



LIEBERT CASSIDY WHITMORE

Best Practices in Board Governance for Symphony Orchestras

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Agenda

- Understanding Governance in Symphony Organizations
- Board of Directors: Leadership in Harmony
- Beyond the Board: Officers, Committees & Artistic Leadership
- Governance Challenges
- Q&A

Understanding Governance in Symphony Organizations



What is Nonprofit Governance?

Nonprofit governance refers to the framework of laws, policies, and practices by which a nonprofit organization is directed and controlled. It encompasses the responsibilities of the board of directors in overseeing the organization's mission, financial integrity, legal compliance, and strategic direction.

Why Does Governance Matters in the Arts?

- Aligns mission, music, and community impact
- Safeguards financial and legal integrity
- Strengthens trust with funders, audiences, and artists
- Fosters transparency and accountability
- Protects the orchestra's reputation and future

The Governance Score – *Foundations of Board Authority*

- State Law
- Federal Law (e.g., Internal Revenue Code & IRS Regulations)
- Articles of Incorporation & Bylaws
- Board Policies
- Best Practices



Composing the Charter – *State & Federal Rules*

State Law

- Director minimums
- Term limits
- Officer roles
- Meeting frequency
- What committees can do

Federal Law

- Governs tax-exempt status
- Required filings (i.e., Form 990)
- Review of excess benefits transactions

Staying in Tune – *Articles & Bylaws Explained*

Articles of Incorporation

- Filed with the state to legally create the organization
- Identify purpose of the nonprofit and tax-exempt intent
- Limits board authority to mission-aligned activities

Bylaws

- Internal rules for governance and operations
- Defines board structure, composition, elections, meetings, quorum, committees, and more
- Required for legal compliance, but flexible for customization

Setting the Tempo – *Board Policies*

Key Policies:

- Conflicts of Interest
- Executive Compensation
- Document Retention/Destruction
- Whistleblower Protection
- Gift Acceptance
- Ethics/Code of Conduct



Fine-Tuning – *Board Policy Best Practices*

- Establish a timeline for regular review of policies
- Ensure policies accessible to all trustees
- Apply policies consistently and transparently
- Annual signature on conflicts of interest policy

Board of Directors: Leadership in Harmony



Who's At The Podium? – *The Board of Directors*

A **deliberative** body responsible for

- Providing **fiduciary** oversight,
- Setting **strategic** direction, and
- Severing as a **generative** space, all to:

*Advance the mission of the
organization*



The Board's Baton – *Fiduciary Duties*

- **Duty of Care:** Act with reasonable inquiry and informed judgment, in good faith
- **Duty of Loyalty:** Avoid conflicts, act in best interest of organization
- **Duty of Obedience:** Follow the mission and comply with laws

Making Music Together – *Collective Responsibilities*

- Uphold the mission of the organization
- Approve and monitor annual budget and financial reports
- Adopt and oversee organizational policies and bylaws
- Ensure legal and ethical compliance
- Plan for leadership succession and board development

Your Part in the Ensemble – *Individual Expectations*

- Board meeting attendance
- Reviewing reporting and board packet, in advance
- Involvement in committee and task force work
- Financial support
- Role as ambassador
- Participating in nonprofit activities
- Delegate day-to-day management

Beyond the Board: Officers, Committees & Artistic Leadership



Leading the Board's Daily Rhythm

Officers

Types & Responsibilities Vary Widely

- Oversee or engage specific governance or operational activities
- May be employees, volunteers, or a combination of both
- Set by state law, bylaws, committee charters, and sometimes job descriptions/employment documents

Common Officer Positions

- Board Chair/Presidents
- Vice Chairs/Presidents
- Secretary
- Treasurer / CFO
- CEO / Executive Director



Compare Role of Board and Executive Leadership

- **Board of Directors**

- To hire, evaluate, & set compensation of Executive Director/CEO and sometimes also Music Director / Artistic Director
- As organization grows in size and sophistication, generally less and less involved in any day-to-day matters

- **Executive Director / CEO**

- Oversees all day-to-day administrative departments
- Often the key liaison to the Board and community

- **Music Director / Artistic Director**

- Often reports directly to the Board (or jointly with the Executive Director)
- Responsible for artistic vision, programming, and conducting

Working in Sections – *Committees*

Types & Responsibilities Vary Widely

- Oversee specific governance or operational activities
- May have non-directors
- If non-directors serve on committee, may not exercise authority of the board, i.e., must be advisory
- Can be ad hoc or standing

Common Committees

- Executive
- Development
- Governance
- Finance
- Audit
- Artistic or programming advisory committee (less common)

Governance Challenges



Caught Offstage

While waiting in line at a local coffee shop, a musician from the orchestra approaches a board member and quietly shares serious concerns about the Executive Director. The musician claims the ED is verbally abusive, micromanaging staff, and has retaliated against employees who speak up. She also alleges the ED instructed staff to alter time records and fired someone after they raised concerns. The musician urges the board member to take immediate action.

What should the board member do, or not do?

Common Challenges: Executive Director Oversight

Lessons Learned:

- Conduct regular performance evaluations
- Don't ignore concerns, but take a neutral approach
- Investigate promptly, impartially, and thoroughly
- Protect against retaliation, including by providing guidance and support to ED during process
- Take corrective action, if needed

A Space to Play – or a Conflict at Play?

The Crescendo Symphony is exploring options for a new rehearsal and administrative space. At a board meeting, the Chair, Ben, shares that his private real estate company owns a building and equipment that would be “perfect” for the symphony’s needs. He notes that he and the Executive Director have already discussed the terms and drafted a contract, which he urges the board to approve immediately.

Can the Board approve the transaction?

Common Challenges: Duty of Loyalty & Conflicts of Interest

Lessons Learned:

- Directors must disclose potential conflicts and cannot vote on matters that they have material interests in
- Transaction must be fair, reasonable, and being entered into for nonprofit's own purpose
- Have written conflict of interest policy
 - Procedures for managing conflicts
 - Procedures for regular review and disclosure
 - Procedures for oversight and compliance

Offstage Disclosure

The board of a symphony orchestra recently held a closed-session discussion about potential litigation involving a former employee. A few days later, Director John, while out to dinner with friends, mentions he's stressed because the orchestra may be facing a lawsuit. He goes on to share some details about the situation and the employee involved.

Is John fulfilling his role as a Board member?

Common Challenges: Duty of Loyalty & Confidentiality

Lessons Learned

- All Board deliberations are confidential
- Additional privacy protections extend to personnel and client matters
- No right to “individually” access confidential information
- Listen to constituency, etc. but do not agree or promise anything
- Once decision made, Board speaks with one voice

Questions?



Thank You!

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