

13th Annual Summer Institute

**MISSION  
STATEMENT:**

**business and service alignment for health outcomes**

## *Board Governance 101*

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**Center for Applied  
Behavioral Health Policy**

ARIZONA STATE UNIVERSITY



## Board Governance 101 – Launching Your Corporation



In the beginning, there was an idea! Then a decision – to incorporate or not to incorporate...

To become a non-profit corporation in this state, the parties must follow the Arizona Corporation Commission (ACC) process, including submission of paperwork, fees, and “Articles of Incorporation”. The AAC oversees corporations (non-profit and for-profit) in the State of Arizona. To find and review your corporation’s specific information, go to <http://www.cc.state.az.us> and click on “Find a Corporation”.

Once granted incorporation status, your organization must follow all statutes related to Arizona non-profit corporations. Those statutes (Arizona Revised Statutes or ARS) may be found at the link below. (The non-profit section is in Title 10 beginning with Chapter 24.)

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=10>

Among other things, these statutes require each corporation to have a Board of Directors; further, all corporate powers and authority of the corporation shall be managed under the direction of that Board of Directors. There are many other requirements and corporate responsibilities, including the need for filing an Annual Report with the AAC.

There are different types of federal tax classifications, and therefore, different rules for each. For example, if a non-profit corporation wants to be recognized by the Internal Revenue Service (IRS) as “tax exempt”, it must complete the IRS application for tax-exemption. And, if a charitable corporation with a tax-exempt status would like to solicit money from Arizona citizens, it must first register with the Arizona Secretary of State; this registration is renewed annually. (More information, visit: [http://www.azsos.gov/business\\_services/Charities](http://www.azsos.gov/business_services/Charities).)

There are organizations that do incorporate as non-profit corporations, but do not have a tax-exemption from the IRS, either because they chose not to seek tax-exemption, or because their application is in process. Once the IRS recognizes the organization as tax exempt, the Tax Report – 990 Form must be filed with the IRS each year. Recently, the IRS has added sections to its 990 Form to cover governance related questions.



**Board Governance 101**



**THE ROLE OF THE BOARD OF DIRECTORS IN ENRON'S COLLAPSE**

**R E P O R T  
 PREPARED BY THE  
 PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
 OF THE  
 COMMITTEE ON GOVERNMENTAL AFFAIRS  
 UNITED STATES SENATE**

**JULY 8, 2002**

**CONCLUSION**

Enron's Directors protest that they cannot be held accountable for misconduct that was concealed from them. But much that was wrong with Enron was known to the Board, from high risk accounting practices and inappropriate conflict of interest transactions, to extensive undisclosed off the-books activity and excessive executive compensation.

At the hearing, the Subcommittee identified more than a dozen red flags that should have caused the Enron Board to ask hard questions, examine Enron policies, and consider changing course. Those red flags were not heeded. In too many instances, by going along with questionable practices and relying on management and auditor representations, the Enron Board failed to provide the prudent oversight and checks and balances that its fiduciary obligations required and a company like Enron needed. By failing to provide sufficient oversight and restraint to stop management excess, the Enron Board contributed to the company's collapse and bears a share of the responsibility for it.

**SUBCOMMITTEE FINDINGS**

- (1) Fiduciary Failure
- (2) High Risk Accounting
- (3) Inappropriate Conflicts of Interest
- (4) Extensive Undisclosed Off-The-Books Activity

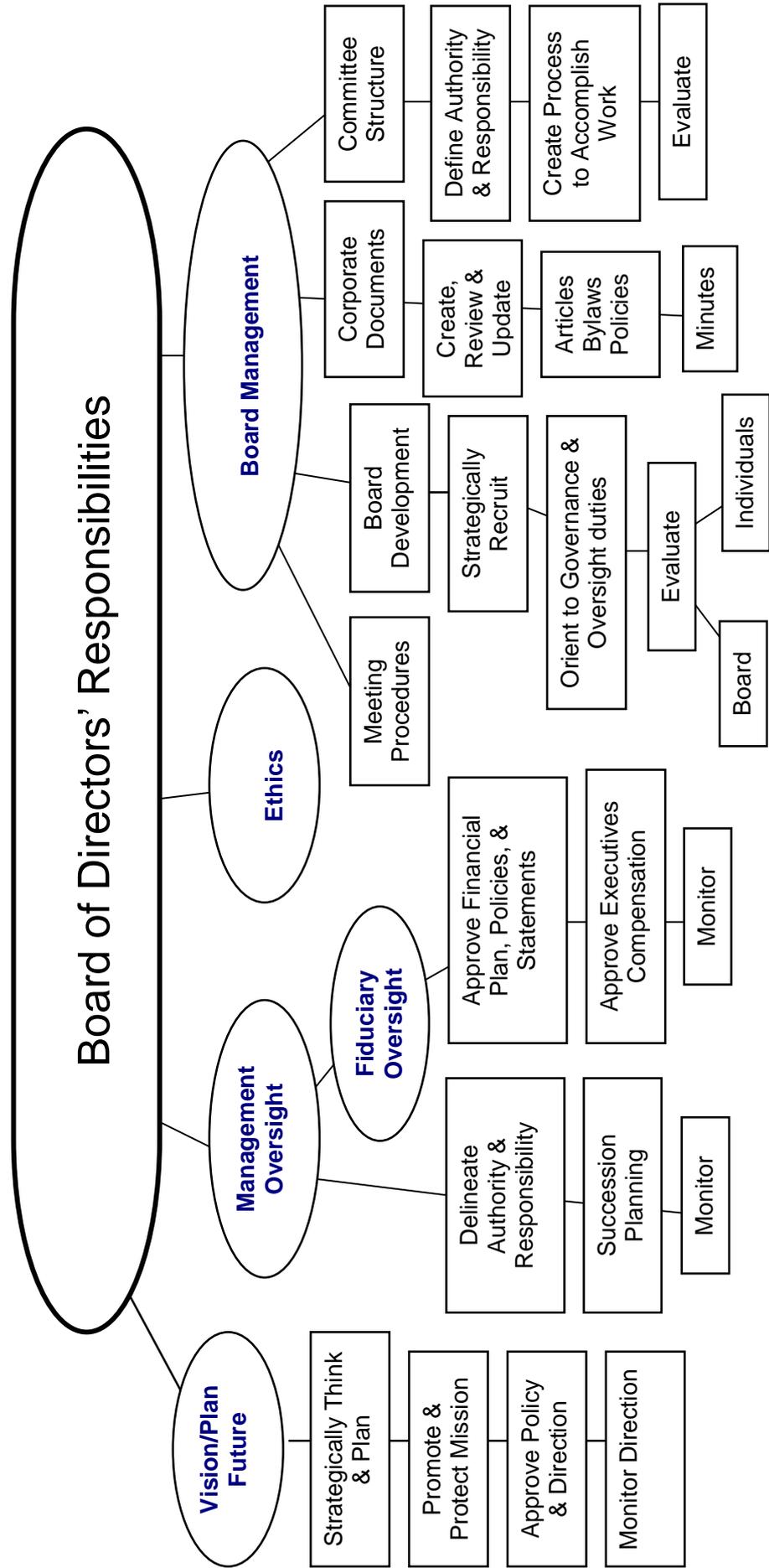
- (5) Excessive Compensation
- (6) Lack of Independence

**SUBCOMMITTEE RECOMMENDATIONS**

- (1) Strengthening Oversight
- (2) Strengthening Independence



## Board Governance





## **Board Governance ~ Collective Board Roles & Responsibilities**



1. Visioning & Planning for the Future of the Organization ~ The Board is responsible for:
  - a. Establishing, promoting and protecting the mission
  - b. Visioning for a successful future
  - c. Setting policy & direction
  - d. Strategically planning for the organization's future to ensure its perpetual existence
  - e. Evaluating the plan, direction and the overall performance of the organization
  
2. Board Management ~ The Board is responsible for:
  - a. Nominating & electing a qualified, diverse and knowledgeable Board comprised of people with the time and resources needed to fulfill their individual Board responsibilities
  - b. Orienting new Directors to the organization, to the collective and individual responsibilities, and to the organization's governing practices
  - c. Educating the Directors on the business of the industry, future trends and organization specific issues
  - d. Evaluating the collective Board and individual Directors
  - e. Creating/dissolving committees as needed to accomplish the work of the Board
  - f. Defining authority & responsibility of each committee
  - g. Providing each committee with clear directives and timeframes for its work
  - h. Holding each committee responsible and accountable for its work
  - i. Evaluating committees regularly
  - j. Creating, reviewing and updating its corporate documents, such as Articles of Incorporation/Constitution, Bylaws, Policies and Minutes
  - k. Validating the accuracy of all corporate tax paperwork submitted
  - l. Reviewing/Signing the Code of Interest annually
  
3. Management & Financial Oversight ~ The Board is responsible for:
  - a. Actions of the Executive Director (ED)
  - b. Guidance to the ED in the form of goals
  - c. Feedback to the ED regarding performance
  - d. Financial oversight of the organization
  - e. Financial reporting to appropriate entities
  - f. Financial health of the organization
  
4. Ethics ~ The Board is responsible for creating an ethical framework to conduct the affairs of the organization in a manner that is consistent with the organization's mission and values.



## **Board Governance ~ Individual Director's Roles & Responsibilities**



### **Obligations:**

1. Duty of Care ~ requires each Director to act:
  - o In good faith;
  - o With the care an ordinarily prudent person in a like position would exercise under similar circumstances;
  - o In a manner the Director reasonably believes to be in the organization's best interest.

It is the responsibility of each Director:

- o To be familiar with the organization's activities and to know whether those activities promote the organization's mission and achieve its goals;
  - o To be fully informed about the organization's financial status; and,
  - o To have full and accurate information to make informed decisions.
2. Duty of Loyalty ~ requires each Director to act:
    - o In the interest of the organization rather than in the personal interest of the Director or some other person or organization; and,
    - o Without conflicts of interest that are detrimental to the organization.
  3. Duty of Obedience ~ requires each Director to act:
    - o In accordance with the organizations rules, bylaws and policies; and,
    - o To further the corporation's goals as stated in the mission statement, Articles of Incorporation, Bylaws and policies.
  4. Duty of Inquiry ~ requires each Director to act:
    - o Independently; to inquire and question as needed to make informed decisions.

### **Additional duties:**

1. Commit to thoroughly understanding and supporting the organization.
2. Review and understand the Bylaws and Board policies. (Each Director is responsible to ensure that Bylaws and policies are followed.)
3. Review Board agenda and all materials prior to the meetings, and be prepared to comment and/or act on each item, as necessary.
4. Honor the responsibilities of the Chair and respond to requests in a timely manner.
5. Keep side bar conversations during meetings to a minimum.
6. Always disclose all possible conflicts of interest.
7. While in the Board meetings, always look out for the best interest of the organization. (Avoid personal agendas.)
8. Agree to and believe in the democratic governance process.
9. Attend all meetings ~ give timely notice when unable to attend.
10. Serve on a committee or task force.
11. Be an ambassador for the organization.



***Delineation Tool for Board and Executive Director (ED)***



When deciding whether the Board of Directors or the ED should handle an issue/action, answer the following questions:

1. Does the issue/action impact, change, or exceed the approved budget?

Yes  goes to the Board

2. Is there a question that the issue/action may NOT be consistent with the organization's mission?

Yes  goes to the Board

3. Does the issue/action create liability or risk for the organization?

Yes  goes to the Board

4. Does the issue/action fit into the current strategic plan for the organization?

No  goes to the Board

5. Is there perceived controversy around the issue/action?

Yes  goes to the Board



***Governance Trend: The New Board Member***



**Strategic Thinking...**

- ❖ is a way of life – not a one-time event
- ❖ requires openness to dialogue
- ❖ involves posing and pondering important questions
- ❖ requires acceptance from the group that discussion might not have an immediate solution but is still crucial to success
- ❖ is worthy of the Board's time

**Characteristics of a Strategic thinker:**

- ❖ Someone without too many pre-conceived ideas (open-minded)
- ❖ Imaginative
- ❖ Risk-taker
- ❖ Team builder
- ❖ Looks at strengths of organization not weaknesses
- ❖ Thinks comprehensively – not departmentally
- ❖ Looks for and thinks in terms of opportunities
- ❖ Has vision to see what the organization might be, as opposed to having a mindset that is only concerned with short-term objectives
- ❖ Feels comfortable with a compass and not a roadmap
- ❖ Creates a climate of creative thinking
- ❖ Carries a vision of what the organization (and, Board) can be – not what is already is...