CARTER LEDYARD

our resources

Nonprofit Boards & Bylaws Part VII: Core Committees

April 18, 2023

Join Carter Ledyard and management consultants Plan A Advisors on a lively exploration of nonprofit boards and bylaws. This multi-part series will help nonprofit executives and board members consider revisions and amendments to make your bylaws more congruent with the way your nonprofit actually operates, improve governance, and ensure compliance with current law.

This series is designed to offer principles of broad applicability, but laws vary by state, and what is best for your organization will depend on your unique circumstances. We encourage you to consult with an attorney who practices law in the state of your organization's incorporation. This series is not legal advice.

NOTE: Some portions of this series may not apply or may apply differently to a membership organization, meaning one with both a board of directors and a separate class or classes of voting "members." In a membership organization, the members have certain governance rights, such as the right to elect directors and officers or to amend the bylaws. If yours is a membership organization, feel free to contact us to discuss those differences.

–

Core Committees defined. Committees that oversee the work of a nonprofit in between board meetings or that address the primary functions of the board – financial oversight, programmatic direction, and/or the continued vitality of the board – are the core committees of an organization. Bylaws generally authorize these core committees and often specify that certain individuals, like the officers, should serve on those committees. In most states, the members of committees must be elected to those positions by the board.

About the Executive Committee. The Executive Committee is the most influential board committee. It is typically empowered to decide issues that arise in between board meetings, and its actions – like those of all board committees – are binding on the board. Board officers usually constitute the members of the Executive Committee, though this is not required. Bylaws may allow for inclusion of additional board members. In practice, a good Executive Committee has a diversity of thought that represents a microcosm of the board, so it doesn't become just an echo chamber or rubber stamp for a powerful and activist board chair. No matter what, only elected board members can serve.

Executive Committee limitations. Statutes in some states as well as nonprofit bylaws themselves may require a super-majority vote to authorize the creation of an Executive Committee. There are limitations on what actions an Executive Committee is allowed to take. These actions include filling board or committee vacancies; the election or removal of officers; approval of a merger or corporate dissolution; the sale, lease, or exchange of major assets; and amending bylaws. Today, electronic conferencing makes it possible to assemble a board quickly for most any emergency, so good bylaws should strictly limit what an Executive Committee can and can't do.

Executive Committee leadership. The Executive Committee should generally provide operational leadership to the board itself as it carries out its work. Executive Committees can take a high-level view of the nonprofit's goals and activities and construct agendas and meeting content that enhance the board's productivity. What are the big issues that the board should address over the course of a year of meetings? What learning can it do? What opportunities might be created for building board camaraderie – or at least familiarity amongst members?

Finance and Audit Committees. Second to the Executive Committee, a Finance Committee is the most important committee for a nonprofit board. Its responsibilities generally include helping to set and monitor an annual operating budget, oversight of primary financial functions, and regular reporting to the full board about financial issues.

For organizations that have audited financials, it is important to have an Audit Committee. Typically, the Audit Committee will select an auditor and review the audit on behalf of the board. Audit Committees – and financial audits – are required in some states, and other state laws mandate that Audit Committees have no members who are part of management or limit overlap between members of the Audit and Finance Committees. In states without such laws, the Audit Committee and the Finance Committee often have overlap in membership. In any case, the Audit Committee should exclude members of management.

Governance & Nominating Committee. A good Governance & Nominating Committee is concerned with the overall function and performance of a board, its composition, and the performance of its individual members. A Governance & Nominating Committee should assess board performance regularly through survey or analysis. It should be strategic in recruiting and proposing board members who bring needed skills, talents, connections, and diverse perspectives – and in nonprofits that provide a service, are representative of a broad cross-section of its constituents. An annual evaluation of the performance of individual board members helps ensure that the board is populated by active and productive members. Among other functions, the Governance & Nominating Committee should ensure a thorough orientation and onboarding process for new members and that a succession plan is in place for officer roles.

–

Other publications in this series:

Boards & Bylaws Part I: All About Bylaws | Carter Ledyard & Milburn LLP (clm.com)

Boards & Bylaws Part II: Mission and Board Role | Carter Ledyard & Milburn LLP (clm.com)

Boards & Bylaws Part III: Board Membership and Terms | Carter Ledyard & Milburn LLP (clm.com)

Boards & Bylaws Part IV: Board Meetings | Carter Ledyard & Milburn LLP (clm.com)

Boards & Bylaws Part V: Officers | Carter Ledyard & Milburn LLP (clm.com)

Boards & Bylaws Part VI: About Committees | Carter Ledyard & Milburn LLP (clm.com)

Boards & Bylaws Part VIII: Bylaw Amendments | Carter Ledyard & Milburn LLP (clm.com)

related professionals

Pamela A. Mann / Partner
D 212-238-8758
mann@clm.com

Lauren W. Shandler / Associate
D 212-238-8611
shandler@clm.com

Jeremy S. Steckel / Partner
D 212-238-8786
steckel@clm.com