

Governance | If you've seen one Board...

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Corporate Governance and Business Transactions

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Tenth in a Series

Organizations devote lots of resources to their Boards of Directors.[1] Lawyers and other consultants intone solemn counsel of duties, responsibilities, and risks for those who serve on a Board. Duties of Care, of Diligence, of Loyalty... the Business Judgment Rule, *etc.* Most of it, while true, comes across as “*Blah, blah, blah.*”

Despite our passion for Governance and healthy Organizations, advisors often fail to deliver the payload on target, or to get the message right, at least “right” enough to resonate with the unique personality *and purpose* of that particular Board. And, after all, we have D&O insurance and law firms standing by to grind down most plaintiffs. So why the nit-picking over what the Board does, how it does it, and whether it exercises oversight to hold management accountable? Every now and then, however, state AG’s or the feds come calling, as do independent auditors, accreditation bodies, and (*sacre bleu!*) the Fourth Estate. *Then*, the game is afoot.

Much of what passes for “Governance” gets swept up into “Board consent agendas” and tidy, redacted or edited minutes. Anxious staffs scurry to prepare agendas, orientation materials, and stacks of information necessary to base sound decisions for Board actions and votes. Yet, Directors who prepare, and who come to a meeting with knowledge-based capacity to execute their duties are hard to find. Well, at least management gets the votes it wants from its somnolent Board; no one rocks the boat.[2] “Great meeting!” More on these issues in future chapters.

For starters, let’s think a bit about just *what kind* of Board we have. Why is it there? Who are the stakeholders that depend on the Board to execute its function?

Despite the universal nomenclature and sweeping provisions of corporation law, no two nonprofit boards are the same. They differ broadly in how and why Board leadership and stakeholders assembled them, as well as in their skill sets, outlooks, and genuine awareness of fiduciary duty. Trite though it may be to say, *“If you’ve seen one Board... you’ve seen one Board.”*

Boards differ also because Organizations vary in size, purpose, and function, both operational and strategic. Some compete in highly regulated sectors. Governance advisors develop pet classifications and terminology they come to trust to assess situations and provide counsel. One such range of Board types might be:

Governance Board | Delegates to CEO; Oversees and advises; Functions in the "big leagues."

Community Service (Working) Board | Few or no paid staff; Participates in operations

Foundation Board | Fundraising; Community liaison and PR; Support Organization

Executive/Management (Subsidiary) Board | Special purpose companies; Internal management; No outside Directors

Another author^[3] classifies nonprofit Board models like this:

Advisory | Helps CEO; Community credibility

Patron | Advisory; Board-funded Organization; Fundraising

Cooperative | No CEO; Consensual decision-making

Management Team | No hired employees; Board performs all duties

Policy | Board delegates to CEO; CEO updates Board

Business enterprises of regulated complexity and size structure their Boards with various models as well.^[4] Both nonprofit and business Boards may include features suggested by two or more models, depending on size, purpose, mission, legal

requirements, and the needs of stakeholders. Most of the models include as common denominators these elements:

Directors:

- are more than potted plants,
- contribute identifiable skills and experience specific to each Director,
- perform work or provide measurable contribution to the Organization,
- undertake the responsibility to inform and prepare themselves,
- ask the inconvenient question with civil expression,
- respect trade secrets and confidentiality,
- remain accountable to the Organization and to each other, and
- oversee and implement the balance of authority and oversight among committees and management appropriate to the specific needs and size of the Organization and its industry.

Why not devote some reflection on what these terms might mean for your Organization? Then, suspend any frustration with its Governance, Board and Management; put off ordering up a redo of the governing documents, policy manuals, orientation schedules, and position descriptions. Let's first be sure we know why we have a Board of Directors and what we need them to do. Further, *does the Board know* the answers to the questions posed above? Why do they stay?

Yours for Better Governance

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[1] That is, those Organizations with visions and missions of substance.

[2] <https://www.youtube.com/watch?v=4u2qc0h2Uv8>

[3] See, e.g., "Board Models: A Comprehensive List," Board Effect blog April 19, 2016. <https://tinyurl.com/y8fyyk7k>

[4] *Ibid.*