CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

THE NONPROFIT GUIDE TO EFFECTIVE BOARD MEMBERSHIP

2ND EDITION

A BEST PRACTICE RESOURCE FOR NONPROFIT LEADERS

INTRODUCTION

As a Board member of a nonprofit, you are making a significant commitment of time, energy, and resources. In accepting a position on the Board, you have agreed to accept two basic responsibilities: support and governance. Each of these require different skill sets and expertise. As a "*supporter,*" Board members fundraise, introduce contacts to the organization, and serve as ambassadors to the community (*both the public and private sectors*). On the other hand, the "*governance*" role involves protection of the public interest, serving as a fiduciary, selecting and assessing the Executive Director, ensuring compliance with legal and tax requirements, and evaluating the organization's work. All of this needs to be done in accordance with the organization's mission, which remains the underlying compass that should guide your actions.

It is important for you to understand the requirements that come with your acceptance of a Board position. This guide will provide some insight to you on how to be a more effective Board member. This includes understanding your duties, your role versus the role of the Executive Director, the various committees that may exist within your organization, legislation such as NYPMIFA, how to read the information provided to you, and more.

The environment that nonprofits operate in is getting tougher, with: increased government regulations and audits; more competition for fundraised dollars, as donors look for increased social return on investments; and a change in focus in measuring nonprofit effectiveness from fiscal measurements to operational measurements. Outputs have given way to outcomes, with a need for organizations to measure their social impacts, the deciding factor.

Take the time to read through this guide, and share it with other Board members. If you have any questions about any of the material within this guide, or if we can be any assistance to you or your agency, please do not hesitate to contact us. Our many nonprofit specialists will be more than happy to answer any questions you might have.

Thank you for making a difference in the nonprofit sector.

CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

***Ken Cerini**, CPA, CFP, FABFA*
Managing Partner

CONTENTS

MAKING THE DECISION TO BECOME A BOARD MEMBER...

You've been asked by a nonprofit organization to join its Board of Directors. With that comes a tremendous level of responsibility that goes beyond just showing up for meetings and passing resolutions. It requires an understanding of what being a Board member entails: your duties, the organization's expectations, your legal exposure, the role you'll be expected to play, the time and money commitment, etc. It also requires some due diligence and soul searching on your part.

It is critical to determine if you are the right person for the job. You need to look in the mirror and ask yourself some difficult questions. Remember, the organization has certain expectations of you as a director and you need to recognize exactly what these expectations are in order to conclude whether or not you're prepared to make the sacrifice. Outlined below are some important questions and key points to consider:

Are you passionate about the organization and the impact it has on society?

Having passion for the organization and its cause is perhaps the most vital trait that someone can bring to an organization. If you don't have passion, you may find yourself reluctant to make the sacrifices or put in the time, energy, and effort to meet the organization's expectations. We're all busy. Many of us have work or family obligations that hinder our capacity to offer time and/or energy to a nonprofit — even one that we have a personal passion for. You need to find out what the time requirements are, and then decide whether you can and want to realistically meet those expectations.

Can you effectively contribute to the Board?

Even if you have determined that you have a passion for the cause, that still may not be sufficient. *Do you have knowledge, skills, experience, contacts, or other qualities that will assist the Board in performing its functions?* Perhaps those who extended the invitation can offer some insight on this. A high-functioning Board will have thought this question through in advance and be prepared to offer a detailed answer. After determining what they have in mind, contemplate whether you see your ability to contribute the same way they do.

What are the financial requirements of being a Board member?

Many Boards have financial expectations for each member. A *"give or get"* Board policy may exist, which requires each Board member to contribute or obtain gifts of a specified dollar amount. The Board may also expect you to absorb the costs of being a director, such as the price of meals, travel, and gas. Whatever form these financial expectations take, you need to be prepared to meet them before accepting a Board position.

Finally, you need to ask yourself if you can put the interests of the organization ahead of your own.

Remember, this is part of your duty of loyalty to the organization. Regardless of your personal feelings and goals, the interests of the organization must come first.

If by now you have determined that you are right for the tasks ahead, you should then focus on whether the organization is right for you. When buying real estate or anything tangible, the prudent consumer will research the product and decide if it is right for him or her. The same is true of deciding to join the Board of an organization.

You already know what the mission and programs of the organization are; you asked this question when you were determining if you had a passion for the organization. So let's turn to some other central points to consider:

Take a look at the other leaders of the organization. Do you know them? Are they people you respect or can respect? Are they people you can work with on a personal basis?

You need to be comfortable with the people you are sharing responsibility with. In the course of Board work, conflicts can develop even between individuals that know, like, and respect one another. Don't compound this by choosing to be involved with people you are not comfortable with. If you're unsure of some of the people you may be dealing with personally, ask around in your network of friends and professional colleagues to make an informed decision.

Next, turn your attention to the financial condition of the organization.

At a minimum, you should review the organization's latest annual reports and its IRS Form 990s. These are public documents and Guidestar.org will have copies of the Form 990s if they are being filed. It would also be wise to request and review the audit results if the organization is of a size that requires an annual audit. Pay close attention to any management letter that the auditors prepared as this document will contain insights into the organization that may not be revealed in the financial documents.

Consider where the organization is headed.

The organization should have a vision and a strategic plan. *Is the Board paying attention to the plan?* Some organizations have strategic plans that are no more than a dusty notepad on the shelf. Others have plans that are living documents, consistently being referred to, with growth measured toward established goals. You want to be connected with an organization that fits the latter description, and not the former.

Understand how the Board operates.

Are there active committees that carry on the work of the Board? Try to ascertain whether the full Board is really making decisions, or if there is a smaller group within the Board that seems to be making the decisions and then informing the other Board members after the fact.

There will always be some uncertainties for new Board members and some period of adjustment, but the organization owes you an orientation process to develop the knowledge and understandings essential to contribute. At a minimum, you should comprehend the following:

- *The organization's legal documents, including its bylaws.*
- *The structure and operation of the organization.*
- *The key issues facing the organization now and in the near future.*
- *What the Board has been doing (in the form of minutes and/or reports).*
- *Financial documents (if you have not already reviewed them).*
- *How the Board conducts its business, including its operating rules, policies, agenda-setting, and meeting management rules.*

This is the short list of what you should look for in the organizational orientation. If you don't get offered such an orientation, ask for one. You don't want to assume the legal obligations of a Board member if you are in the dark about what is really happening within the organization.

The final question that needs to be asked is what protection(s) the organization offers its directors.

This is a critical item and should be a deal-breaker for you if you are not comfortable with the protections provided. The American Bar Association's Guidebook for Directors of Nonprofit Corporations states: *"In recent years, litigation against directors of many varieties of nonprofits has increased in frequency. ... All directors need to understand the action that may be taken to protect them against liability related to their service on [a] nonprofit corporation's Board."* Two particular areas that should be examined are indemnification and insurance.

Indemnification is a term describing what the corporation might repay a director for expenses arising from a lawsuit against the director. Such indemnification is controlled by the laws of the particular state in which the corporation operates as well as by the bylaws of the organization. There are two types of indemnification:

"mandatory indemnification" and ***"discretionary indemnification."***

The prospective Board member should clearly comprehend what the rules are for his or her organization. The details of this very technical, legally complex subject are well beyond the scope of this short article. Suffice it to say that this is a critical topic for the prospective director and one that should be thoroughly understood before committing to an organization.

Even if the corporation has indemnification procedures, the ability of the corporation to fulfill those promises is dependent upon its financial circumstances. This is where insurance comes into play. The type of insurance you want to ask about is **Directors and Officers (D&O)** insurance. The coverage under D&O policies will depend upon the laws of the state involved and the terms of the individual policy offered. Prospective directors should understand what the terms of their policy are and should ideally be provided with a memorandum by the organization that outlines the D&O coverage being offered.

Deciding to join a Board is not a simple matter. There are quite a few questions and points to consider. *Who would have thought when you got the invitation to join a local nonprofit Board that the process of deciding whether to say yes would be so lengthy and strenuous?* Please don't be discouraged. Most good nonprofits will pass all of the tests above with flying colors.

We commend you on your interest to give back to the community, and express our hope that your service on a nonprofit Board is both satisfying and rewarding. Whatever the process is to get you to the point of saying *"yes,"* once you do, the personal sacrifices and contributions you make will no doubt be much-appreciated and gratifying.

BOARD MEMBER AGREEMENTS

Board members will likely have different interpretations as to what is expected from them in their roles. In many cases, not all Board members know the full extent of what is expected of them and what their responsibilities are to the organization. To avoid such confusion and to ensure awareness and understanding of their responsibilities as a Board member, a Board member agreement should be implemented to address these concerns. The purpose of a Board member agreement is to officially outline and codify the expectation and responsibilities of each Board member.

As with any arrangement that involves a commitment of time (*and sometimes money*), having an agreement in place is best practice to ensure both the Board member and the organization have a clear understanding of what is expected. The agreement will describe the Board member's responsibilities as well as describe the responsibilities of the organization's management so that the Board member can fulfill his/her fiduciary responsibility. Prior to a Board member being voted on at the annual meeting, presenting him/her with a sample agreement will help ensure that the relationship between the Board member and the organization will start off on the right path.

There are several sample agreements available on the Internet that can be modified to be in-line with the organization's bylaws and to best fit the organization's needs from its Board members. The following is a sample of what can be included in the agreement:

- *Attend a certain number or percentage of Board meetings;*
- *Give-or-get financial contribution;*
- *Volunteer at the organization's fundraising events; and*
- *Volunteer to be on one of the Board committees (if position allows).*

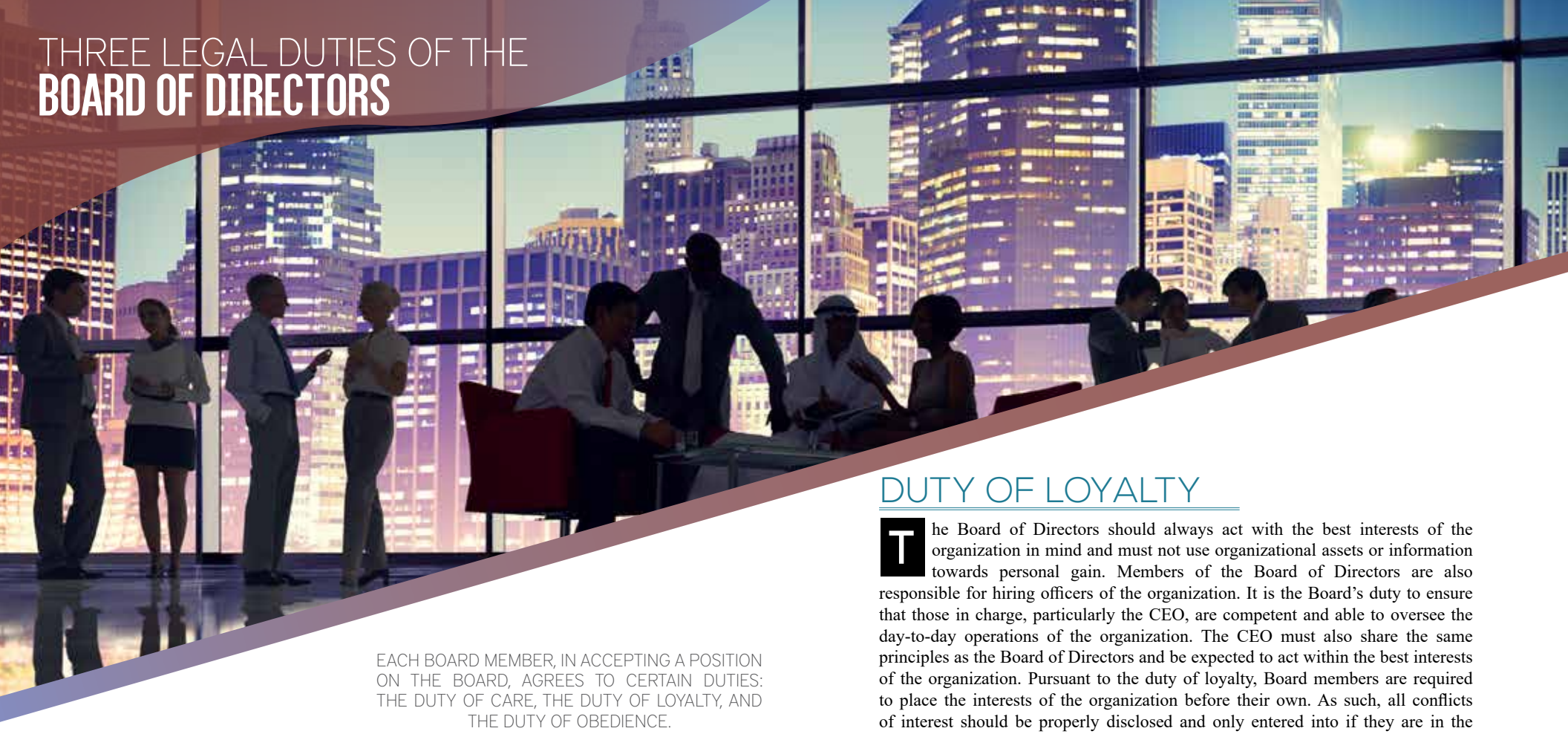
The agreement can also state what the Board member will expect from the organization. The following is a sample of the organization's responsibilities:

- *Provide timely financial information;*
- *Provide timely responses to inquiries to management; and*
- *Provide necessary information to allow the Board member to make wise decisions in governing the organization.*

For a new organization, the implementation of a Board member agreement will be an easier feat than for a large Board of Directors of an established organization, as all Board members might not be willing to sign the agreement. However, if the decision to require Board members to sign an agreement was made, it can help eliminate those members who are not fully vested in their roles as Board members, which will then give the opportunity for a new Board member to join that is willing to make the commitment that is needed for the organization. For those organizations that do not have Board agreements, the Nonprofit Revitalization Act states that the Board of Directors cannot remove a Board member without cause. Removing a Board member without cause, even if allowed per the organization's bylaws, is not compliant with current New York State law. However, having a Board agreement in place can help provide support that an ineffective Board member is not fulfilling his/her obligations under the agreement, making it easier to remove that individual from the Board.

Board member contracts are not mandatory, although having them in place is best practice and can help ensure Board members are aware of their responsibilities, what is expected of them, and what they expect from the organization to enable them to more effectively lead.

THREE LEGAL DUTIES OF THE **BOARD OF DIRECTORS**



EACH BOARD MEMBER, IN ACCEPTING A POSITION ON THE BOARD, AGREES TO CERTAIN DUTIES: THE DUTY OF CARE, THE DUTY OF LOYALTY, AND THE DUTY OF OBEDIENCE.

DUTY OF (DUE) CARE

This is the responsibility of Board members to ensure that the organization's assets are properly used and to supervise the organization's actions diligently. Members of the Board of Directors are responsible for setting the foundation for the organization, and hence, to enable the organization to move towards greater sustainability. The duty of due care also covers the Board's responsibility to ensure that all activities undertaken by the organization are those which help the organization move towards those future goals. The members of the Board should also make themselves aware of the affairs of the organization to be able to identify any instances of misappropriation or fraud. Under the duty of care, Board members are responsible to ensure a proper control environment exists; to take the time to understand the operations, funding streams, and underlying regulations; and to provide proper fiscal oversight.

DUTY OF LOYALTY

The Board of Directors should always act with the best interests of the organization in mind and must not use organizational assets or information towards personal gain. Members of the Board of Directors are also responsible for hiring officers of the organization. It is the Board's duty to ensure that those in charge, particularly the CEO, are competent and able to oversee the day-to-day operations of the organization. The CEO must also share the same principles as the Board of Directors and be expected to act within the best interests of the organization. Pursuant to the duty of loyalty, Board members are required to place the interests of the organization before their own. As such, all conflicts of interest should be properly disclosed and only entered into if they are in the best interests of the organization. Finally, it is the Board's responsibility to evaluate the effectiveness of the CEO, and where appropriate, other key members of the organization's management.

DUTY OF OBEDIENCE

The actions of the Board members should also reflect adherence to applicable laws and regulations as well as faithfulness towards the organization. This is accomplished through the adaptation of policies which emphasize a strong, ethical *"tone at the top."* It is also closely related to the other two duties of the Board, whereby the ethical policies and the motion towards future sustainability also aid the organization to act in accordance with its mission as well as any laws and regulations. Duty of obedience requires Board members to establish appropriate policies and provide appropriate governance in running the organization. Board members should have regular communication with the organization's Corporate Compliance Officer to ensure they understand risks and exposure within the organization.

TOP 10 RESPONSIBILITIES OF NONPROFIT BOARD MEMBERS

1. DEFINE THE ORGANIZATION'S MISSION AND PURPOSE.

It is the Board's responsibility to define and review the organization's statement of mission and purpose, which lays out the organization's goals, resources, and primary constituents served. Too often organizations move outside their core mission, chasing funding that may not be appropriate. The Board is in charge of keeping the organization on track. We encourage Board members to re-read the organization's mission before each Board meeting so that they have a clear understanding of what's guiding their decisions.

2. CHOOSE AND EVALUATE THE CEO AND SET COMPENSATION.

Boards must reach consensus on the chief executive's responsibilities and perform a thoughtful search to find the most qualified individual for the position. This includes helping to define job responsibilities, compensation, etc. Each organization will have different expectations and skill sets needed depending on the other members of management, where the organization is in its life cycle, the nature of the organization and its funding, etc.

3. SUPPORT THE CEO.

The Board should ensure that the CEO has the moral and professional support he or she needs to further the mission of the organization. There should be regular, open communication between the Board and the CEO. This often happens through the organization's Board Chairman/ President.

4. PERFORM EFFECTIVE PLANNING.

Boards must actively participate in an overall planning process on a regular basis, and assist in implementing and monitoring the plan's goals. Planning should look at short-term and long-term, and should include *"what if"* scenarios, especially if your organization relies on government funding that could be tenuous.

5. MONITOR AND STRENGTHEN/ ELIMINATE PROGRAMS AND SERVICES.

The Board's responsibility is to determine which programs are consistent with the organization's mission and monitor their effectiveness. For those programs which are not, the Board should consider if such programs should be transferred to another organization. Management should also continue to evaluate whether it is a buyer (*looking to acquire another organization to strengthen/expand its footprint/offerings*), a seller (*looking to merge into another organization*), or whether it will maintain the status quo.

6. ENSURE APPROPRIATE LEVELS OF FINANCIAL RESOURCES.

One of the Board's foremost responsibilities is to secure appropriate funding for the organization to carry-out its mission. Board members are required to help raise funds for the organization they govern. If you're not able to, you may want to consider if you will be an effective Board member.

7. MAINTAIN PROPER FISCAL OVERSIGHT.

The Board must assist in developing the annual budget and ensuring that proper financial controls are in place. The Board can only do this if it receives regular, adequate financial information. Once again, this includes *"what if"* modeling so that the agency is prepared if certain funding is not available.

8. DEVELOP NEW BOARD MEMBERS.

All Boards have a responsibility to identify potential new Board members, orient new members to the Board, and periodically and appropriately evaluate their own performance.

9. ENSURE LEGAL AND ETHICAL INTEGRITY.

Remember, Board members have three overriding duties; the duty of care, the duty of loyalty, and the duty of obedience. Board members are ultimately responsible for adherence to legal standards and ethical norms.

10. ENHANCE THE ORGANIZATION'S PUBLIC STANDING.

Board members need to be ambassadors for the agencies whose Boards they sit on. This includes the public sector (*lobbying activities on behalf of the agencies*) and the private sector (*bringing on new Board members, raising money and support for the agency, integrating with constituents, etc.*).

NONPROFIT BOARD POLICIES & PROCEDURES

Behind every successful nonprofit organization is a Board of Directors that implements and follows best practice policies and procedures. Such policies help to ensure that the Board remains aware of the status of the organization, creates accountability, and helps the Board make unbiased decisions in the best interests of the organization. Outlined below are some practices and key policies that every organization's Board should consider implementing. It is important to note that effective January 1, 2017 an employee of an organization cannot also function as the *"chair"* of its Board. Employees can still be on the Board, but this is no longer considered best practice. The actual functions of the Board position, not the title itself (*chair, president, etc.*), is most relevant.

- A formal IRS Form 990 review process should be implemented whereby a completed copy of IRS Form 990 is distributed or made available to all members of its governing body before filing the form. The Board should create and implement a set process to be followed by the organization to review the 990. This helps to ensure that the Board is aware of what is being reported to the IRS and the outside world, as an organization's 990 is posted on GuideStar and other websites, and is accessible to anyone that would like to review it.
- The Board *must* have written conflict of interest policies that will govern the independence of directors, officers, and employees, as well as transactions in which directors, officers, and employees have a financial interest. **This policy must cover** *definitions; disclosure procedures; that the person with the conflict not be present for the deliberation or vote; that he/she not improperly influence the deliberation or voting; and the existence of the conflict and process must be documented in the minutes of any meeting where discussed or acted on.* There must should be annually-signed disclosure statements that the Secretary or Secretary's designee provides to the Chair of the Audit Committee or if there is not one, to the Chair of the Board. The Board will need to actively assess and approve transactions between the nonprofit and its directors, officers, and key employees, including their relatives and other organizational affiliations. An interested person will have to disclose the material facts of his or her relationship in a related party transaction to the Board, and be absent from Board discussions and votes. The Board will need to approve and document that the transaction is fair, reasonable, and in the best interests of the nonprofit, and consider alternative options. The Attorney General will have power to bring action to enjoin or rescind any related party transaction which it determines do not meet the standards.
- The Board should have in place or implement a written whistleblower policy to encourage employees to make anonymous, good faith reports of suspected fraud, corruption, misappropriation, etc., without being fearful of retribution. Organizations with 20 or more employees and annual revenue in excess of $1 million are required to adopt a whistleblower policy and they must distribute a copy of the policy to all directors, officers, employees, and volunteers who provide substantial services to the organization. The distribution requirement may be satisfied by posting the policy on the organization's publicly available website or at its offices in a conspicuous location accessible by employees and volunteers. The policy must have procedures for reporting suspected violations, preserving confidentiality, and protecting whistleblowers from retaliation. The policy should designate an employee, officer, or director to administer and report to the Audit or other committee of independent directors, or if no committee, to the Board.
- The Board should have in place or implement a written document retention and destruction policy. There are certain types of documents that may need to be retained for a period of time. Staff members should be aware of these documents, so they can shred unnecessary papers, and retain key documents.
- The process for determining compensation for the organization's top management official (*CEO, Executive Director, etc.*), as well as other officers and key employees should include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision. This ensures that there is adequate support of the thought process for setting salaries and bonuses, instead of just paying someone unsubstantiated additional compensation.
- The Board should have in place or implement a policy that makes IRS forms 1023 and 990, as well as its governing documents, conflict of interest policy, and financial statements available to the public. This can be achieved by making these documents available on the organization's website, or outlining how and where they can be obtained on request. This creates transparency in your organization.
- The Board should have in place or implement a policy whereby minutes of all Board meetings (*and committee meetings for each committee with authority to act on behalf of the governing body*) are maintained. This creates a historical log of topics discussed and decisions made, and supports the diligence of the governance process in running the organization.
- The Board has a fiduciary responsibility to protect the assets of the nonprofit and to use those assets to further the nonprofit's philanthropic mission. One way to achieve this may be to invest the nonprofit's cash in investment vehicles, such as stocks and bonds, and other financial investments that can grow the nonprofit's assets. The Board should develop an investment policy before investing significant assets. The policy should focus on a prudent approach to investing assets by: *defining the nonprofit's objectives for investing, identifying the nonprofit's risk tolerance, and adopting an investment policy.* There are three competing interests for any funds that a nonprofit invests: **(1)** *protecting (and growing) the investment,* **(2)** *earning a reasonable interest rate, and* **(3)** *maintaining access to the invested cash when needed. An investment policy can address all three, as well as define who is accountable for investment-related activities.* The full Board may delegate the authority to oversee the nonprofit's investment portfolio to an Investment Committee and/or the nonprofit may hire a professional investment manager. Evaluating the performance of the invested portfolio and the investment manager's performance are the responsibilities of the Board (*or the Investment Committee of the Board*).
- Having a gift acceptance policy in place is considered a best practice by the IRS. A well-considered gift acceptance policy should be

implemented by the Board to assist with managing the expectations of donors, and also serve as guidance for Board and staff members who are on either the asking, or receiving end, of contributions. Adopting a gift acceptance policy will help guide the organization with regard to accepting or declining some types of gifts that may run counter to the nonprofit's values and a nonprofit may simply not be equipped to either dispose of or manage the ongoing requirements of maintaining the value of certain gifts, such as real estate.

Other policies and procedures to consider, which apply to specific organizations, are outlined below.

- If the organization has local chapters, branches, or affiliates, then the Board should have policies and procedures that govern the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purpose.
- If the organization invested in, contributed assets to, or participated in a joint venture or similar arrangement with a taxable entity during the year, then the Board should have in place or implement a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements.

All policies should be reviewed by legal counsel before implementing them. Otherwise, you may be opening your organization and Board of Directors to potential, unintended liabilities.

Please don't hesitate to contact us should you require any assistance or have any questions related to the various policies and procedures outlined above. Head to http://bit.ly/2d024a4 for access to various policy templates. If you intend to rely on a policy template from us it is important that you use the template only as a guide. Read everything carefully to ensure that what is established as **YOUR** policy is applicable to your situation as well as legal in your state. While many policies can be somewhat generic and cover all types of nonprofit operations, you may need additional policies to address issues that are unique to your organization.

BOARD & EXECUTIVE DIRECTOR ROLES

THERE IS ALWAYS A QUESTION AS TO WHERE A BOARD'S RESPONSIBILITIES END AND MANAGEMENT'S STARTS. THERE ARE NO HARD AND SET RULES; WHAT WORKS FOR ONE AGENCY MAY NOT BE EFFECTIVE FOR ANOTHER. SOME ORGANIZATIONS HAVE A STRONG EXECUTIVE DIRECTOR AND A WEAK BOARD, WHILE OTHERS HAVE A STRONG BOARD AND A WEAKER EXECUTIVE DIRECTOR. ONE THING IS FOR SURE, RUNNING AN EFFECTIVE NONPROFIT TAKES AN ACTIVE BOARD OF DIRECTORS AND A DEDICATED STAFF LED BY A STRONG EXECUTIVE DIRECTOR WORKING IN HARMONY TO FORWARD THE MISSION OF THE ORGANIZATION.

ROLES OF THE BOARD OF DIRECTORS

In general terms, the Board of Directors provides oversight and guidance to the Executive Director and the nonprofit's other staff members. The Board ensures that the organization stays aligned with its mission and values in addition to complying with all federal and state laws.

Specifically, the Board of Directors has oversight over the following areas:

Legal Oversight

The Board ensures that it is operating in accordance with its mission and the purpose for which it was granted tax-exempt status. Board members should constantly re-read the organization's mission statement to ensure that everything they do on behalf of the organization is in furtherance of the organization's mission.

As safeguards of the public trust, Board members are responsible for protecting the organization's assets; ensuring that the organization's control environment is effective; prudently deploying resources; and providing direction and governance.

The Board ensures legal and ethical integrity and maintains accountability.

Management Oversight

The Board is responsible for ensuring that the nonprofit organization is operating effectively. It

is the Board's responsibility to select the Executive Director and outline his/her role; the Board supports the Executive Director and assesses his/her performance (*should be performed in a written evaluation*); the Board determines appropriate compensation for the Executive Director and other executive staff members; and the Board has the power to hire and remove the Executive Director.

Fiscal Oversight

The Board provides proper fiscal oversight, including setting and approving an annual budget. This does not mean the Board prepares the budget, nor does it mean that the Board should micro-manage the budget process. The Board should review and gain an appropriate understanding of the budget, ensure that the organization is establishing appropriate reserves, revenues and expenses make sense and are supportable, and monitor the organization's fiscal health and actual operations compared to budget on a regular basis. Board members need to have at least a basic understanding of how the organization generates revenue and its cost structure to be able to understand if the proposed budget is reasonable. The fiscal aspects of an organization are not always the easiest for Board members to understand, but they are the lifeblood of any organization.

Part of the role of the Board is to ensure that the organization has the financial resources it needs. As a result, Board members should be involved in helping in the organization's fundraising efforts. Fundraising is often essential to an organization to provide discretionary funding. Many Boards require a give-or-get commitment from its Board members. This is something you should understand before joining a Board.

Program Oversight

It is the Board's responsibility to ensure that programs are in place to further the mission and goals of the organization. If there are specific compliance programs that the organization must follow (*e.g. Medicaid*), the Board should ensure a proper compliance program is in place and should be receiving regular updates of the organization's compliance.

ROLES OF THE EXECUTIVE DIRECTOR

While the Board's role is to oversee, the role of the Executive Director is to execute the policies, programs, and initiatives established by the Board. The Executive Director is responsible for running the day-to-day operations of the organization. The Executive Director is an employee of the organization whose responsibilities are determined, and performance monitored, by the Board of Directors.

Staff Management

The Executive Director hires, supervises, and motivates the staff of the nonprofit. It is the Executive Director's responsibility to ensure the organization is properly staffed, all of the staff members have appropriate job descriptions, job performance is evaluated and pay is appropriate within a predetermined scale, staff members are following organizational policies and protocols, and that everyone is properly trained and on the same page in terms of organizational mission and goals. The staff of a nonprofit traditionally comprise more than 70% of a nonprofit's annual expenditures, so this can be a significant part of the Executive Director's responsibilities.

Development and Management of Policies and Programs

While it is the Board's responsibility to set policies, it is the Executive Director's responsibility to ensure that the Board's policies are properly implemented. In many organizations, the Executive Director may suggest policy to the Board, but ultimately the establishment of such policies rests with the Board. It is management's role to put procedures in place to ensure that policies are effectively being followed.

Staff Liaison to the Board of Directors

The Executive Director must also keep the Board informed as to what the organization is doing. The Executive Director attends Board meetings and maintains open lines of communication with the Board of Directors.

Ensure Effective Operations

The Executive Director is responsible for running the day-to-day operations of the organization. It is the Board's responsibility to provide the overall framework, but it is the Executive Director that steers the ship to ensure the organization stays on course. This framework is often developed jointly by the Board and Executive Director through a strategic plan which provides a road map for management to follow.

In order for an organization to be effective, the Executive Director and the Board must embrace their roles, open up lines of strong interactive communication, and develop a collaborative relationship focused on ensuring the organization's mission is carried out in the most effective and efficient way. If the Board and management aren't in-synch, with the Board providing governance, oversight, and monitoring organizational effectiveness, and management, building off the framework provided by the Board, guiding the various components of the organization so that they are functioning in harmony, the organization will not reach its full potential. Like with any relationship, communication and trust are essential.

BOARD POSITIONS & RESPONSIBILITIES

EVERY MEMBER OF THE BOARD OF DIRECTORS HAS IMPORTANT RESPONSIBILITIES THAT ARE UNIQUE TO HIS/HER POSITION ON THE BOARD. IT IS IMPORTANT THAT EACH MEMBER OF THE BOARD UNDERSTAND WHAT HIS/HER RESPONSIBILITIES ARE SO THAT THE BOARD WORKS COHESIVELY TO FURTHER THE MISSION OF THE ORGANIZATION. BELOW ARE SOME OF THE KEY BOARD POSITIONS ALONG WITH THEIR RESPECTIVE RESPONSIBILITIES.

CHAIRMAN OF THE BOARD

RESPONSIBILITIES

- Acts as a partner to the Chief Executive Officer/Executive Director (*CEO*) and other Board members
- Acts as an ambassador for the organization
- Can be an approved member of all committees of the organization
- Establishes mission and purpose
- Maintains healthy relationships with funders, partners, and other stakeholders
- Monitors annual budgets, audit reports, material business, and planning decisions
- Ensures legal and ethical integrity
- Hires and coordinates annual performance evaluation of the CEO
- Performs periodic consultations with Board members on their roles and helps them assess their performances
- Monitors and strengthens programs and services by reviewing operational effectiveness
- Helps assist the CEO and Nominating Committee in recruiting Board members to build a competent Board to develop effective future leaders
- Evaluates Board members' and Executive Director's progress
- Works with the CEO, Board officers, and committee chairs to develop the agenda for Board of Directors meetings, and presides at these meetings
- Appoints volunteers to key leadership positions including chair of Board committees, task forces, and cultivates leadership succession
- Recognizes his or her responsibility to set an example for other Board members and play a major role in fundraising activities
- Develop and maintain an effective Board culture
- Works with the CEO and other Board officers to develop both immediate and long-term goals and expectations for the Board that support organizational priorities and governance concerns
- Ensures that committees have the resources needed to do their jobs

VICE PRESIDENT OF THE BOARD

RESPONSIBILITIES

- Performs the duties of the Chairman as required in the Chairman's absence
- Supports the activities of the Chairman including sharing responsibilities as appropriate
- Presides at meetings of the Board of Directors
- Serves as approved member of standing committees
- Plans the organization's human and financial resources
- Sets an example for other Board members by contributing financially and by playing a major role in fundraising activities
- Works with the Chairman to assist in developing the agendas for Board of Directors meetings
- Advises the Chairman on appointing volunteers to key leadership positions, including positions as chair of Board committees and task forces
- Supports and challenges the Chairman in all his/her responsibilities to ensure organizational priorities and governance concerns are addressed in the most effective and efficient manner
- Represents the Board in the community, especially at events at which the Chairman cannot attend.
- Approves and monitors the organization's strategies and policies, annual budgets and business plans, evaluates the performance of the organization, and supervises the management of the organization
- Seeks to ensure that all directors are properly informed of issues arising at Board meetings and provided with adequate and accurate information in a timely manner
- Actively encourages the directors to be engaged in the Board's affairs and contribute to the Board's functions
- During the period when the Chairman is absent and the normal functions of the Chairman cannot be carried out, the Vice Chairman will take the role as the acting Chairman until a new Chairman has been elected and appointed by the Board
- Hires and evaluates the organization's CEO along with the Chairman
- Develops long term goals and expectations for the Board with help from the CEO
- Helps ensure that committees have the resources needed to do their jobs

COMMITTEE CHAIRPERSON

RESPONSIBILITIES

- Provides leadership and ensures committee members are aware of their obligations and that the committee complies with its responsibilities
- In consultation with the CEO or other Board or committee members, schedules dates, times, and location for meetings
- Ensures meetings are called and held in accordance with the organization's mandate, terms of reference, or bylaws
- In consultation with the CEO, and/or other Board or committee members, establishes and confirms an agenda for each meeting
- Ensures the meeting agenda and relevant documents are circulated to the members of the committee at least 3-5 days in advance of the meeting
- Officiates and conducts meetings
- Consults with other committee members and provides advice and support
- Ensures that discussion on agenda items is on-topic, productive, and professional
- Ensures minutes are complete and accurate, retained, included, and reviewed at the next meeting
- Ensures the organization is managed effectively
- Ensures decisions taken by the committee are clear and not ambiguous, and that responsibility for taking forward action points is properly allocated

TREASURER

RESPONSIBILITIES

- Provides direction for the financial management of the organization
- Facilitates the Board in meeting its financial oversight responsibilities
- Chairs the Finance Committee
- Provides direction for the oversight of the organization's record keeping and accounting policies
- Ensures the presentation of timely and meaningful financial reports to the Board
- Ensures the development of an annual budget and its submission to the Board for its approval
- Leads the monitoring of budget implementation
- Oversees development and Board review of financial policies and procedures adopted by the Board
- Ensures assets are protected and invested according to Board policy
- Leads the Board in assuring compliance with federal, state, and other financial reporting requirements
- Presents the recommendation of the auditor to the Board for its approval
- Presents the results of the audit to the Board
- Recognizes his or her responsibility to set an example for other Board members and playing a major role in fundraising activities

BOARD POSITIONS & RESPONSIBILITIES

SECRETARY

RESPONSIBILITIES

- Provides direction for the keeping of legal documents
- Certifies and keeps, at the principal office of the organization, the original, or a copy of, the bylaws as amended or otherwise altered to date
- Keeps a book of minutes of all meeting of the Board and committees. Minutes shall record time and place of meeting, and the names of all those present
- Presents minutes to the Board for approval
- Ensures that all notices are duly given in accordance with legal requirements
- Recognizes his or her responsibility to set an example for other Board members and playing a major role in fundraising activities

BOARD MEMBERS

RESPONSIBILITIES

- Serves as a trusted advisor to the CEO as he/she develops and implements strategic plans
- Reviews outcomes and metrics created for evaluating its impact, and regularly measures its performance and effectiveness
- Approves annual budget, audit reports, and material business decisions; being informed of, and meeting all, legal and fiduciary responsibilities
- Contributes to an annual performance evaluation of the CEO
- Assists the CEO and Board chairman in identifying and recruiting other Board members
- Partners with the CEO and other Board members to ensure that Board resolutions are carried out
- Serves on committees or task forces and takes on special assignments
- Acts as an ambassador for the organization to stakeholders
- Ensures commitment to a diverse Board and staff
- Organization of the Board of Directors, officers, and committees
- Formulation and oversight of policies and procedures
- Financial management, including adoption and oversight of the annual budget
- Oversight of program planning and evaluation
- Personnel evaluation and staff development
- Review of organizational and programmatic reports
- Promotion of the organization
- Fundraising and outreach

BOARD COMMITTEES

There are generally two types of committees; committees of the Board and committees of the organization. Committees of the Board have the ability to take action on behalf of the Board, while committees of the organization cannot. In deciding how to structure your committees, remember that a committee of the Board can only be made up of Board members (*must have at least three*) while a committee of the organization does not need to made up exclusively of Board members.

Committees of the Board are an important extension of the Board of Directors and carry out specific functions that are vital to the organization. The organization's bylaws include the committees to be held by the organization and can include a provision for the establishment of additional committees as needed. As with Board of Directors' meetings, each committee must maintain minutes for each meeting held by the committee and should hold meetings as often as stated in the organization's bylaws. The committees report to the Board and typically do not have the authority to exercise any powers of the Board, unless stated otherwise. The New York State Nonprofit Revitalization Act (*"NPRA"*) focused on certain Board committees to improve overall corporate governance of nonprofit organizations. The most common committees of the Board are summarized below.

Finance Committee

Typically, the Board Treasurer is the Chair of the finance committee.

Purpose – *To take responsibility and oversee the financial performance and reporting of the organization.*

Powers – *The committee reviews and recommends the annual proposed budget, budget modifications, and financial/accounting policies and procedures. The committee also monitors the actual-to-budget operations. In addition, the finance committee should be responsible for ensuring the organization's tax filings are filed timely and reviewing the internal controls that are in place at the organization.*

An extension of the finance committee is the audit committee. This committee's responsibility is to select an independent audit firm to conduct the audit, oversee the audit process, accept the audited financial statements, and report findings to the Board of Directors. According to the NPRA, there are additional requirements for an audit committee of organizations that have over $1 million in annual revenue. These requirements are to have discussions with the auditor prior to and after the audit. Prior to the start of the audit, the discussion should focus on the scope and planning of the audit, and upon completion of the audit, the results of the audit. Results of the audit include identification of material weaknesses in internal controls, any restrictions on the scope of the auditors' activities or access to requested information, any significant disagreements with management, and the adequacy of the accounting and financial reporting process of the organization. This is applicable for financial statement audits, government audits, and pension audits. To the extent that an organization has an internal audit function, this process should also be monitored and directed by the audit committee.

An investment committee can also be an extension of the finance committee. For those organizations that have significant amounts of investments, whether for general operations or an endowment, this committee can be responsible for developing an investment policy that conforms to the goals of the organization and ensures compliance with the New York Prudent Management of Institutional Funds Act (*"NYPMIFA"*), *later discussed on page 42.*

Compensation Committee

Purpose – *To establish a compensation policy for determining compensation amounts for the organization's executive employees.*

Powers – *The committee can recommend and/or approve compensation amounts for the executive employees. The directors can use a compensation consultant or benchmark compensation amounts for executives of other similar organizations to help determine compensation amounts.*

The NPRA prohibits the involvement of the person that will receive the compensation from being present, or from participating in the deliberation and voting on said compensation.

Nominating Committee

Purpose – *To ensure vacant positions on the Board are filled and to develop Board succession plans.*

Powers – *This committee is responsible for seeking candidates for recommendations to fill vacant seats on the Board, as they occur. This is an important function for the organization, as new Board members have a significant impact in the future of the organization.*

Executive Committee

This committee usually consists of the Board officers (*President, Vice President, Treasurer, or Secretary*) and can include members of the Board.

Purpose – *To manage the direction of the Board and assist in creating the agenda for Board meetings.*

Powers – *This committee can meet and make decisions on urgent matters that come up between scheduled Board meetings. The bylaws will include the authority that this committee has over decision-making on behalf of the Board.*

Compliance Committee

This committee is highly recommended for health and welfare organizations. Such organizations that receive federal and state funding are subject to more regulations over the programs that receive such funding. This committee is made up of directors and meets with the Corporate Compliance Officer.

Purpose – *To oversee the organization's corporate compliance program and related policies and procedures. The committee also ensures sufficient resources are available to carry out the corporate compliance plan.*

Powers – *The committee reviews the policies and procedures that involve the code of conduct, corporate compliance plan, and the process for reporting concerns by employees and vendors. The committee also reviews and evaluates the results of compliance audits, as well as management's plan of action to respond to the audit findings.*

Development Committee

Purpose – *To establish a plan for fundraising activities so that sufficient financial resources are available for the organization.*

Powers – *The committee can develop and recommend fundraising plans for approval by the Board. Fundraising plans can include establishment of Board-designated funds, determine the need to raise capital for a specific project, or create a new fundraising event. The committee can monitor the fundraising plan to ensure activities are progressing in the direction intended.*

In addition to the above committees, the Board of Directors can also create ad-hoc committees. These committees are created for a special purpose for a certain period of time *(i.e. committee established to organize a major fundraising event or capital campaign project*). When the purpose or goal has been met, the committee will then dissolve. Having a few committees creates the opportunity for recruitment of new Board members. As committees typically meet fewer times during the year than the Board, individuals can first serve on a committee before making the commitment to serve on the full Board.

REMOVING TROUBLESOME BOARD MEMBERS

Boards of directors function in interesting ways. Whenever a group of people closely interact, collaborate, form joint decisions, vote, and are held accountable, there exists risk that this group will become dysfunctional and/or ineffective. Successfully blending disparate personalities, viewpoints, experiences, and qualifications into one cohesive and capable unit can be a daunting task. Boards often fall short of their stated goals due to a varied list of reasons. A board should constantly be assessing its performance as a group and on a member-by-member basis. As part of this assessment process, a board may conclude that one or more of its members are no longer suited to serve. As with a tree, careful pruning of dead wood can spark flourishment and growth to new levels. If you're involved with a board that could use some trimming-down, you have much to consider.

Determining whether or not a Board member should be removed should be based on many factors. What follows is a list of some behaviors that could influence such a determination. This list is far from all-inclusive.

- *Breaching fiduciary duties;*
- *Attempting to micro-manage staff and operations;*
- *Engaging in prohibited or conflicting transactions;*
- *Consistently exhibiting an argumentative, disrespectful, and disagreeable demeanor;*
- *Failing to prepare for and/or attend meetings;*
- *Creating an atmosphere that suppresses the free exchange of ideas by other board members;*
- *Ignoring confidentiality of information; and*
- *Disregarding fundraising requirements and responsibilities.*

Practically speaking, boards should exhaust all efforts to remedy challenging members before concluding that removal is necessary. These efforts can include the following:

- *Setting very clear expectations of all board members;*
- *Nipping unwanted behaviors in the bud when they are first presented (board Presidents/ Chairs must set the tone of meetings and interactions);*
- *If Board member agreements or contracts are in place, presenting clear violations to the member in question;*
- *Hosting an intervention of sorts to bring to light the issues in question;*
- *Provide one-on-one coaching, possibly by the President/Chair; and*
- *Asking or suggesting that the board member willingly resign.*

Assuming a board intends to move forward with removing a member, it must first understand the legal implications of such a plan. Nonprofits are governed by state laws and corporate by-laws or similar documents. Removing a problematic board member must follow prescribed procedures spelled out within these laws and documents. A worthwhile set of by-laws should clearly describe the process for dismissal of a board member. Seeking the opinion of a reputable attorney to ensure that any applicable clauses do not run afoul of applicable state laws is also well-advised. Also keep in mind the impact on future voting and quorums that removing this board member may create. By-laws should be written to address such unusual circumstances, but they're not always comprehensive enough.

Term limits are a useful feature that can be built into an organization's by-laws. One-, two- or three-year terms are common for nonprofit board membership. These limits ensure that a fair and sensible process can be followed to keep board members in place. Term limits help curb complacency and provide a built-in mechanism to remove underperforming members without strict confrontation. Simply put, existing board members can choose to not vote-in a disruptive member when his or her term expires. Many experts advocate taking term limits a step further by also limiting the number of terms that may be served. These experts argue that boards should strive to be in perpetual motion, exposing themselves to fresh ideas and a diverse pool of members that will stimulate creative thinking and unique thought. Detractors to the limited term number position argue that there is value in consistency, institutional knowledge, and history.

Another option may be a leave of absence. Unforeseen circumstances can impair a member's ability to serve. Medical issues, career obligations, family matters, etc. can all take a toll on a person's time that could otherwise be dedicated to the nonprofit. If a board member is disappointing due to reasons out of his/her own control, choosing to pause his/her term instead of outright replacing him/her may prove advantageous.

When all else fails though and a forcible removal of a board member is chosen to be the best course of action for the organization, expect that the by-laws will require some form of special impeachment-type vote that would require at least a majority (*frequently two-thirds, and occasionally unanimous*) of existing board members to elect to remove said member. More legal implications come into play, as the board must ensure that this action is clearly documented and supported by contemporaneous meeting minutes. A belligerent excommunicated board member may research his/her own legal options upon dismissal. Boards must ensure that their records clearly detail the reason for termination of the ex-board member and all communications with and about him/her for potential legal defense.

Most board members are deeply and honestly devoted to their organizations and work diligently to promote and advance their underlying missions. For those unfortunate exceptions, board members must remember that their positions are not guaranteed to them. Removal may become necessary, and if it does, as with anything, appropriate planning, preparation, execution, and documentation are essential. The noble purpose of the nonprofit must never be compromised.

RELATED PARTY TRANSACTIONS

At its most basic level, a related party is one that is either directly or indirectly able to significantly influence or control another party. Thus, a related party transaction is a transaction that occurs between two or more parties with inter-linking relationships.

Specifically, in the nonprofit sector, a related party is generally a person who serves as a director, officer, or key employee of the nonprofit organization or any affiliate thereof; any other person who exercises the powers of directors, officers, or key employees over the affairs of the nonprofit corporation or any affiliate; or any relative of any of the preceding individuals. *"Relative of an individual"* refers to his or her spouse or domestic partner, ancestors, brothers and sisters (*whether whole or half-blood*), children (*whether natural or adopted*), grandchildren, great-grandchildren, or the spouse or domestic partner of brothers, sisters, children, grandchildren, and great-grandchildren. In addition, any entity in which any of the foregoing individuals have a 35% or greater ownership or beneficial interest, or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%, constitutes a related party. It's a long and convoluted list, for sure.

It is important to consider the potential ramifications of a related party transaction involving a nonprofit organization in which a related party has a substantial influence over the affairs of the corporation and the five-year look-back period of the federal statute that accompanies such an instance. **Consider this admittedly-muddy example:** The wife of the great-grandson of an individual who three years ago was a very significant donor to a nonprofit organization provides services for a fee to the organization. As a result of her affinity for the organization, these services are being provided at well-below market rate and the donor has had no other relationship with the organization. In this example, the donor (*great grandparent*) could be considered a *"related party"* even though never serving as an employee or board member because, as a very significant donor, the great-grandparent may have been in a position to exercise substantial influence over the affairs of the organization within the five-year look-back period. Therefore, a transaction of this nature is subject to the heightened requirements and procedures for related party transactions. The moral of the story here is to be mindful of these issues as they arise, and become educated enough to spot potential areas of risk and exposure.

Under the New York State Nonprofit Revitalization Act (*"NPRA"*), the belief is that a related party transaction is invalid and, therefore, unenforceable, unless the organization's governing body determines that the transaction is fair, reasonable, and in the best interests of the organization. Under previous law, related party transactions gave rise to questions as to whether any director or officer involved was fulfilling his/her duty of loyalty to the organization; however, such transactions, if approved and entered into, were valid, binding, and enforceable against the organization.

Oftentimes related party transactions can be benign. For instance, an organization purchases a laptop from a company that employs the wife of a staff member who has no decision-making ability regarding the purchase. However, that benign transaction can rapidly turn problematic if the appropriate steps are not followed — *for example,* if the laptop was not purchased at the best possible price and the transaction was not appropriately reviewed and approved.

Assuming that a related party has an interest in a proposed transaction involving the nonprofit organization, for the transaction to be valid, the related party must:

(a) *Disclose in good faith the material facts concerning his or her interest in the proposed transaction; and*

(b) *refrain from participating in deliberations and votes on the proposed transaction.*

Of course, a related party is allowed to provide information to the Board (*or a Board committee*) regarding the proposed transaction and to respond to questions. In addition, when evaluating a related party transaction, the organization's governing Board must:

(1) *Consider alternative transactions not involving a related party;*

(2) *approve the transaction by no less than a majority vote of the directors present at the meeting; and*

(3) *contemporaneously document the basis for approval.*

The NPRA provides the New York Attorney General with a distinct authority to bring an action to enjoin, void, or rescind any related party transaction or proposed related party transaction that violates any provision of the law or that was otherwise unreasonable or not in the best interests of the organization at the time that the transaction was approved. Alternatively, the Attorney General has authority to seek other relief, including restitution, removal of directors or officers, or in the case of wilful and intentional conduct, payment of an amount up to double the amount of any benefit improperly obtained.

To help combat any potential conflicts within an organization, it is critical that a conflict of interest policy be developed, written, and implemented. While it has been an age-old element of good governance practices for the governing Board of an organization to formally adopt and require compliance with a written conflict of interest policy, the NPRA has codified this practice by requiring that all nonprofit organizations adopt a written conflict of interest policy that meets certain statutory requirements, including a requirement that the presence and resolution of conflicts of interest be documented in the organization's minutes. Elements of a sound conflict of interest policy are discussed in greater detail within the Board Policies and Procedure section of this guide and a sample template can be found on our website at http://bit.ly/2d024a4.

ADDITIONAL BOARD RESPONSIBILITIES

Most Board members understand that it is their responsibility to provide fiscal and programmatic oversight and guidance for the organization they govern; however, they are not always aware of some of the other areas that Board members should be involved with in order to properly oversee the organization they are involved in. These responsibilities can be performed at the Board level, or through a committee of the Board, such as a compliance committee, audit committee, or finance committee, as described earlier.

Corporate/Medicaid Compliance

If your organization receives $500,000 or more in Medicaid funding, it is required to have in place a formal Medicaid Compliance Program. Even if you don't receive Medicaid funding, but you receive funding from other government sources, you should still consider having in place a compliance program to ensure that the organization is properly complying with contract terms and regulations. This goes beyond a quality insurance function, and includes:

- *Appointing a Medicaid/Corporate Compliance Officer to oversee the Compliance Program;*
- *Educating the organization's staff, Board members, and others regarding appropriate behavior and compliance;*
- *Providing staff members with the ability to report instances of non-compliance or fraud without fear of reciprocation;*
- *Developing a formal risk assessment and testing strategy; and*
- *Monitoring areas of non-compliance, developing corrective action plans, and self-reporting where necessary.*

There should be regular (*at least quarterly*) reporting to the Board as to the status of the Compliance Program and findings, if any.

Pension Compliance

The U.S. Department of Labor (*"DOL"*) is stepping up the number of audits it is performing, it has added new rules increasing the fiduciary responsibility of plan sponsors, and the number of employee suits of plan sponsors is on the rise. It is important for the Board to understand the organization's fiduciary responsibility and ensure compliance with DOL regulations. As part of its responsibilities, Boards should:

- *Review with its investment advisors the investment choices to determine if investments are underperforming;*
- *Have the plan benchmarked to determine if fees paid by the plan are appropriate;*
- *Meet with your plan auditors (if your plan requires an audit) to determine if the plan is in compliance with DOL regulations; and*
- *Meet with your human resources staff to determine how plan compliance is being monitored.*

In addition, Board members should take the time to read through the plan document to familiarize themselves with the terms of the plan.

Internal Controls

Most Boards believe that the internal control environment is the responsibility of management. While management is responsible for designing and implementing an effective control environment, it is the Board's responsibility to ensure that the control environment is operating effectively. This can be accomplished by the Board reviewing controls (*documentation of the control environment*), hiring an internal auditor to test the control environment, and through discussion with external auditors.

Risk Analysis

Most organizations utilize insurance as a way to mitigate risk. Too often, however, no one is reviewing the organization's insurance policies to determine if they are effectively mitigating risk for the organization. The Board should ensure that a proper evaluation of the organization's insurances is properly being performed.

Executive Compensation

It is the Board's responsibility to hire and evaluate the performance of the Chief Executive Officer, and in many instances, other key members of the management team. Formal evaluations should be performed, and compensation should be linked to such evaluation. Furthermore, in setting executive compensation, it is important to perform a salary study to determine if compensation is reasonable and supportable, given the compensation of other similar organizations in your marketplace. This is especially important, since many New York State funded agencies are subject to Executive Order 38, which puts certain limitations on how much executives can potentially earn.

These are just some of the main issues that should be of concern to Board members and discussed at Board meetings. The key is to understand how the organization you're involved with operates and the issues that are impacting it and its industry. This will help ensure that you are making proper decisions in helping to mitigate risks and concerns and help move the organization forward.

SOCIAL IMPACT

Social impact is defined as the significant positive effect that your organization's activities have that addresses a social issue or cause, and, on a grander scale, on the overall wellbeing of society. Nonprofit organizations exist to promote and advocate for specific social causes. To get to the heart of how successfully your organization is performing, and whether the investment of your organization's valuable resources are bringing about desired results, your organization should be measuring and reporting on its social impact. A popular approach to understanding and measuring social impact is the Theory of Change, which seeks to explain how the activities of a nonprofit bring about its desired goals in the context of the society it functions within. This is a multistep process that can be outlined as follows:

STEP 1: IDENTIFY DESIRED GOALS.

These goals should be clear, concise, and measurable. A good starting point to developing these goals would be reviewing the organization's mission, which should be clearly established. Your organization's goals should, at a minimum, take into account the following:

- *The social issue you are seeking to address;*
- *The target population you wish to serve;*
- *The activities you will engage in to enact change; and*
- *The impact you are seeking to bring about within the community you wish to serve.*

STEP 2: IDENTIFY AVAILABLE INPUTS.

These are the available resources you can work with and invest to achieve the goals outlined in Step 1. They can be fiscal, physical, intellectual, etc.

STEP 3: IDENTIFY OUTPUTS.

These are the actions your organization will take within the community using the available inputs identified in Step 2, to achieve the goals identified in Step 1. In tandem with identifying outputs, you should also determine specific output indicators that can be measured to track what outputs your organization has delivered to target populations within the community over time. These indicators are generally quantitative in nature, focusing on the number of outputs delivered over a set period of time.

STEP 4: IDENTIFY DESIRED OUTCOMES.

These are the environmental changes brought about as a direct result of the organization's activities identified in Step 4. Outcomes should be simply defined and objectively measurable, rather than overly complex or subjective. As with Step 3, you should also determine specific outcome indicators that can be measured to track the changes that occur in the community as a direct result of your organization's activities. Ideally, your outcome indicators will tell you how successful the organization was in achieving its desired outcomes. Outcome indicators can be both quantitative and qualitative in nature. Qualitative indicators are subjective experiences that are linked to specific outcomes. It's a good idea to have a mix of qualitative and quantitative indicators to track each identified outcome.

STEP 5: MEASURE OUTPUT AND OUTCOME INDICATORS OVER TIME.

How an organization measures output and outcome indicators can vary widely depending on the unique activities of the organization. Your organization should research available data collection tools to determine which best suits your needs and activities. Both output and income indicators can be measured internally by staff responsible for delivering services to target populations. Output indicators should be measured in real time as services are being delivered. Outcome indicators can be measured a determined length of time after services have been delivered. Organizations commonly utilize questionnaires to interface directly with target populations to measure outcome indicators. Measurement and tracking should take place over a predefined period of time. Those responsible for collecting data should be adequately trained to ensure consistency of application across the organization.

STEP 6: ANALYZE THE DATA, MEASURE THE IMPACT, AND REPORT THE FINDINGS.

Your organization should review, interpret, summarize, and draw conclusions about whether the data supports that your activities brought about a meaningful social impact. In addition, the data should be formalized into a narrative report that can be shared internally with management and the governing body. Keep in mind that if the results of your analysis are inconclusive, you may benefit from modifying indicators or data collection procedures and repeating the process.

Considering social impact is a vital and meaningful way to measure an organization's success towards achieving its purpose. By taking a systematic approach to both measuring and reporting on its social impact, organizations can obtain meaningful feedback that it can use to improve the quality of its programs, and ultimately further its mission. Social impact reporting can also be repurposed to market your organization to the various stakeholders (*funders, donors, governments, communities, etc.*) to whom your organization may be held accountable, to potential funders and donors who are looking for an organization that stands out among the pack, and to other nonprofit organizations with whom you can collaborate.

UNDERSTANDING FINANCIAL REPORTING FOR A BOARD MEMBER

Most Board members are not expected to be nonprofit financial experts, but they should have a basic understanding of the information in the financial statements that is presented to them. Having a basic understanding will help them better govern a nonprofit and allow them to better understand an organization's financial position, cash flows, and results of operations. This is important, as it is the role of the Board to ensure that the organization's funds are used prudently and that the organization is fiscally sound enough to fulfil its mission. By having better fiscal insight, Board members are better able to read and interpret financial reporting, and ask the necessary questions of the organization's internal fiscal staff as well as the external auditors

To have a basic understanding of the financial statements, a Board member should be familiar with the common components of financial statements:

- *Statement of financial position (balance sheet)*
- *Statement of activities (profit and loss)*
- *Statement of functional expenses*
- *Statement of cash flows*
- *Footnotes*

The Independent Auditors' Report is shown before the financial statements. This report provides the period under audit, the responsibility of the auditor and management for the audit of the financial statements, and the auditors' opinion.

An unmodified opinion is what agencies are striving for, but what is an unmodified opinion?

- The purpose of an audit is to opine on the information presented in the financial statements. Once the audit of the financial statements is complete, the auditor will give an opinion as to whether the information presented in the financial statements is in accordance with accounting principles generally accepted in the United States of America, better known as "**GAAP.**" An unmodified opinion is a *"clean"* opinion in which the financial statements are presented in accordance with GAAP and the information presented in the financial statements is not materially misstated.

What are GAAP-based financial statements?

- To be in accordance with GAAP, typical not-for-profit financial statements must include the statements and footnotes noted above.
- The amounts presented on the financial statements are recorded on the accrual basis of accounting (*revenue recorded when earned and expenses are recorded when incurred*), as opposed to the cash basis (*revenue recorded when received and expenses recorded when paid*). Many smaller organizations maintain their books throughout the year on the cash basis and convert to the accrual basis for their annual audit..

A Board member should be familiar with the information that is presented in the financial statements.

The statement of financial position has three categories:

1. **Assets** – Most common assets of an organization include cash, investments, accounts receivable, prepaid expenses, and fixed assets. The assets are presented in order of liquidity (*how fast the asset can be converted into cash*). Current assets are those assets that are generally expected to be available for use within a one year cycle (*such as cash, receivables, and prepaid expenses*) and long-term assets are those that cannot be used in the near term (*such as property and equipment and restricted cash*).
2. **Liabilities** – Represent the current (*generally due within one year from the statement of financial position date, such as accounts payable, and current debt obligations*) and future (*such as long-term debt and contingencies*) obligations that the organization is expecting to meet through the use of its assets. In essence these are liens, or anticipated liens, against an organization's assets.
3. **Net Assets** – The difference between total assets and total liabilities. It represents the portion of the assets that the organization owns (*not allocated for a liability*).

Net assets fall into two categories: without restriction (*also includes net assets that are designated by the Board for specific uses*) and **with restriction** (*includes temporarily restricted and permanently restricted*).

- Restrictions on net assets are created by the donor. Temporarily restricted net assets can be restricted as to time and/or purpose and will be considered *"released from restriction"* once the restriction(*s*) has been met. Permanently restricted net assets generally are held in perpetuity (*Board may have some control over this depending on the wording in the donor's gift*) and typically the earnings from the principal amount can be used for general operations or temporarily restricted for a specific purpose.
- Net assets will increase or decrease based upon the results of its operations as reflected on its statement of activities.

The statement of activities includes:

- Support (*contributions, grants, and net fundraising income*) and revenue (*fees for services and program service revenue*).
- Net assets released from restrictions, which represents the use of an organization's restricted net assets. The amount is reflected as an increase to net assets without restrictions and a decrease in net assets with restrictions under support and revenue. The concept of net assets released from restriction is that once a purpose or time restriction is met, usually through the use of the funds, these resources are no longer restricted and should be included in net assets without restrictions.
- Expenses, subtotalled by program, general and administration, and fundraising. These amounts will agree to the totals reported on the statement of functional expenses.
- Some people think that a nonprofit cannot make a profit. A nonprofit is a business, just like any other business, and it should strive to create appropriate *"profitability"* and establish adequate reserves to develop strong fiscal viability.

The statement of functional expenses reports the natural classification of the expenses (*e.g. payroll, fringes, rent, etc.*) that were spent on the organization's programs, general and administration, and fundraising activities. Many donors focus on this schedule, because they are interested to see what percentage of an organization's expenditures are spent by the organization in a program service capacity (*program service percentage*). This is particularly important for organizations receiving significant NY State originated or pass-through funds as Executive Order 38 limits the amount of general and administrative costs that can be funded by the State to no more than 15%.

The statement of cash flows reconciles the beginning of the year cash balance to the end of the year cash balance. The cash activity is separated by three types of activities: ***operating, investing,*** and ***financing***. The statement of cash flows combines the statement of financial position and the statement of activities to help you to better understand the sources and uses of cash within an organization.

Footnote Disclosures:

- The footnotes disclose information about the organization, its programs, significant accounting policies, detailed information on significant accounts, and commitments and contingencies. The footnotes are an important aspect of the financial statements as they add a better understanding as to the detail behind the numbers on the statements.

In addition to the information presented on the financial statements, Board members should be familiar with certain key benchmarks, trend analyses, and ratios that will help them to better understand the meaning and impact of many of the numbers on the financial statements. This information is often looked at by funders, banks, and other users of the financial statements to assess the organization's fiscal health. If these ratios are not strong, it could impact an organization's ability to obtain funding. The most common trend analyses and ratios include the following:

Liquidity – *shows the organization's ability meet its financial needs in the next fiscal year:*

- Is measured by working capital (*current assets less current liabilities*) and current ratio (*current assets divided by current liabilities*). You want to have at least positive working capital.
- It measures the ability of an organization to meet its current obligations with the current assets it has available. Banks like to see a current ratio of approximately 1.5 to 1.

Days in Cash:

- The number of days the organization can operate with its cash balance (*as of the statement of financial position date*) without bringing in any additional resources.
- Depending on how an organization is funded, an appropriate days in cash figure could range from 45 days (*organization with a consistent monthly funding stream*) to as much as a year (*an organization with one big annual fundraising event or appeal*). Understanding days in cash can provide a quick insight into whether or not an organization is having, or is going to have, cash flow issues.

Days in Accounts Receivable:

- The number of days it takes an organization to collect on its receivables. Depending on the type of funding an organization receives, a Board member would want to see the number of days to be no more than 45 and to see the days decrease over time, or at least remain consistent. Days in accounts receivable is typically more relevant for organizations that rely on regular revenue streams (*such as fees for service or regular government vouchers*) than those that are more fundraising-driven. If an organization's days in receivables are greater than its days in cash, the organization may have cash flow issues if a line of credit is not in place.

Trend in Net Assets:

- A Board member would want to see the organization's net assets increase over time, or at least remain fairly consistent. A steady or continuous increase in net assets means the organization is operating efficiently (*i.e. programs are appropriately run and expenses are controlled*). Growth in net assets typically means better cash flows and better liquidity.

Expendable Net Assets:

- It's important when looking at an organization's net assets that you also understand if those net assets are available for use by the organization. Too often, organizations have significant levels of net assets, but they are still having difficulty meeting their day-to-day obligations. Expendable net assets takes an organization's net assets, removes long-term assets (*e.g. property and equipment, security deposits, restricted resources*), and adds back debt related to the removed assets. This will really hone in on the level of expendable or usable net assets the organization really has. After all, you can't pay your staff with bricks from your building.

Program Trend Analysis:

- A significant measurement of an organization operating effectiveness is based on the success of its programs. It's important to see if a program is profitable, break-even (*i.e. deficit-funded, where the organization is reimbursed for the expenses already paid to run the program*), or operating at a loss.

Program trend analysis will be unique from agency to agency, depending on the organizations' operations and funding sources. Some examples include:

- Total program revenues less expenses (*this could be in total or by funding source*).
- Sources of revenue (*what percentage of an organization's revenue is coming from each revenue stream*) help to identify concentrations in revenue.
- Revenue and/or expense per unit of service.
- Trends in units of service (*important for fee-based revenue streams*).

Fundraising Event Profitability:

- The profitability of an organization's fundraising event(*s*) is measured by the total revenue raised from the event less the total expenses associated with the event. This measurement can assist in determining if an event is worth continuing or should be modified to potentially generate more income. A good rule of thumb is you would like your events to generate at least three times the related expenses.

Program Service Percentage:

- This represents the percentage of every dollar that is spent on running the organization's programs. The higher the percentage, the more dollars targeted to program activities. The nature, size, and funding sources of your organization will all impact your program service percentage. Larger organizations, government funded organizations, and health and welfare organizations all tend to have higher program service percentages.

By having a better understanding of your organization's finances, by being more engaged in financial discussions and by understanding the impact of the financial information, you can identify concerns or opportunities early on. This will put you in a better position to help steer the organization forward and ensure that it is able to maximize its organizational impact.

WHAT THE BOARD OF DIRECTORS SHOULD KNOW ABOUT IRS FORM 990

IRS Form 990 is an informational tax form that the majority of tax-exempt organizations must file annually. The Form's main purpose is to give the IRS an overview of the organization's activities, governance, and detailed financial information. Additionally, Form 990 includes a section to describe the organization's accomplishments in the previous year to justify maintaining its tax-exempt status. The IRS uses the information reported in Form 990 to ensure that organizations continue to qualify for tax-exempt status.

Federal tax law does not define that it is the Board's duty to receive or review a Form 990, but organizations who do not have a Board review policy in place may be considered to have a significant weakness and lack of oversight. There has been a substantial increase in the demand for transparency and accountability within the nonprofit sector, further cementing the importance of the Board's involvement in the review of the organization's Form 990.

The following "Board Member Review Checklist for Form 990" highlights some key areas that Board members should examine as a part of their review of Form 990.

BOARD MEMBER REVIEW CHECKLIST FOR FORM 990

1. PART I - SUMMARY

- ☐ *Is the brief description of the organization's mission truthful and clearly defined?*
- ☐ *Will the mission description positively influence a potential donor?*
- ☐ *Does the current year summary of financial information compare favourably or unfavourably with the prior year?*

2. PART III – STATEMENT OF PROGRAM SERVICE ACCOMPLISHMENTS

- ☐ *Does the information in Part III explain to the user of Form 990 why the organization exists, who it serves, and the information about activities it will undertake to accomplish its mission (e.g. the organization's impact)?*
- ☐ *Are the program services described in enough detail to present an accurate depiction of the organization?*

3. PART V – STATEMENTS REGARDING OTHER IRS FILINGS AND TAX COMPLIANCE

- ☐ *Have paid individuals been properly classified as employees rather than independent contractors to avoid payroll tax issues?*
- ☐ *If the organization is a charitable organization and received more than $250 from a single donor, was a receipt provided to enable the donor to corroborate his or her charitable contribution deduction?*

4. PART VI – GOVERNANCE, MANAGEMENT, AND DISCLOSURE

- ☐ *If the organization does not have the Board-adopted written policies indicated, should the Board consider adopting any?*
- ☐ *Should the Board consider a change in the procedures for setting compensation to minimize the future risk of investigation by the IRS? An organization that over-compensates its management may open themselves to personal liability.*
- ☐ *If the organization is conducting activities in multiple states, is it properly registered in those states and completing each states filing requirements?*

5. PART VII – COMPENSATION OF OFFICERS, DIRECTORS, TRUSTEES, KEY EMPLOYEES, HIGHEST COMPENSATED EMPLOYEES, AND INDEPENDENT CONTRACTORS

- ☐ *Does the compensation of those listed in Part VII appear justifiable in view of the organization's activities, size, and their responsibilities?*

6. PART VIII – STATEMENT OF REVENUE

- ☐ *Does the revenue data indicate too much reliance on one source that could be threatened by a poor economy or other external factors? Should alternate revenue streams be considered?*
- ☐ *Too much reliance on unrelated business income [as reported in column (C)] could risk an organization's exempt status. Is column (C) insignificant as compared to totals in column (A)?*

7. PART IX – STATEMENT OF FUNCTIONAL EXPENSES

- ☐ *Are compensation and benefits (lines 5 through 9) consuming too much of the organization's revenue?*
- ☐ *Are expenses justifiable and in line with the organization's mission?*
- ☐ *If completed, do the totals of column (C) management and general expenses and column (D) fundraising expenses appear disproportionate relative to total program service expenses in column (B)?*

8. PART X – BALANCE SHEET

- ☐ *Is a large amount of cash (line 1) being kept in non-interest bearing accounts?*
- ☐ *Are resources being averted from program service activities to related party loans (lines 5 and 6)?*
- ☐ *Is oversight being exercised over related party loans to ensure adequate collateral, interest, timely repayment, etc.?*
- ☐ *Are notes and loans receivable (line 7) sufficiently collateralized and monitored for timely repayment?*
- ☐ *Does an increase, if any, in accounts payable or accrued expenses (line 17) during the year suggest potential cash flow problems?*

9. PART XII – FINANCIAL STATEMENTS AND REPORTING

- ☐ *Where the organization's financial statements appropriately audited or reviewed by an independent accountant (if applicable)?*
- ☐ *If audited, do the auditors' report to the group responsible for overseeing the financial reporting process (an audit or finance committee or the governing Board)?*

10. SCHEDULE A – PUBLIC CHARITY STATUS AND PUBLIC SUPPORT

- ☐ *Does the data (Part II Section C or Part III Sections C and D) indicate that the organization is in danger of becoming classified as a private foundation rather than remaining a public charity?*

WHAT THE BOARD OF DIRECTORS SHOULD KNOW ABOUT IRS FORM 990

11. SCHEDULE C – POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES

- ☐ *If exempt under Section 501(c)(3), are policies followed to prevent participation in a political campaign that could jeopardize tax-exempt status?*
- ☐ *If the organization is a Section 501(c)(3) entity that is eligible to make the lobbying expenditure election but has not, should it do so to minimize the likelihood that exempt status will be lost because of excessive lobbying (see Part II-A)?*

12. SCHEDULE J – COMPENSATION INFORMATION

- ☐ *If any box on line 1a is checked, is the economic benefit warranted or should it be re-examined?*
- ☐ *Does the organization require strict accountability for expense reimbursements to prevent abuse (lines 1b and 2)?*
- ☐ *Is the organization setting compensation based on one or more methods indicated by the box descriptions for line 3?*

13. SCHEDULE L – TRANSACTIONS WITH INTERESTED PERSONS

- ☐ *Did the organization consider all direct or indirect transactions or relationships that may require disclosure? (See Part IV questions 25 through 28.)*
- ☐ *Are business transactions with interested persons fully disclosed, including the amount, nature of the transaction, and relationship with the organization, management, and Board?*

14. SCHEDULE O – SUPPLEMENTAL INFORMATION

- ☐ *Is the 990 review process fully described?*
- ☐ *Does the organization describe how public documents (Forms 990, 990-T, if applicable, and 1023) are made available for public inspection (website, office, Guidestar, etc.)?*

15. SCHEDULE R – RELATED ORGANIZATIONS AND UNRELATED PARTNERSHIPS

- ☐ *Did the organization receive any payment from, or engage in any transaction with, a controlled entity within the meaning of section 512(b)(13)? Organizations fall under section 512(b)(13) if a parent/subsidy relationship exists, or if the same persons constitute a majority of the members of the governing body of both organizations, or the same entity/persons controls both organizations.*
- ☐ *If the answer to the above question is yes, did the information on schedule R include appropriate current year related transactions?*

Board members should be aware that Form 990 is made available to the public and can be inspected by third parties, so a thorough review remains an important duty of the Board. Board members and organizations that are educated about the Form 990 will benefit from accurately reported information that best reflects the organization and its values which could result in increased public support.

TOO MANY NONPROFITS, TOO LITTLE M&A

Nonprofit organizations are facing an increasing number of demands and it's finding many of them stretched so thin that creativity and strategy are the only answers left to overcome these demands. Government funding is decreasing while costs continue to increase. Regulations are becoming more stringent. Individuals are less inclined to give because of the 2018 Tax Cuts and Jobs Act. All of these issues are added to the preexisting struggles to remain attractive for potential new donors, maintain good funding relationships with historical donors, and find efficiencies to limit administrative spending and have more direct service costs. Above all, nonprofit organizations' goals at the end of the day are to fulfill their mission, provide their services successfully, be known for those services, and eliminate any open ends to ensure a complete and fulfilling mission overall.

Mergers and acquisitions (M&A) are out of the ordinary in the nonprofit world. Resources are very scarce since it is such a rarity and guidance on M&A in the nonprofit world is lacking. However, if used strategically, M&A can be beneficial to your organization and a great way to gain a competitive advantage in your nonprofit service areas. M&A should be as accepted in the nonprofit world as it is in the for-profit world. In addition to the challenges mentioned above, there are too many nonprofit organizations registered in the United States. Consolidation needs to happen. If M&A became a regular part of nonprofit business, it would be a win for everyone. In a saturated sector of nonprofits where there are not enough people who need the services of the organizations providing them, employees wouldn't be as few and far between and competition would be decreased, which means more quality employees and donors for you. In the government-regulated sector of nonprofits where a lot of compliance and training is required, consolidation could decrease the time, effort, and cost of that training through shared knowledge and resources.

Why are M&A a better approach over alternative solutions? Growing an organization organically is no easy feat. Costs and time are generally not favorable and geographic expansion requires knowledge of the population and whether it is in need of your services. Requirements could include building an additional location, fostering new relationships with funders, learning skills and building knowledge to deliver those new services, as well as beating new competition. M&As are strategic if used effectively. Your organization would merge with an entity that already has the location, the donor relationships, the skills and knowledge, and reputation that is known over their competition.

The biggest take-away from this should be that M&A needs to be set up properly and rolled out smoothly and strategically within the consolidating organizations in order for it to be a successful transaction. As a board member, there are a few questions you should ask yourself, your peer board members, and key management personnel of the organization before a M&A occurs:

How will this M&A benefit the organization and the communities it serves? Each M&A is unique and occurs for its own specific reasons, but some of the benefits you may find include an expansion on geographic influence and serving a greater population, enhancement of or addition to services, advancement in reputation, and access to additional resources, just to name a few.

Does this M&A support or enhance the organization's mission? Remember why the organization exists in the first place. Think about how the M&A would benefit or hinder the organization. *What would ultimately happen to the organization if the M&A didn't occur? Does the merging or acquiring entity have similar goals in its mission statement?*

What challenges does the organization currently face that could hinder the M&A opportunity and how can those challenges be mitigated? Cost is an issue that faces many M&A candidates. Both organizations should be writing up a formal business plan that paints a picture for a fluid M&A throughout. This should be prepared in a way that is ready to present to potential donors who would be interested in providing funds to help with the process. Ensure the organization doesn't miss a beat by reviewing any compliance requirements with laws and regulations.

What advantages and disadvantages would the organization face with this M&A? In addition to the expansion of geographic influence and the impact on a more widespread population, some may find the advantageous expertise and long-term financial stability to be attractive factors. Disadvantages the organization may want to consider include negative reactions from donors or staff, programs that become muddled and don't differentiate themselves from one another, or a M&A candidate that has goals so far from your own that the organizations would not consolidate seamlessly.

Once the organization has had time to explore these thoughts, and if its leaders decide to move forward at this point, a more detailed analysis should ensue. Create a reasonable and realistic budget for the M&A. Capture every cost you can think of including travel, legal and accounting fees, additional compensation, etc. Don't forget to leave room for unexpected costs. Specific details from both entities should be reviewed, including the latest set of financial statements, a list of donors, and organizational charts, among others. Once all vital information has been reviewed, consolidate it all into a summary that lays out how the M&A will impact both organizations. This helps paint a picture and will ultimately be a crutch in your decision-making regarding whether to move forward with the M&A. This also shows that you have done your due diligence and will leave minimal room for surprises.

If you decide to move forward from here, start designing the newly combined entity. Gather all contracts and historical business records from the original entities, determine if the transaction will be a merger, acquisition, or joint venture, and create a meaningful name. *Who will be on the Board? How will the assets and liabilities from the originating entities be integrated? Which overlapping costs could be eliminated from the combined entity?* Build this new organization using each entity's best features. Think about location, operational details, and review administrative procedures and agreements. Brainstorm new long-term and short-term goals, as well as your plans to reach those goals. *What needs to be done to ensure this new organization fulfills its mission? Which funders are most likely to provide help?* Make sure all employees understand their new roles. Granted, the initial transition might be a bumpy ride, but through practice and time, the M&A will be something of the past and your organization will be operating smoothly again.

In the nonprofit world, these opportunities usually come when someone in a key management position is retiring or an entity is in financial distress. This is a reactive approach to M&A and the opportunity may not come forth at the best time for you. If you treat M&A as a routine option for your nonprofit, you will take a more proactive approach and the opportunity will be there when you're ready. Gain a competitive advantage in your nonprofit service area. At least consider making M&A a streamlined part of your organization's business strategy.

NYPMIFA:

WHAT IS IT AND WHAT DOES IT MEAN FOR ME?

NYPMIFA – *what does this strange acronym mean?* These seven letters are used to abbreviate the **New York Prudent Management of Institutional Funds Act**. NYPMIFA is not something completely new to us. This legislation was signed into New York State Law by Governor Patterson on September 17, 2010 and is NY States version of the **Uniform Prudent Management of Institutional Funds Act** (*"UPMIFA"*). UPMIFA provides guidance regarding investment management and spending. UPMIFA strives to promote a total return approach to spending by supporting investing at a rate that will preserve the purchasing power of the principal over the long-term, while spending endowment funds at a rate that will reflect a donor's intentions.

How does this affect the nonprofit sector? One, it enables nonprofits to spend from endowments whose fair values have dropped below the original gift level, so long as the spending is deemed prudent by the nonprofit. And two, it creates restrictions on any earnings in excess of the spending policy, even in the absence of a donor restriction. In other words, should the Board establish a spending policy that allows up to 3% of earnings to be spent by the organization and the investments yield 10% in a year, the extra 7% of earnings would be treated as a temporarily restricted amount until appropriated.

In passing NYPMIFA, New York State has adopted much of UPMIFA's standard principles, but with three major differences, ***The first difference*** relates to its requirements surrounding written policy. NYPMIFA requires the Board to develop formal spending and investment policies, and also to review those policies on an annual basis. ***Additionally, there are eight standards of prudent spending outlined by NYPMIFA.*** Nonprofits are required to have a written policy describing how those standards have been adopted. ***The second difference*** relates to NYPMIFA's presumption of imprudence. The Act believes that a nonprofit's spending would be considered imprudent *if it spends more than 7% of the endowment's market value*, which is to be measured on a quarterly basis and calculated over a period of no less than the preceding five years. ***The third and last major difference*** relates to written notification. NYPMIFA, unlike any other state's version of UPMIFA, requires nonprofits to notify their existing endowment donors, in writing, for approval to spend below the original gift amount. The Act specifies the required language to be used when notifying donors

as well as guidelines for the notification itself. Nonprofits must allow donors a 90-day window to respond to the notice before encumbering endowment funds for the first time under NYPMIFA. A donor is considered *"available"* under NYPMIFA if the individual is living (*or if the donor is an institution, is in existence*) and can be located and identified with reasonable efforts. However, notification is not required if **(1)** *the gift instrument already allows for spending below the fund's historical value,* **(2)** *the gift instrument specifically limits the nonprofits ability to encumber or accumulate funds,* or **(3)** *the endowment is the result of a gift which was part of a solicitation/ funding originated by the nonprofit.*

So, what does this specifically mean for your nonprofit? Donor intent documented in a gift document must always be respected. If the donor is silent as to appreciation and spending rules, NYPMIFA then comes into play. Boards will have to set specific spending policies in place that either call for the preservation of endowment funds or prudent spending of endowment fund assets as outlined by NYPMIFA. Should the Board choose to spend endowment funds as it deems prudent, it must act in good faith and exercise care while considering, if relevant, the following factors:

- *the purpose of both its organization and the endowment fund;*
- *the duration and preservation of the endowment fund;*
- *the overall economic environment;*
- *the organization's investment policy;*
- *the anticipated investment return on the endowment;*
- *the possible impact of inflation or deflation;*
- *other resources that may exist within the organization; and*
- *if appropriate and necessary, alternatives to spending of the endowment fund and the impact such alternatives may have on the organization.*

For each of the aforementioned factors, the organization must maintain contemporaneous records of the Board's decision, the consideration given, and, if applicable, the action taken.

Let's recap, because this is not a simple subject.

1. NYPMIFA advocates for stronger protocols on investment management and requires prudence from the Board in investing institutional funds held in endowments or for investment purposes. It requires nonprofits to have formal investment policies that consider factors such as economic conditions, inflation rates, tax implications, and others noted within this article.

2. In an effort to try to preserve organizational assets, many nonprofit Boards take a very conservative approach to investments by keeping them all in certificates of deposits or U.S. Treasury securities. Pursuant to NYPMIFA and the need for prudent consideration of the factors outlined above, this may no longer be an appropriate way of handling an organization's investments. NYPMIFA requires the diversification of investments; unless the Board determines special circumstances exist that deem doing so inappropriate. Such a decision should be documented and is required to be evaluated annually.

3. Should a nonprofit decide to utilize the services of an external investment advisor for management of its institutional funds, the Board must exercise care in selecting and monitoring the advisor. This is inclusive of ensuring no conflicts of interest exist, establishing the advisor's role and level of control, and monitoring performance results.

4. Prior to NYPMIFA, a nonprofit had to obtain approval from the donor or would have to resort to soliciting the supreme court in its jurisdiction or the surrogate court where the will was probated (*for an intestate donation*) if the nonprofit wanted an endowment released. Thankfully, NYPMIFA provides some level of flexibility in dealing with funds that have become obsolete, wasteful, impractical, or impossible to effect. Now, under NYPMIFA, an organization can either get donor consent or obtain a modification by a court. This doesn't seem to be much of a change; however, the difference is should the donor decide not to consent to a release or modification of a restriction, the organization is no longer barred from soliciting the court. In either case, the donor and State Attorney General must be given notice. NYPMIFA also allows nonprofits to modify or release donor restrictions without receiving judicial approval, upon 90 days' notice to the Attorney General, if **(1)** *the fund's value is under $100,000,* **(2)** *the fund has existed for more than twenty years,* and **(3)** *the proposed use of the fund after release is consistent with the purpose outlined in the original gift.*

5. NYPMIFA also requires that an organization soliciting new endowment funds include a statement in its solicitation materials, unless otherwise restricted by the grant instrument, noting that the nonprofit may expend as much of the endowment fund as it deems prudent after considering the factors governing appropriation decisions set forth in NYPMIFA.

It is essential that nonprofit Boards and investment committees are well educated on the rules surrounding NYPMIFA to ensure that all of its provisions are properly being considered and implemented. Retaining qualified and experienced legal counsel to help navigate through the complexities of NYPMIFA may be a good first step to ensuring compliance.

NYPMIFA: WHAT IS IT AND WHAT DOES IT MEAN FOR ME?

FUNDRAISING: A DIFFERENT APPROACH

For too long, the nonprofit sector has taken a *"one size fits all"* approach to fundraising; with dinner dances and golf outings clogging the calendar and development staff making phone calls looking for sponsorships at pre-established levels. Now I'm not suggesting that nonprofits shouldn't do fundraising events. For many nonprofits, these are highly successful and bring in significant levels of discretionary funding for organizations. What I am suggesting, however, is that nonprofit organizations should consider what other options they have that they can offer to their business partners to start to develop more meaningful collaborations.

Businesses understand that if they are going to work with the nonprofit sector they are going to need to support the agencies they work with. While fundraising events provide an avenue for business owners to support charity, there is often very little benefit that the business derives from these sponsorships. *Wouldn't a relationship with your business partners where both sides benefit be a better option, with the potential of driving larger resources to your agency?*

When was the last time you sat down with your donors or business partners and had a heart-to-heart with them to find out what they are looking for in a relationship with your organization? Donors want to support your organization in a meaningful way, but they would also love to derive some competitive business edge in the process. By taking time to understand their business model, what about your organization excites them, and how you can fit into their strategic thinking, you can really create a collaborative arrangement that really works for everyone.

I understand that this may be a little abstract, so let me throw out an example. Cerini & Associates strongly believes in education. We invest a lot of money each year in educating both our staff and the industries we serve. We were looking for a way to make a deeper impact thank what we were already doing. Along came the Book Fairies, a nonprofit organization that collects gently used books and puts them in the hands of teachers, students, and adults in an effort to reduce illiteracy and break the cycle of poverty. Real impact that appealed to us. We could have supported one of their events, but instead we opened a discussion about how we could effectively partner to help them leverage their impact, while creating a business advantage for C&A. We agreed on a model where for every billable hour of service C&A had, they would pay to put a book in the hands of a child.

Benefit to Book Fairies: Book Fairies develop a relationship with a new strategic partner that hadn't funded them in the past, with C&A becoming one of the organization's largest donors. In addition, C&A has been promoting its partnership with Book Fairies, which is increasing awareness of the Book Fairies brand.

Benefit to C&A: C&A has been able to promote the relationship to its clients and prospects, letting customers know that if they work with the Firm, not only does the customer get accounting talent, they are also making a difference in the lives of children by helping to facilitate the distribution of books. Furthermore, Book Fairies has been including C&A in much of its social media and press releases, which has helped to improve the C&A brand. Much more impactful than a tee sponsor.

In today's environment, where people have the access to obtain information instantly, where it's easy to get recommendations and ratings, and where people have a much greater desire to make a difference, there are plenty of ways that you can offer real value to strategic business partners well in excess of an add in a journal. Furthermore, your business partners will appreciate the entrepreneurial outlook you bring to the table during the exploratory discussion. Finding ways to be a good partner to your donors will go a long way in making you the charity of choice when the time comes to write that check. *Think about it.*

EFFECTIVE BOARD MEETINGS:
HOW DO YOU ENSURE YOUR BOARD REMAINS EFFECTIVE?

Board meetings should be structured effectively to allow board members to connect with the mission of the organization and encourage a commitment to achieving organizational goals. Some practices that contribute to effective board meetings include time management, a clear agenda, prioritization, preparation, and a diverse board with appropriate turnover.

An effective board meeting begins with appropriate time management. A consent agenda including items that require formal board approval, but no further discussion, should be used to reduce time spent on ancillary tasks. With less time spent on passive agenda items, the board will remain engaged with more critical issues. A meeting agenda should be formulated to prioritize tasks, and an appropriate amount of time should be allotted to discuss and debate each matter. Items that require a board vote should be highlighted to ensure they are addressed. Prior to the board meeting, the agenda, supporting information for discussion items, and any other relevant data should be distributed to board members with ample time to prepare and formulate their thoughts. All board members should consider it their responsibility to review the material provided and come to the meeting prepared.

The Board Chair and Chief Executive of the organization should communicate and work together to determine the key agenda items and make sure that all board members are prepared to discuss the important issues when they attend the meeting. The Chief Executive should contribute items to the agenda that the board would otherwise be unaware of, such as organizational challenges and triumphs, risks, and other prospective matters. The composition of the board, including the number of board members, essential skills possessed, and board terms will also help board meetings be productive and support the organization in meeting its goals. The size of the board should strike a balance between different professional and personal experiences, while still affording everyone the opportunity to be involved in the decision making process. A small board may be limited in perspective and could place too much burden on each individual. A large board will be more diverse but less likely to make decisions quickly and adjust to change. With a large board, committees can be used to focus on specific areas and report to the entire board, thus streamlining the level of time needed to vet out issues.

In addition to board members having knowledge of the organization and its industry, a board should be comprised of members that collectively possess budgeting, financial management, fundraising, human resources, and legal skills. The nominating committee, or existing members of the board, should seek potential members to adequately represent all skills.

Managing the composition of a board's skills, experience, and education is an ongoing process. The board should evaluate its current status and plan for the future by considering the length of time members and officers have served. Continuity of board members brings historical knowledge of the organization which can be useful in future decision making. Alternatively, turnover results in fresh ideas and a different approach to reaching organizational goals. In general, it is a best practice to limit board terms to allow for a rotation of board members that will have something additional to bring to the table.

Effective board meetings are essential to meeting an organization's mission. A detailed agenda for board meetings that allows enough time to discuss key items and a consent agenda for other non-essential items is a start to making sure meetings are kept on course. Having a diverse board with varied skills and experience, and enough turnover in board members to introduce fresh perspectives, fosters discussion and new ideas, which lead to positive impact for an organization.

SUCCESSION PLANNING
FOR NONPROFIT BOARDS

Nonprofits that are serious about their own sustainability should also be serious about planning for the smooth and thoughtful transition of their leadership. Whether a transition occurs due to an unexpected vacancy on the staff or Board, or the anticipated transition of a long-tenured leader, being ready with a plan in place can help a nonprofit weather the inevitable storm of leadership transition. An effective succession planning process requires collaboration between Board members, executives, and key staff members. To be most effective, the planning, if possible, should be completed in advance of any departures.

It is important for the Board members to secure the organization's future by clarifying direction and ensuring effective leadership is in place. Having a succession plan will help you to attract the right Board members when they are needed. The Board should work together to develop and approve succession plans for various scenarios. It also may be of benefit to the Board to create a Board committee to address transitional issues in the case of an unexpected departure of an executive.

A key element to having a good succession plan is developing competency-based criteria to be used as a guideline for recruiting and electing Board members. These competencies can be grouped into universal competencies that all Board members should possess and essential collective competencies that one or more Board members bring to help the Board execute its responsibilities effectively. On at least an annual basis, the organization's recruitment needs should be analyzed by reviewing the Board's competencies that are in place and looking to fill any gaps based on anticipated vacancies or operational shortfalls. A list of prospective members should also be maintained and updated as necessary so that interviews can be held when an opening arises. If the Board anticipates an opening within the next twelve months, recommendations should be made for a replacement as soon as possible.

Many organizations have established standing committees of the Board that contain both Board members and non-Board members. This is a great way to develop a farm system from which to recruit if a Board position is opening. These committee members are already engaged with the organization, are knowledgeable about the organization, and are familiar with the Board and management. In addition, Board members can gain some insight into committee member effectiveness before they are brought onto the Board.

Once a list of candidates is developed, the candidates should have initial interviews/communications with other Board members. The list of candidates should then be narrowed down to the eventual replacement after the Board has reached a consensus.

A problem that many organizations face with succession planning is failing to start or failing to finish. In order to prevent this from happening, it may be beneficial to recruit one or two Board leaders with the interest and skills to champion this issue. These leaders can recruit others to form a group that will help in the planning. It is also important for the group to set a timeline and a completion date so that there is something to strive for. A useful tool to help Boards stay on top of succession planning is to develop a chart that can include the Board members, their length of service, expiration of their current term, as well as committee and officer positions held. This will help give a clear picture of upcoming vacancies that may need to be filled. In addition, it is important to open lines of communication with Board members whose terms are expiring to determine what their intentions for future Board or committee service will be.

The quality of leadership of the Board members of a nonprofit organization is extremely important to its ongoing success and sustainability. Poorly handled transitions can wreak havoc on an organization, while carefully planned and managed transitions actually set the organization up for greater success in the future.

WHAT OUR CLIENTS ARE SAYING...

"I have worked with Cerini and Associates for the past few years and would provide a strong recommendation to any business interested in seeking a true strategic partner. We utilize a variety of services from their firm, and I have always been impressed with their high degree of professionalism, the quality of their work, and their overall business understanding. Ken and his firm constantly put their clients first and will go the extra mile to get the job done."

Anthony A. Russo, Director Of Accounting
Long Island Board of Realtors, Inc.

Firm Overview

Cerini & Associates, LLP is a full service accounting firm with a foundation built on value-added ideas and integrity. C&A serves many industries, including healthcare, nonprofit, special education, school districts, technology, contractors, and an array of mid-sized businesses (*including retailers, manufacturers, distributors, et al*). C&A's services include, but are not limited to:

- *Accounting & Auditing*
- *Tax Compliance & Business Advisory*
- *Tax Controversy Defense & Support*
- *Litigation Support*
- *Mergers & Acquisitions*
- *Internal Audit*
- *Operational & Internal Control Reviews*

C&A's staff takes pride in the quality of its work and operates with the technical ability of a much larger firm. C&A is also proud to have received an unqualified opinion during its last tri-annual peer review. The firm is affiliated with many professional organizations, including the: New York State Society of Certified Public Accountants, American Institute of Certified Public Accountants, and Association of Certified Fraud Examiners.

GET IN TOUCH
3340 Veterans Memorial Hwy, Bohemia, NY 11716
(631) 582-1600
www.CeriniCPA.com

OUR PARTNERS

NONPROFIT

Cerini focuses on nonprofit, education, and healthcare providers. With over 30 years of experience, he brings to each relationship a business acumen and focus that goes beyond what you traditionally find in an accountant. He is extremely responsive and is a strong advocate for his clients.

KEN CERINI, CPA, CFP, FABFA

Burke specializes in serving nonprofit and mid-sized business clientele. With well over a decade of experience, he works closely with many types of complex accounting, auditing, compliance, and general business matters that impact both the nonprofit and entrepreneurial communities.

MATTHEW BURKE, CPA, CFE

Quigley has been a member of Cerini & Associates' audit and consulting practice area for ten years where she focuses on serving the firms nonprofit and employee benefit plan clientele. Tania has experience in performing financial statement audits and reviews, tax return preparation, cost report preparation and filing, retirement plan audits, and other consulting.

TANIA QUIGLEY, CPA

ENTREPRENEURIAL

McWilliams has over a decade of experience providing tax and business consulting services to companies of different sizes and across different industries, bringing a broad and diverse knowledge base and strategic solutions to the many complex issues that businesses face.

EDWARD McWILLIAMS, CPA

Roffi works closely with the firm's small business clients focusing on tax compliance, planning, accounting assistance and management advisory. She also is responsible for the firm's internal operations and finances.

KIMBERLY ROFFI, CPA

Scanlon joined Cerini & Associates in March, 2007, and has since provided both tax and audit services to various business industries. Her audit background with small to mid-size organizations gives her invaluable insight to the internal workings of a business that will allow her to fully assist to all of a company's needs and growth.

CARISSA SCANLON, CPA

SCHOOL DISTRICTS

Diamond works primarily with the firm's school district clients focusing on internal controls, information technology assessments, and risk reduction strategies. She has over twenty years' experience and is committed to providing recommendations that help her clients meet their educational goals.

SHARI DIAMOND, CIA