NONPROFIT BOARDS: Oversight, Insight, Foresight
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Managing Consultant
About The Presenters

Sarah Curfman, Managing Consultant

Sarah Curfman is a managing consultant with CliftonLarsonAllen’s Nonprofit Group. She works with CLA nonprofit clients, bringing her expertise in organizational assessment, board governance, group facilitation, and fact-based research analysis.

She is a recent past President and Board Chair of the Junior League of Minneapolis – a membership organization of women more than 800 women committed to promoting voluntarism, developing the potential of women and improving the community through the effective action and leadership of trained volunteers. Additionally, she has served on the boards of multiple Minneapolis-based nonprofit organizations including Social Venture Partners, Free Arts Minnesota and EAG.

Sarah holds a B.A. in Accountancy with a minor in Fine Arts from Miami University in Oxford, Ohio. She
Agenda

PART 1: Defining Accountability and Fiduciary Responsibility

The purpose of this session is to understand the legal and ethical requirements of serving as a board member.

PART 2: Governance vs. Management

The purpose of this session is to understand the difference between governance and management.

PART 3: Case Study: Boston Museum of Fine Arts

The purpose of this session is to examine a case study involving the Boston Museum of Fine Arts. Participants will act as board members to make key strategic decisions.

Questions / Answers / Discussion
Part One:

Accountability and Board Fiduciary Responsibility
Defining Accountability

Nonprofit board members are required to:

- Operate with a clarity of purpose
- Maintain legal knowledge
- Maintain ethical behavior that extends beyond the requirements of the law
- Conduct regular self-evaluation of mission, programs, and operating policies
- Maintain responsibility for fiscal oversight
Purpose of the Governing Board

• Three purposes for the board of directors
  – To register as a tax-exempt corporation
  – To provide organizational oversight
  – To maintain accountability to the public and the law

• A governing board must ensure that:
  – The organization provides a product or service that reflects the community’s need
  – The organization is healthy – financially, managerially, and programmatically
Governance Responsibilities

1. Establishing mission and philosophy
2. Strategic thinking and planning
3. Setting policies to effectively guide operations and programs
4. Advocating for the organization in the community
5. Ensuring the organization has adequate resources
6. Ensuring the organization is managing resources effectively
7. Reviewing financial and programmatic performance as compared to objectives
8. Organizing the board to work effectively
9. Recruiting and orientation of new board members
10. Ensuring legal and ethical integrity
What Does the Law Require?

• Duty of Care
  – Diligence and attentiveness to board responsibilities. Act as “an ordinarily prudent person” would “in a like position and under similar circumstances.”

• Duty of Loyalty
  – Faithful pursuit of the interests of the organization rather than personal interests or the interest of another person or organization.

• Duty of Obedience
  – Act with fidelity, within the bounds of law generally, to the organization’s mission.
Duty of Care

- Attend meetings and actively participate in the work of the board
- Scrutinize the work of committees having authorization of the board
- Know the books and records
- Ensure financial accountability and protect assets consistent with donor restrictions and legal requirements
- Assist the organization in obtaining adequate resources
- Honor your duty to investigate and report potential theft or mismanagement
- Document decision-making in board minutes
Duty of Loyalty

- Avoid conflicts of interest or the appearance of such conflict. If questions arise, the burden of proof that no conflict exists lies with the director.
- Establish a written policy on avoiding conflicts of interests.
- Do not lend money to a director or the director’s family unless the board deems it will benefit the corporation.
- Do not divert a corporate business opportunity for your own personal gain.
- Adhere to the rules of the Internal Revenue Code regarding self-dealing.
Duty of Obedience

• Ensure the organization remains obedient to its central purpose
• Be familiar with state and federal statutes and laws related to the organization
• Comply with deadlines for all local, state, and federal filings
• Be familiar with the organization’s governing documents and follow the provisions of those documents
• Where appropriate, obtain opinions of legal counsel or accountants
Fiduciary Responsibility

Financial oversight is a core responsibility of the board

*That means that ALL board members:*

- Have equal and shared fiduciary responsibility for the organization
- Understand the content and significance of financial statements and audit
Fiduciary Responsibility

- Ensure protection and appropriate use of assets
- Establish program revenue and expense objectives which are consistent with the mission of the organization
- Insist on income-based spending
- Thoroughly discuss and adopt an annual budget that reflects the financial objectives and strategies of the organization before the beginning of its fiscal year
- Review financial statements regularly and compare them to budget. Ensure that you account for significant variances and require timely course adjustments as needed
- Ensure that strong and appropriate internal financial controls, processes, and practices are in place
Fiduciary Responsibility

• Establish appropriate financial policies to guide organization operations

• Where possible, establish an operating reserve to finance cash shortfalls and program growth

• Assess annual audit implications and approve action plans to strengthen performance

• Establish and monitor a system to ensure that the organization is in compliance with all relevant financial laws and regulations

• Approve non-routine contractual obligations as defined by approved board expenditure authorization policies

• Establish adequate risk management mechanisms
Part Two:
Management vs. Governance
Modes of Governance
Governance

In the nonprofit setting, the purpose of governance is to “ensure, usually on behalf of others, that an organization achieves what it should achieve, while avoiding those behaviors and situations that should be avoided.”

- John Carver

Boards That Make A Difference, 2006
Governing Functions

- **Strategic Direction** – setting a direction for the organization that reflects its constituents needs
- **Resource Development** – developing financial resources that support program activities
- **Financial Accountability** – managing financial resources that ensure honesty and cost-effectiveness
- **Leadership Development** – developing the human resources that lead the organization today and in the future
Management Functions

• *Program Planning and Implementation* – taking the strategic directions to the next level of detail and putting it into action

• *Administration* – ensuring the effective management of the details behind the program
Determining Different Roles

• Governance is the ultimate responsibility of the board, while the responsibility of the *staff* is management.

• Rather than seeing the nonprofit board’s job as a function of *management*, *it is first and fundamentally* a responsibility for *ownership*.

• Board should ask, in regards to programs and initiatives, “Why are we doing this, rather than, how can we do it?”
Governance Triangle

Three modes of governance based on best practices of organizations and behavioral theory

Type I: Fiduciary
Type II: Strategic
Type III: Generative
Type I: Fiduciary Mode

- Fiduciary accountability, integrity and oversight

“Essential but if that is all a board does, its focus is to prevent trouble rather than promote success”

- Richard Chiat, William Ryan and Barbara Taylor

Governance as leadership: reframing the work of nonprofit boards (2006)
Type II: Strategic

• Beyond annual strategic planning to continuous strategic thinking

“Until a board learns to use ideas rather than plans to drive strategy, the full range of the board members talents will be vastly under utilized.”

“Boards are better suited to think together than to plan together, to expand the essence of a great idea, rather than elaborate the details of a plan”

- Richard Chiat, William Ryan and Barbara Taylor
  Governance as leadership: reframing the work of nonprofit boards (2006)
Type III: Generative

- Drivers for continually moving the organization forward. Knowledge of the broader landscape.
- REAL WORLD EXAMPLE
  - Problem – voluntary turnover of staff
  - Technical solution – increase compensation
  - Strategic solution – create a great place to work for professional staff where quality work, not money is the decisive factor.
  - Generative solution – create an environment where employees learn the skills needed to build a career in the nonprofit space – whether at your organization or another.
Unleashing Board Potential

- Oversight (Fiduciary)
- Foresight (Strategic)
- Insight (Generative)
## Emphasize Modes, Not Tasks, of Governance

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<thead>
<tr>
<th></th>
<th>Fiduciary</th>
<th>Strategic</th>
<th>Generative</th>
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<tbody>
<tr>
<td>Board’s Purpose</td>
<td>Stewardship of tangible assets</td>
<td>Strategic partnership with management</td>
<td>Source of leadership for the organization</td>
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<tr>
<td>Chief role</td>
<td><strong>Steward</strong></td>
<td><strong>Strategist</strong></td>
<td><strong>Sense Maker</strong></td>
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<td>Core work</td>
<td>Set mission, oversee operations, deploy resources, ensure compliance</td>
<td>Scan environment, shape strategy, create comparative advantage</td>
<td>Find and frame challenges, reconcile values and choices</td>
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<td>Conducive process</td>
<td>Standing committees</td>
<td>Task forces, ad hoc work groups</td>
<td>Inclusive conversations</td>
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<td>Power base</td>
<td>Legal authority</td>
<td>Technical expertise</td>
<td>Ideas, insights</td>
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Part Three:

Boston Museum of Fine Arts Case Study

Tying It All Together
**Tying it together – Case Study**

Loan of 21 Monet paintings by the Boston Museum of Fine Arts to the Bellagio Casino in Las Vegas

<table>
<thead>
<tr>
<th>Type I: Fiduciary/Oversight</th>
<th>Type II: Strategic/Foresight</th>
<th>Type III: Generative/Insight</th>
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<tbody>
<tr>
<td>What are the insurance and security arrangements?</td>
<td>Will the absence of the paintings affect patronage?</td>
<td>What will we do or not do if the price is right?</td>
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<tr>
<td>Are there any bequest-related restrictions on travel or venue?</td>
<td>How will the association with a casino affect the museum’s image?</td>
<td>Should we loan art to the highest bidder?</td>
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<tr>
<td>How long is the loan period?</td>
<td>Should the museum sponsor tie-in events in Boston or Las Vegas?</td>
<td>Should we display art where the masses already are?</td>
</tr>
<tr>
<td>How much will the Bellagio pay?</td>
<td>What can the museum accomplish with the income from the Bellagio?</td>
<td>Do masterworks “belong” in neon-light, pop-culture, for-profit venues?</td>
</tr>
<tr>
<td>How will the museum’s name appear?</td>
<td></td>
<td>How conservative or iconoclastic an institution do we wish to be?</td>
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Case Study reported by Edgars, 2004/Analyzed by Chiat, 2005
Hallmarks of High-Performing Boards

• Transparency
• Culture of inquiry
• Inclusive, interactive conversations
• Reconciles values, vision and choices
• Source of organizational leadership

Understands the power of oversight, foresight, and insight
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