



# Critical Knowledge for Board Members

> BY LESLIE SHIVERS

**B**oard members come into the job with personal agendas and often-incorrect assumptions about the responsibility of association governance,” wrote Susan Stratton, owner of Leading Edge Mentoring, in “The Exasperated CEO’s Guide to Troubleshooting Bad Board Behavior” (*Executive Update*, ASAE & the Center, Feb. 2005).

She was referring to manipulative behavior by individual board members, but the idea applies just as well to board members who come into their new role with little information on the expectations that come with it.

Nonprofit associations are being scrutinized much more closely these days. And not just by governmental entities. Members, potential members, donors, volunteers, and the general public are also looking more closely at associations with the help of watchdog groups and the media.

**EDUCATE** incoming board members on their **INDIVIDUAL ROLES**.

The consequences of bad board behavior can be catastrophic for a nonprofit. So, it’s our responsibility to educate potential and incoming volunteers—and remind continuing volunteers—of what their role in the association entails.

## Expectations of a Board Member

Board volunteers need a clear picture of the responsibilities and expectations of their new position; most of this information should be introduced during recruiting.

### Attendance

Attending and engaging in board meetings is important, should be expected, and is necessary to create quorum. Do your bylaws allow for members to attend by conference call? By proxy?

### Preparation

Whether your board meets once a month or once a year, members should read and consider agendas, financial and informational reports, and other materials in preparation for decision-making meetings.

Board members who don’t read the materials often bring up questions that are irrelevant or answered within the materials provided—an unproductive use of the time and energy of the entire group, and disrespectful of their fellow volunteers who took the time to prepare despite their own busy schedules.

Providing summaries helps volunteers wade through sometimes overwhelming amounts of material. The Executive Director or board leader

should consider asking for preliminary feedback or questions prior to the meeting.

Minutes should be distributed as soon as possible after the meeting. Ask board members to read and comment on the minutes within a week or two. It’s a lot easier to catch errors and omissions a week after the meeting than a month or a year.

### Role

The board’s role is strategic. The Executive Director manages operations and board members must respect that separation when interacting with staff—special requests should always be made through the Exec.

Educate incoming board members on their individual roles. Do they represent a portion of your membership? Make sure they understand that although they are expected to be the voice of their constituency, to be successful the board must work as a team, for the good of the association as a whole.

### Financial reports

Not all of your board members may understand how to read financial reports, including investment reports, budgets, and your Form 990. Board volunteers should be provided with training and/or instructional materi-



als, and with an avenue for asking questions without embarrassment. Association-specific expectations Some societies expect each board member to donate, fundraise, or handle additional responsibilities specific to the organization's mission. Too often, these are unwritten expectations that new board members only understand after they've taken office. What are these additional expectations in your organization?

Don't leave out the social expectations. Do all members understand that they're expected to attend receptions and other networking events and to interact with members at every opportunity?

### Legal Responsibilities of a Board Member

There are also legal requirements that your board and committee volunteers need to be aware of.

Last April, William E. Walters, III, an attorney with Kelly Garnsey Hubbell + Lass, LLC, presented "2010 Legal Update: Keeping Track of the Alligators" to an audience of CSAE members.

Walters offered information on a wide range of legal topics that affect associations. Here's a summary of what participants learned in the portion of his presentation focusing on board and committee members:

#### Statutory duties

In Colorado, nonprofit corporations must be led by a board of directors whose members must act in good faith and in what they believe to be the best interests of the association. Both board and committee members are required to act diligently for the benefit of the society, and in accordance with its mission.

#### Fiduciary duties

Fiduciary duties include the duties of care and loyalty:

- The **duty of care** requires directors to fulfill their responsibilities in good faith as a normally prudent person would, in accordance with the law and the organization's mission.
- The **duty of loyalty** requires direc-

tors to act in the best interest of the association with "undivided loyalty and allegiance." The association's interests must take priority over volunteers' personal interests. When a board or committee member is profiting from his/her relationship with the association, this creates a conflict of interest. This can be personal gain, benefiting



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from the relationship by doing business with the association, taking advantage of confidential information about the association's business, etc.

The duty of loyalty also requires board members to support the board's decisions, no matter how fiercely they may have argued against those deci-

sions when they were made.

**Antitrust laws**

Trade and professional associations are gatherings of competitors, which means that "only some action by the association that unreasonably restrains trade needs to occur for there to be an antitrust violation," wrote Jeffrey S. Tenenbaum, an

attorney with Venable LLP, in "Antitrust Primer for Association Board Members," a 2007 article from the ASAE and the Center collection. In his presentation, Bill Walters described examples of "areas of concern" as price fixing, allocating territory or services, excluding nonmembers from opportunities or refusing to deal with them. Even setting standards that create an unfair advantage or publishing reviews of vendors are potential problems.

The federal penalties for violating antitrust laws are severe, and can include millions of dollars in fines, jail sentences, restrictions on your association's activities, or even dissolution.

**Protections**

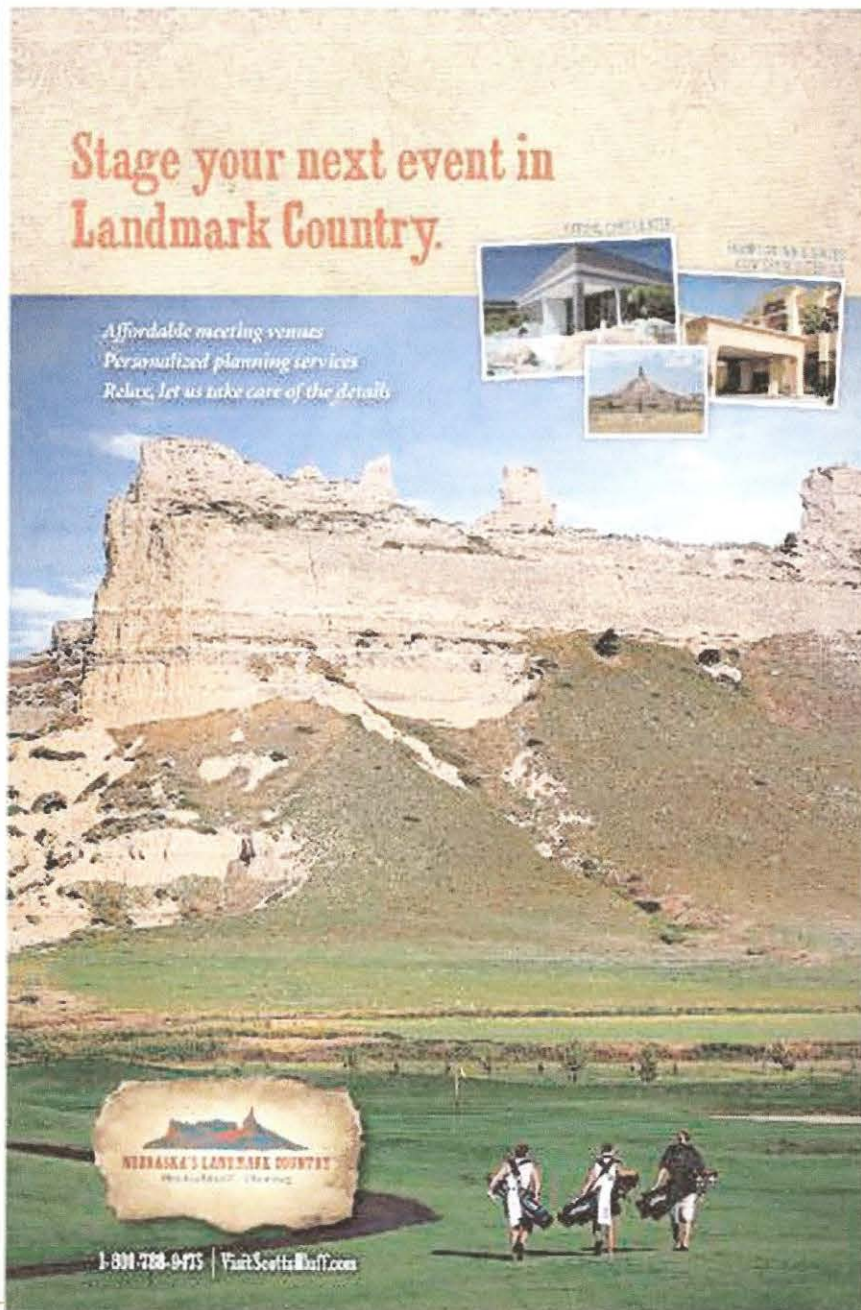
Several Colorado statutes cover directors and other volunteer who act in good faith in what they reasonably believe to be the best interests of the corporation, and with reasonable care.

Insurance can be obtained to cover liability in general, for Directors and Officers (D&O), errors and omissions, defamation, and employment practices. Insurance will not cover board members who act in a "willful and wanton" or criminal manner. Walters advises keeping a sharp eye out for exclusions in your policy; [www.insuranceformynonprofit.org](http://www.insuranceformynonprofit.org) offers more resources.

To avoid problems, board members can disclose conflicts, abstain from voting, be absent during discussions, or even resign. They must keep confidential information private.

Risk management Directors should:

- Stay informed of the organization's activities
- Be aware of and adopt policies to address areas such as antitrust, conflict of interest and confidentiality, investments, gifts, expenses and compensation, etc.





- Monitor (but don't micromanage) delegated activities.
- Understand where their authority lies—and ends. They must support the full board's decision, whatever their personal feelings. If a board member can't bring himself to fully support a decision, he may choose to remain silent.
- Be aware of and help enforce conflict of interest policies. It's not always easy to avoid conflicts of interest, but your volunteers must be educated on the policies and their implications in day-to-day board or committee operations.
- They should be advised of the need to keep communications in e-mail, social media, and other correspondence professional.

### Training and Orientation

Of course you don't want to scare off a potentially valuable board member or committee volunteer, but it's important to be realistic and truthful in conversations with potential volunteers. Consider having the first approach made by a senior volunteer—a peer who understands his or her role on the board.

Hold an orientation and communicate the expectation that volunteers attend.

At the orientation, communicate the organization's mission, strategic plan, organizational chart, policies, and each of the expectations listed above. Summarize the status of each major activity. Give them a copy of the latest financial reports and your latest Form 990. Be sure volunteers understand each report's significance and how to read it.

Make sure they understand the rules of procedure used by your board or committee, whether it is strict adherence to Robert's Rules of Order or something less formal.

Help empower your board members to contribute their best to your association by making sure they come into the job with full knowledge of the expectations and responsibilities of their new roles. ■

LESLIE SHIVERS HAS BEEN MANAGING NONPROFIT ASSOCIATION FUNCTIONS FOR OVER 15 YEARS. CONTACT HER AT 303-359-2751 OR SHIVERS@LBTMAIL.COM.



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