

## Good Governance

Good governance requires a nonprofit board of directors to adopt and adhere to appropriate policies and procedures to keep the nonprofit on course and in compliance with the various laws that regulate nonprofits.

### How can we ensure good governance for our nonprofit?

Good governance starts with the nonprofit's bylaws. Bylaws are the nonprofit's governing rules and among its most important documents. The nonprofit acts at the direction of its board of directors and the bylaws specify the rules of conduct of the board. If the board or an individual director fails to comply with the governing rules, the result can be invalidation of a corporate action and/or civil liability on the part of the directors. In short, every director should read and understand the nonprofit's bylaws.

### To what extent can we change our nonprofit's bylaws?

Subject to state law, many bylaws' provisions may be changed to better reflect the intent and desires of the nonprofit so long as the proposed changes are within the permissible scope of relevant state law provisions. In order to be valid, such amendments must be made in accordance with the proper procedures for amending the bylaws. The board should consult with an attorney before making any amendments to the nonprofit's bylaws to ensure legal compliance. Bylaws that have been amended or restated should clearly state in the heading or caption on the title page that they have been amended and/or restated and include the date of the amendment or restatement.

### Are our bylaws enough to ensure our nonprofit practices good governance?

Bylaws set forth the minimum requirements and standard of conduct of the board and directors. Adherence to the bylaws helps ensure good governance. It is strongly encouraged that each board consider developing and adopting procedures and policies that address governance topics in more detail, as needed. Such policies may include conflict of interest,<sup>1</sup> whistleblower, document retention, gift acceptance, investment and diversity, equity and inclusion (DEI) policies, as well as others. Well-implemented policies and procedures lead to better managed nonprofits. They will also help ensure that the nonprofit employs best practices both in board accountability and in its day-to-day operations. Every nonprofit has different needs, depending on the types of activities it engages in. As such, it is recommended that you consult with an attorney to determine the policies that will be most beneficial to your nonprofit.

### Is it really necessary that we adopt governance policies?

Not only is it valuable to adopt governance policies in order to inform the board of its legal obligations but adopting such policies is particularly important given the enhanced emphasis on nonprofit accountability and good governance by the IRS and states' Attorneys General. The annual information return filed by most nonprofits (Form 990) includes a number of questions intended to help the IRS implement and enforce this emphasis. Among other questions, Form 990 asks whether the organization has conflicts of interest, whistleblower and document retention and destruction policies. Because the Form 990 is a public document, having such policies in place indicates to donors and constituents that the nonprofit endeavors to practice good governance.

### Beyond our bylaws and internal policies, what else can we do, as directors, to practice good governance?

Directors must act in accordance with their statutory fiduciary duty to the nonprofit. Good governance best practices help ensure that directors faithfully exercise their fiduciary duties to the nonprofit. For more information on director fiduciary duties, please see our Quick Reference Sheet on Directors' Fiduciary Duties.

### What can happen if our nonprofit does not practice good governance or act in accord with its bylaws?

Failures in governance may not only threaten the trust the public has in a nonprofit, but it can also lead to innumerable legal issues for the organization and directors alike. Failure to adhere to legal obligations imposed upon directors and the board may subject the nonprofit and, in some cases, individual directors to liability.

### What should a director do if they believe that the board or another director is not practicing good governance?

If a director believes the board or another director has failed to abide by the bylaws, internal policies or the law, they should state so (either in writing or during a board meeting) and object to the noncomplying action. They should also be certain that the objection is noted in the relevant meeting minutes, if the objection is raised during a board meeting. Not only is this the right thing for the director to do, but it also will protect that director if the rest of the board is found to have breached its duty as a result of its action.

<sup>1</sup> See our Quick Reference Sheet on Conflicts of Interest.