

Nonprofit Update

Increase the effectiveness of your board through effective board governance

By: Dan Brophrey, dbrophey@rpblp.com

An effective board is a major determinant of the success of any nonprofit organization. Boards of directors are essential for setting strategy, supporting the Executive Director, fundraising and stewarding investments, and providing stability to a nonprofit organization. However, many people volunteer for boards out of a commitment to the organization's mission without understanding the fiduciary and leadership role of the board's members. This can lead to poor board performance, which can then result in a lack of strategic focus as well as executive and staff burnout.



Although there is no one set of rules that apply to every nonprofit organization, there are several guidelines for effective board governance that if followed, are likely to lead to overall success for a nonprofit organization.

1. The board should meet regularly enough to conduct its business and fulfill its duties. The board should also establish and implement an attendance policy that requires board members to attend meetings regularly. In addition, the board and any committees created should take steps to ensure that minutes of their meetings, and actions taken by written action or outside of meetings, are contemporaneously documented. Organizations that file Form 990 will find that Part VI, Line 8 asks whether an organization contemporaneously documents meetings or written actions undertaken during the year by its governing body and each committee with authority to act on behalf of the governing body.
2. The board of a charitable organization should establish a size and structure that allows for full deliberation and diversity of thinking on governance and other organizational matters. Except for very small organizations, this generally means that the board should have at least five members. The size of the board should be reviewed periodically.
3. The board of a charitable organization should include members with diverse backgrounds (including, but not limited to, ethnic, racial and gender perspectives), experience, and organizational and financial skills necessary to advance the organization's mission.
4. A substantial majority of the board of a public charity, usually at least two-thirds of the members should be independent. They should not be compensated by the organization as employees or independent contractors; have their compensation determined by individuals who are compensated by the organization; receive, directly or indirectly, material financial benefits from the organization; or be related to anyone who has one of these relationships with the organization.
5. The board should hire, oversee, and annually evaluate the performance of the chief executive officer of the organization.
6. One of the most important responsibilities of the board is to select, supervise, and determine a compensation package that will attract and retain a qualified CEO.
7. The board or a designated compensation committee should also review the overall compensation program to ensure the compensation program is fair, reasonable, and sufficient to attract and retain high quality employees.

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What happens to the board of directors when a nonprofit organization dissolves?

By: Mike VanWagenen mikevan@rpblp.com

Today's economy has created a challenging environment for not-for-profit organizations. Unfortunately, some worthy organizations have been forced to shut their doors. This leads to a unique set of fiduciary responsibilities for the defunct organization's board of directors – responsibilities you should understand if you are serving a struggling organization.

When a nonprofit is no longer able to perform its charitable duties, the board of directors is legally obligated to wrap up the affairs of the organization in an orderly fashion. Most articles of incorporation used by a nonprofit contain a clause for dissolution that dictates the activities that must be performed by the board in the event that the nonprofit is no longer a viable entity. Typically, the board is required to:

- Contact an attorney to begin the legal process
- Send appropriate notices to state and federal regulators
- Transfer any remaining funds left in the organization to another 501(c)(3) organization. If the defunct nonprofit owns property or other non-cash assets, these can be transferred or liquidated with the proceeds transferred to another nonprofit.

Board members cannot resign from the board to avoid these fiduciary responsibilities. If the nonprofit is left with no leadership, regulators and the courts will turn to former board members as they work through the legal process of dissolution. This process may involve subpoenas, which will require the former board members to retain personal legal counsel at their own expense. In addition, board members may no longer be covered by Directors' and Officers' Liability Insurance. Board members may even be held personally liable for any activity that occurred while the nonprofit was unmanaged.

Remember that board service is more than just goodwill towards a not-for-profit organization. Board members have important fiduciary responsibilities that, if an organization dissolves, continue until the organization is no longer a legal entity.

To suggest future topics, please contact Mike Van Wagenen at mikevan@rpblp.com


QuickBooks Tips & Tricks: The Importance of Backups

By: Lori Saqer lsaqer@rbpllp.com



We all know the importance of backing up our both our business and personal computer files. Did you realize that you can (and should) also back up your QuickBooks files? QuickBooks makes saving a QuickBooks-specific backup fast and easy. This backup will make restoring your company file much simpler in the event of a computer problem or catastrophic event. You can even set up QuickBooks to schedule backups as frequently as you wish. Here's how:

1. Go to the **File** menu and click **Save Copy or Backup** to open the backup wizard.
2. Click **Backup Copy**, click **Next**, and then click **Local Backup**.
3. If you haven't already done so, click **Options** to set your backup defaults, such as where you want to save your local backup, and then click **Next**. If your regularly scheduled backup is saved on a local hard drive or server, it is important to periodically save a backup that will be stored offsite, so that a copy exists outside of the business office.
4. Click **Only schedule future backups**. (This will create a schedule for backups without running a backup). Click **Next**.
5. In the **Backup on a schedule section** of the window click **New**.
6. Enter a **Description** for your scheduled backup. This name appears in your list of scheduled backups so you can easily find it later.
7. Click **Browse** to select the folder where you want to store your backup copies. Note: it is very important to periodically save an additional backup of your QuickBooks file in an offsite location.
8. Click **Store Password** to open the **Store Windows Password** window and enter the requested Windows login information. Be sure the login you enter has Windows permission for the location you've selected for the backup.
9. Select the time, weekly frequency, and day(s) for the backup to take place. For example, if you want to run your backups daily, select every day of the week and run the task every "1" week.
10. Click **OK** to return to the previous window. The backup appears in the list in the **Backup on a schedule section** of the window.
11. Click **Finish** to close the wizard.

By scheduling backups, you can save yourself a lot of frustration if you do have a computer issue later. 

How possible changes to lease accounting could affect your nonprofit

Does your nonprofit organization lease office space, equipment or vehicles? If so, you should be aware of some accounting changes that are currently being discussed by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB).

FASB and the IASB are considering changing the rules related to lease accounting for two reasons. First, the United States is moving towards International Financial Reporting Standards which will more closely comply with the standards used by the G-20 Nations. In addition, concerns have been raised by investors and other users of financial statements regarding the treatment of lease contracts. This is because leases and their related expenses are usually one of the top expenses for a not-for-profit organization, after salaries and benefits. However, these leases do not appear in the organization's statement of financial position. The lease payments are recognized as an expense over the lease term and future minimum lease payments are disclosed in the footnotes to the financial statements.


FASB and the IASB propose to change accounting methods for leases so that leases are accounted for consistently across all industries. The new rules would be based on the principle that all leases give rise to both liabilities and assets. If this new rule is adopted, it would require the lessee to:

- Recognize an asset for the right to use the leased item
- Recognize a liability for the obligation to pay future rental costs

These assets and liabilities would then be recognized in the organization's statement of financial position.

What does this mean for your nonprofit?

The greatest potential effect of this rule (other than making your accounting more complicated) is that it could affect your ability to borrow money. If your organization leases a variety of items, such as your office space, office equipment (copiers or telephone equipment), or vehicles, under this new rule it may appear on paper that you are carrying too much debt, especially if you have a long-term lease on your building or vehicles. If this rule is implemented, it will be important to work with both your CPA and your banker when trying to obtain a loan. Your CPA can assist you by working with your banker to be sure your bank will understand the new lease accounting method and why your financial statements look different than they have in the past.

We are not sure if this new rule will pass. FASB is expected to issue a pronouncement later this year regarding this rule, and the implementation date is still to be determined. We will continue to monitor this issue and will provide you with information as it becomes available. 

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Sponsors

How creative sponsorships can lead to tax issues

By: Mike VanWagenen mikevan@rpbllp.com

Although promotion of a private company is generally considered advertising, tax-exempt organizations are generally exempt from income taxes related to sponsorship dollars. This is due to a safe harbor created by the IRS, which distinguishes “qualified sponsorship payments” from payments made for advertising purposes, which are considered unrelated business income.

Because nonprofit organizations are continually looking for new and creative ways to raise money and attract sponsors, it is important for your organization to understand the difference between safe harbor transactions and advertising. The Internal Revenue Service (IRS) is always very interested in what tax-exempt organizations are doing when fundraising. Therefore, organizations need to be aware of what the IRS considers taxable advertising when building unique sponsorship opportunities.

Activities that are generally considered to fall within the safe harbor include:


- Acknowledging a company as the exclusive sponsor of an activity or organization
- Using a sponsor’s logo or slogan in conjunction with the nonprofit’s activities, as long as the logo or slogan does not contain qualitative or comparative descriptions of the company’s products, services, facilities, or the company itself
- Listing the sponsor’s locations or contact information
- Providing value-neutral descriptions of sponsors on the nonprofit’s website

By contrast, taxable advertising includes messages containing:

- Qualitative or comparative language
- Price information, or other indications of savings or value
- An endorsement or inducement to purchase, sell, or use any company, service, facility, or product

In addition, payments that are contingent on the level of attendance at events, broadcast ratings, or other factors indicating the degree of public exposure will not qualify for the sponsorship safe harbor. This rule is especially important to watch as more nonprofits develop social media fundraising campaigns. For example, some organizations obtain sponsorships that are contingent on the number of new Facebook “likes” or YouTube views achieved during a campaign. At this point, we are unaware that the development of social media fundraising campaigns has reached the IRS’ radar screen. However, the tax-exempt community has a well-earned reputation for its resilience and creativity when it comes to fundraising. Accordingly, the mixture of social media and fundraising may attract IRS attention in the future.


As a firm that works with over 500 nonprofits, we understand the connection between sponsorship dollars and the success of any nonprofit organization. We know it is important to keep corporate sponsors engaged and to provide value to them for their sponsorship dollars. Just remember that when developing a new sponsorship strategy, it is important to consult your CPA to ensure you do not create an unexpected tax issue.

For more information, or for advice on your specific fundraising strategy, contact Mike VanWagenen or Dan Brophy at 414-271-7800. 

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8. Within the board, the positions of chief staff officer, board chair, and treasurer should be held by separate individuals.
9. The board should establish an effective, systematic process for education and communication with board members to ensure they are aware of their ethical and legal responsibilities and can carry out their oversight functions effectively.
10. There should be a clear process for removing board members who are unable to fulfill their responsibilities.

11. The board should establish clear policies and procedures setting the length of terms and the number of consecutive terms a board member may serve.
12. At least once every five years, the board should review the organizational and governing instruments to ensure that it is abiding by the rules it set for itself and whether changes need to be made.

With effective policies and procedures in place, a board of directors can be a tremendous asset to a nonprofit organization rather than just a governing body. 

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