision-mission/>.

Resources on Employment Law and Practices

- New York City Bar Employment Law Handbook for Non-Lawyers. http://www2.nycbar.org/pdf/report/pro_se_handbook.pdf.
- U.S. Department of Labor: A Summary of the Major Laws of the Department of Labor. <http://www.dol.gov/opa/aboutdol/lawsprog.htm>.
- Lawyers Alliance: *Employment and Tax Law Considerations Related to Compensating Summer Youth Workers, May 2015*. http://www.lawyersalliance.org/pdfs/news_legal/Youth_Employment_Law_Legal_Alert_May_2015_FINAL.pdf.
- New York State Workers' Compensation Board: Who Is and Is Not Covered by the Workers' Compensation Law? www.wcb.ny.gov/content/main/Employers/Coverage_wc/empWhoCovered.jsp.
- New York State Workers' Compensation Board: Disability Benefits. http://www.wcb.ny.gov/content/main/offthejob/IntroToLaw_DB.jsp.

Privacy Policy and Cybersecurity Resources

- Council of Better Business Bureaus: *Data Privacy for Small Businesses*. <http://www.bbb.org/council/for-businesses/toolkits/data-privacy-for-small-businesses/>.
- Privacy Rights Clearinghouse: Fact Sheet 28: Online Privacy for Nonprofits. <https://www.privacyrights.org/online-privacy-nonprofits>.
- Council of Better Business Bureaus: *Data Security Made Simpler*. <http://www.bbb.org/council/data-security-made-simpler/>.
- BBB Wise Giving Alliance: Standards for Charity Accountability Implementation Guide, See Standard 18. <http://give.org/for-charities/How-We-Accredit-Charities/implementation-guide/?id=242224>.

Resources on Effectiveness Policy and Other Policies

- Metro NY BBB Foundation: Sample Charity Effectiveness Policy. <http://www.bbb.org/new-york-city/charities-donors/charityeffectiveness/charity-effectiveness-policy/>.
- BBB Wise Giving Alliance: Standards for Charity Accountability Implementation Guide, See Standard 6.

<http://give.org/for-charities/How-We-Accredit-Charities/implementation-guide/?id=242224>.

- National Council of Nonprofits: Document Retention Policies for Nonprofits
<https://www.councilofnonprofits.org/tools-resources/document-retention-policies-nonprofits>.

Other Helpful Resources

- Community Resource Exchange: Tools for Nonprofits – Strategic, Program and Operational Planning This website page contains a link to a sample personnel manual as well as other nonprofit planning tools.
http://www.crenyc.org/resources_tools.

Examples of Nonprofit Standards

- *Better Business Bureau Standards for Charity Accountability* – the BBB Standards present 20 guidelines for nonprofit practices that demonstrate accountability. The standards cover a variety of practice areas, including governance, effectiveness, finances, solicitations, and informational materials. Publicly soliciting charities that meet all 20 of the BBB Standards upon review are known as BBB Accredited Charities and are noted as such on BBB websites.
<http://www.give.org/for-charities/How-We-Accredit-Charities/>.
- *Independent Sector Principles for Good Governance and Ethical Practice* – Independent Sector is a leadership network for nonprofits, foundations, and corporations committed to advancing the common good. It has published a set of 33 principles for sound practice related to legal compliance and public disclosure, effective governance, financial oversight, and responsible fundraising.
<https://www.independentsector.org/principles>.

Examples of Professional Codes and Guidelines

- *Financial Accounting Standards Board (FASB)* – FASB publishes guideline documents laying out Generally Accepted Accounting Principles (GAAP) as they apply to not-for-profit organizations, as well as other entities. These guidelines are used by not-for-profit accounting professionals and nonprofit managers to determine how not-for-profit financial reporting should take place in audited financial statements, as well as to determine how various types of donations and expenses should be recognized and reported. From time to time, these guideline documents are reviewed and updated by FASB after a public comment period. Nonprofit senior managers and board members should become familiar with GAAP financial reporting concepts. <http://www.fasb.org/home>.
- *Association of Fundraising (AFP) Professionals Code of Ethical Standards* – AFP members agree to abide by this code of fundraising ethics as a condition of joining this international professional association.
<http://www.afpnet.org/Ethics/EnforcementDetail.cfm?ItemNumber=3261>.

Additional Resources on Good Governance Practices

- *Independent Sector Compendium of Standards* – For further reference, the Independent Sector has published a very extensive list of Standards, Codes and Principles of Nonprofit and Philanthropic Organizations.
https://www.independentsector.org/compendium_of_standards.
- *National Council of Nonprofits* - This national association of nonprofit organizations also publishes a web resource on ethics and accountability.
<https://www.councilofnonprofits.org/tools-resources-categories/ethics-accountability>.