

# Do I Hear a Motion? Board Meeting Basics

Presented by  
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Legal Center for Nonprofits, Inc.

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# Scope of Program

This program will not turn you into a Parliamentarian!

This program provides:

- ▶ Brief overview of role of Board of Directors in nonprofit organizations;
- ▶ Basics of effective Board meetings for smaller nonprofits.

# Road Map

1. Role of the Board in the Nonprofit Organization
  2. Board Duties
  3. Directors & Officers
  4. Meetings
  5. Notice
  6. Agendas & Meeting Materials
  7. Conducting the Meeting
  8. Motions, Resolutions, & Votes
  9. Minutes
  10. Committees
  11. Special Situations
  12. Resources
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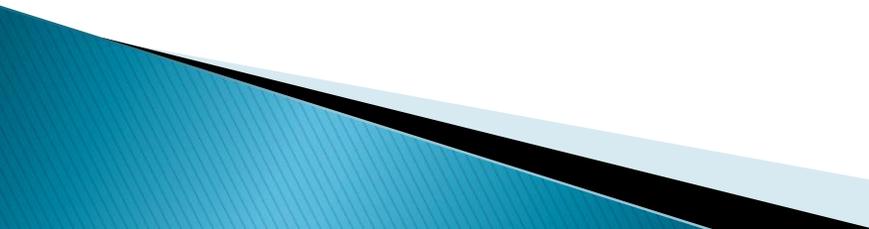
# Board of Directors

- ▶ Legally responsible to govern the corporation
  - ▶ Fiduciary relationship to corporation
  - ▶ Deliberative
  - ▶ Acts collectively
  - ▶ Sets policy & strategic direction
  - ▶ Guards the mission
  - ▶ Officers, employees and others are its agents
  - ▶ Advocates & representatives of the organization
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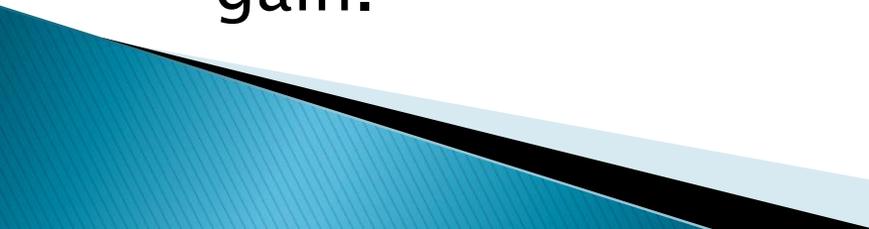
# Board's Fiduciary Duties

## The “Ordinary Prudent Person” Standard

A director must act with such care as an ordinarily prudent person would act in his/her position.

- ▶ Duty of Care
  - ▶ Duty of Loyalty
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# Exercising Fiduciary Duties

- ▶ Be diligent in preparing for Board & committee meetings.
  - ▶ Attend meetings.
  - ▶ Be fully informed and consider all pertinent factors in decision-making.
  - ▶ Exercise independent judgment.
  - ▶ Require full information on topics on which decisions must be made.
  - ▶ Ask questions.
  - ▶ Put the organization's interests before personal.
  - ▶ Disclose conflicts of interest.
  - ▶ Avoid using corporate opportunities for personal gain.
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# Officers

Statutory requirement of President, Treasurer, and Secretary.

Officers:

- ▶ Agents of the Corporation and the Board.
- ▶ Act only under authority of Board.
- ▶ Board may delegate to others if needed:
  - To committees
  - To individuals (e.g., staff)
- ▶ Useful to have “job description” for each.

# Officers

- ▶ Generally, without other authorization by the Board, only the President and Treasurer may bind the corporation; usually stated in bylaws.
  - ▶ Board may NOT delegate all of its authority to any one individual (Boston Marathon case).
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# Officers

**President** (or “Chair”) – presides at meetings.

- ▶ Not everyone is suited to be president!
- ▶ Requires a good “traffic cop”!
- ▶ Good time management, strong “people” skills, assertive, good listener.



# Officers

**Treasurer** – oversees financial condition & management of funds.

- ▶ Detail-oriented, analytical, highly organized.
  - ▶ Must be **comfortable** with numbers!
  - ▶ Need **NOT** be accountant!
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# Officers

**Secretary** (formerly, “clerk”) – responsible for minutes of meetings, keeps organizational books and documents.

- ▶ Strong listening skills, strong writing skills, able to distinguish important points.
- ▶ Should NOT be same person as president.

# Officers

**Other Officer positions** – bylaws may authorize creation by the Board, based on needs of organization; for example:

- ▶ Vice-president;
- ▶ Assistant Treasurer or assistants to other officers.

# Meetings

## 3 Types of Meetings:

- ▶ **Regular Meetings** – where most work gets done; usually monthly or bimonthly.
- ▶ **Annual Meeting** – usually elections of directors & officers, report of financial situation, accomplishments.
- ▶ **Special Meeting** – when something comes up requiring special attention, may be held on short notice.



# Meetings: Frequency

## Boards meet as often as needed to get their work done.

- ▶ Small organizations or start-ups may meet monthly.
- ▶ Larger boards, 7+ directors, or boards that work in committees, may meet less often, bimonthly or quarterly.
- ▶ Usually only the largest boards meet semi-annually or annually.

*NOTE: When small organizations meet infrequently or erratically, it suggests the directors are not attending to their Duty of Care.*

# Meeting: Length

**Meetings should be long enough to get the work done.**

- ▶ Aim for 90 minutes; 2 hours, maximum!
- ▶ Longer meetings are tiring, less productive.
- ▶ Meetings of less than one hour may be indicative of failure to engage the Board.
- ▶ Properly prepared agendas help control meeting length.



# Providing Notice of Meetings

**Some type of notice in advance of meetings is essential. Failure to provide proper notice can result in litigation.**

- ▶ Notice requirements should be stated in bylaws.
  - ▶ If regular meetings are “noticed” in the bylaws or by Board resolution (e.g., “Regular meetings shall be on the third Tuesday...”), no further notice is required, unless the date or location is changed.
  - ▶ Bylaws can specify whether purpose of meeting is required in the notice.
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# Providing Notice of Meetings

- ▶ Different notice requirements may apply to different meetings; bylaws should specify.
  - Because special meetings sometimes must be scheduled on “short notice”, they usually have different notice requirements—less time required.
- ▶ Notice may be waived, both before and after the meeting. Attendance without objection at a meeting lacking proper notice is deemed waiver of notice.
- ▶ Best Practice is to err on side of caution and notice all meetings according to bylaws requirements via the Agenda Packet.

# Agendas

**Although not required by law, agendas keep meetings on track. Use agendas strategically!**

- ▶ Plan agenda 1–2 weeks before the meeting.
- ▶ Some Boards leave to Executive; some prepare jointly, Pres & Executive; some have Exec Cmte develop.
- ▶ Screen items that properly belong to staff OUT of Board meeting.

# Agendas: Prep Tips

- ▶ Substantive list of items requiring discussion and/or action.
  - Indicate whether matter is “discussion only”, “vote required”, etc.
- ▶ Draft motions ahead of time and include in agenda, especially in complicated matters or even just to ensure it’s done!
  - Can indicate whether material to support the item is included in the meeting materials.
- ▶ Assign time limits or use arrangement to indicate importance.
- ▶ Structure agenda: EASY – HARD -- EASY
- ▶ Use consent agenda for routine items (little or no discussion expected or required).
- ▶ Committee meetings should have agendas too!

# Meeting Materials

Materials to support agenda are sent out with agenda 1–2 weeks ahead of meeting; include anything needed to prepare adequately for discussion of agenda items.

- ▶ Usually prior month's minutes need approval; always provide draft minutes for review.
  - Avoids “reading of the minutes” in the meeting.
- ▶ Include Treasurer's report or financial report.
- ▶ Include committee reports, officers' reports.
- ▶ Other pertinent reports or documents.

# Meeting Materials

- ▶ But don't overdo it!
    - “Just right” means directors have enough information to discuss and decide each agenda item.
  - ▶ Providing written reports ahead of time saves valuable meeting time for discussion and deliberation—no one should be reading docs for first time during the meeting!
  - ▶ Directors do their pre-meeting “homework” as part of their Duty of Care.
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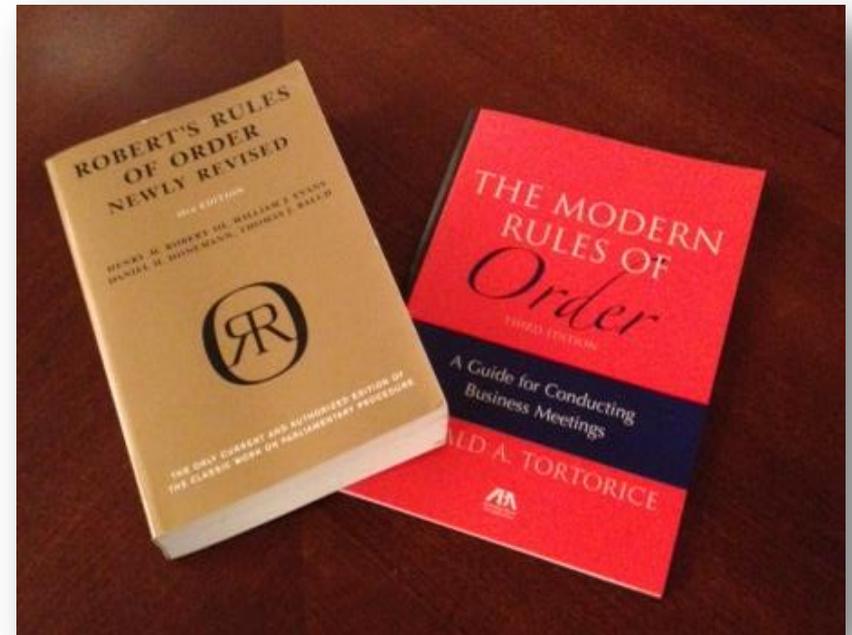
# Conducting the Meeting

## Role of Chair or President:

- ▶ Controls “traffic” of the meeting;
  - ▶ Ensures all viewpoints expressed;
    - Both majority & minority views!
    - Draws out the quiet folk.
  - ▶ Ensures adequate discussion on items;
  - ▶ Cuts off discussion if degenerating or excessive;
  - ▶ Actively listens; and
  - ▶ Sets tone of collegiality, respect, inclusiveness.
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# *Robert's Rules* Not Needed!

- ▶ Do have a protocol, rules, or guidelines for conducting meetings.
- ▶ Most smaller Boards don't need Robert's Rules!
- ▶ Board can create its own protocol or use a "condensed" version of *Robert's Rules* or other meeting procedure.
- ▶ If Board creates its own protocol, it can be formally adopted and promulgated to Board members.



# Eliminate Barriers to Discussion

Barriers to effective discussion and decision-making in meetings include:

- ▶ Agenda that is packed too full; leaves no discussion time;
- ▶ Intimidation by status of some members;
- ▶ Domination by personalities;
- ▶ Suppression of minority viewpoints;
- ▶ GroupThink;
- ▶ Authoritarian leadership.

Source: Diane J. Duca, *Nonprofit Boards: Roles, Responsibilities, and Performance*, ch. 7

# Processes for Effective Discussion

Because Board meeting is the Board's opportunity to discuss and deliberate, it's essential to foster good communications:

- ▶ Separate perception from fact. Facts are needed for decision-making, but directors bring their own perceptions to the table; how they view an issue is colored by perception.
- ▶ Goal of collaborative decision-making is to uncover as many opinions and options as possible and select the best thru deliberative process.

Source: Diane J. Duca, *Nonprofit Boards: Roles, Responsibilities, and Performance*, ch. 7

# Order of Meeting

Typical order is:

1. Welcome (or “call to order”)
  2. Approval of Minutes
  3. Treasurer’s Report (financial report)
  4. Old Business
  5. New Business
  6. Adjournment
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# Quorum

**Quorum is the number of directors who must be present to take action on any matter before the Board. No Quorum – No Action!**

- ▶ By statute, a quorum is “a majority of directors then in office” unless the bylaws provide otherwise.
  - A Board may establish a quorum at any level it desires.
  - But too small a quorum presents problems.
- ▶ Quorum must be stated in the bylaws; otherwise, statutory default applies (i.e., majority, as above).

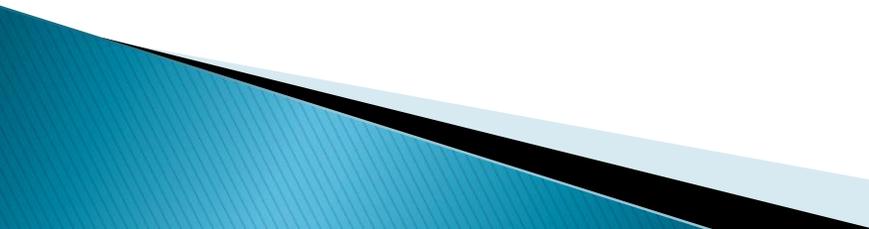
# Quorum

## **Don't tinker with the quorum!**

- ▶ If Board members are not attending meetings in sufficient numbers, tinkering with quorum won't fix the problem!
  - ▶ The Law values the collective deliberation of the Board and the full participation of all Board members.
  - ▶ Boards that frequently fail to achieve a quorum have deeper problems that must be addressed organizationally.
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# Motions

## **Boards act via “motions”.** Motions:

- ▶ May only be made by directors, including the President (unless the bylaws say otherwise).
  - ▶ Should be worded carefully to ensure the language says what is intended.
  - ▶ May be drafted in advance, for example, if discussion occurred at a prior meeting, or when a matter is complex.
  - ▶ Verbal motions arising during the meeting should be repeated by the President to ensure they are captured accurately.
- 

# Motions

## “Second”

- ▶ Motions receive a “second” from a different director;
- ▶ Means that the idea put forth has value and should be considered and debated.

# Motions

Once the motion has been stated and receives a second, it is thoroughly discussed and debated.

Sometimes a motion must be restated, revised, or otherwise “tweaked” before it is ready to be voted.

# Motions

What happens to motions? They may be:

- ▶ Voted;
- ▶ Amended;
- ▶ Substituted;
- ▶ Postponed;
- ▶ Referred to committee;
- ▶ Withdrawn; or,
- ▶ Rescinded.

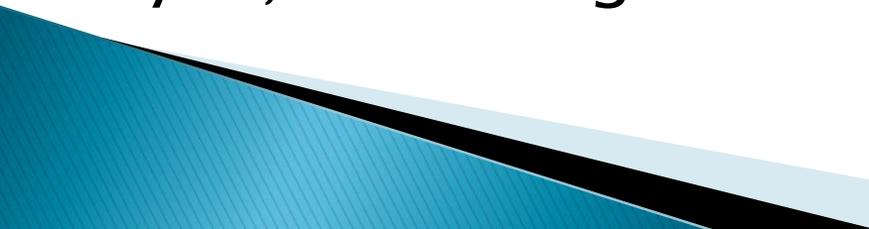
This is NOT an exhaustive list! (Especially if using RR!)

# Motions – A Sample Dialogue

**Director:** “I move that...” (Director suggests the Board take an action.)

**President:** Director –Name– has moved that (restates motion). Do I hear a second?”  
(Boardspeak for “Does anyone else support this idea?”)

**Director #2:** “I’ll second.” (“Boardspeak” for “yes, that’s a good idea!”)



# Motions – A Sample Dialogue

**President:** “Any discussion?”

At this point, the motion is fully discussed and debated. President may recognize directors to speak, call on others, etc., to keep discussion moving forward and on topic, and maintaining collegial tone.

When President thinks Board is ready for a decision, he/she “calls the question”...

# Motions – A Sample Dialogue

**President:** “We have a motion to (repeats the motion)...All in favor, say ‘aye’.” (The “ayes” are counted & recorded.)

**President:** “Any opposed?”  
(The “nos” are counted & recorded.)

**President:** “The motion *carries/does not* carry.”

# Motions

The Secretary carefully records the precise language of the motion, and any variations that come up for discussion, although only the final version of the motion will be recorded in the minutes.

The number of votes for and against is recorded and whether the motion passed or failed.



# Motions

- ▶ When motions arise out of the discussion:
  - Take care to correctly state the motion.
  - Ask the Secretary to read it back so all know precisely what is being moved.
- ▶ Prepare motions on complex issues ahead of time and include with agenda.
- ▶ When reviewing minutes for approval, ensure all motions are stated correctly.
- ▶ Motions pass according to bylaw or legal requirements.
  - Most actions require simple majority vote.
  - Some actions require *supermajority*, i.e., more than a simple majority (often 2/3), as specified in bylaws or statute.

# Resolutions

Some matters that come before a Board are particularly significant; for example, decisions to:

- ▶ Buy property;
- ▶ Open a bank account;
- ▶ Enter a contract;
- ▶ Hire a Chief Executive;
- ▶ Dissolve the corporation.

In these cases, a formal written motion—a resolution—may be required.

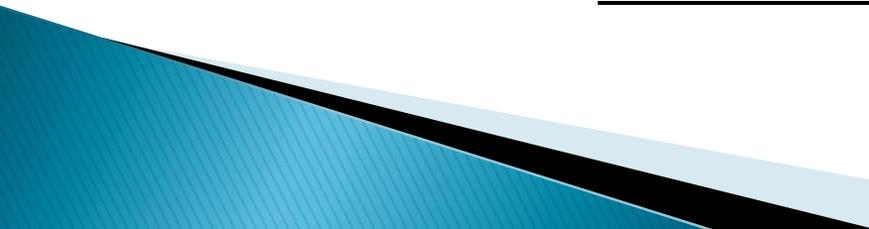
- ▶ Draft ahead & provide with agenda.

# Resolutions

For example, resolution appears in minutes as:

RESOLVED, that the firm of Smith & Co., is hereby appointed auditors of No-Name Nonprofit, Inc., and that the remuneration for their services for the year 2013, be fixed at \$3,000.

If necessary, this can be extracted from the minutes and certified by the Secretary.



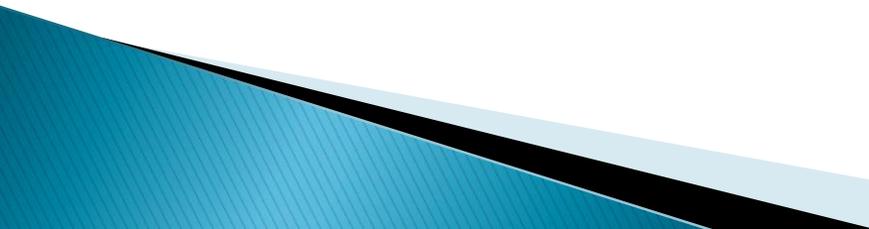
# Votes

Through a vote, the Board acts collectively to decide a matter.

- ▶ President states whether a motion passed.
- ▶ Secretary records the “ayes” and “nays”.
- ▶ Secretary also records who abstained.
  - Abstentions function as “no” votes. Example: Board of 5 votes on issue requiring majority. If all vote, 3 vote yes, 2 no, the motion passes. If 2 vote yes, 1 abstains, and 2 vote no, the motion fails because it failed to receive a majority (i.e., 3 yes votes).
- ▶ Usually voice vote or show of hands, but larger Boards may sometimes use ballots or roll calls.

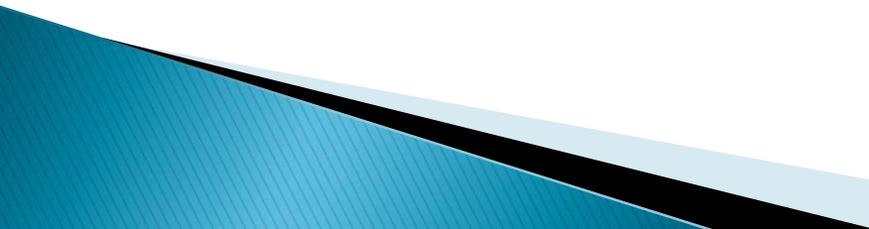
# Minutes of the Meeting

Minutes are a legal document, the official record of the meeting.

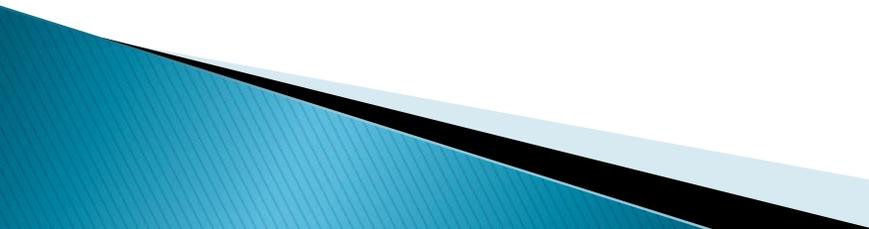
- ▶ Minute-writing is an art!
  - ▶ Not a verbatim transcript of the meeting.
  - ▶ Capture the main points of discussion; no need for detailed who-said-what.
  - ▶ In cases of potential legal issue, review by President or Executive Committee and legal counsel prior to distribution to Board.
- 

# Minutes of the Meeting

Minutes generally include the following:

- ▶ Name of organization;
  - ▶ Location, date, time and type of meeting;
  - ▶ Directors and officers in attendance;
  - ▶ Approval of prior minutes;
  - ▶ Acknowledgment of financial report (no need for Board to approve unless an audit report);
  - ▶ Matters discussed in order discussed (helpful to use agenda as outline);
  - ▶ All final motions, and whether passed or failed; who moved (no need to record seconds); key points of discussion; and,
  - ▶ Time of adjournment.
- 

# A Word about Committees

- ▶ Useful for Boards > 5 members; not needed for smaller Boards. Larger Boards may get most work done in committees.
  - ▶ Bylaws should authorize creation, who may serve (directors, non-directors), who chairs, etc.
  - ▶ Limited powers, generally recommends course of action to the Board, though may be authorized by Board to act in certain instances.
  - ▶ Committees should have “charge” defining authority & describing tasks, expected outcomes and timeframes.
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# Committees

Committee meetings may be conducted in similar fashion to full Board meetings:

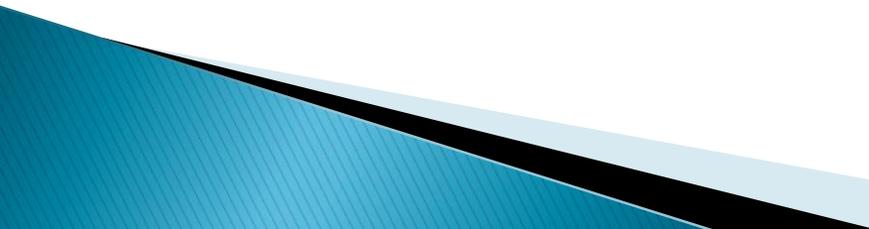
- ▶ Use agenda;
- ▶ Provide meeting materials;
- ▶ Draft & approve minutes;
- ▶ Provide written reports/minutes to full Board in agenda packet.

# Executive Committee

Executive Committee – to have or not to have, that is the question!

- ▶ Not required, but useful for Boards with 7+ members;
- ▶ Bylaws authorize to act in the Board's place between meetings if necessary;
- ▶ Often assists with development of agendas;
- ▶ Like other committees, powers are limited (e.g., may not amend bylaws, remove people, etc.);
- ▶ **Best practice:** full Board ratifies all acts of Exec. Cmte.
- ▶ **Best practice:** Exec. Cmte. never acts to overturn act of full Board.

# A Few Special Situations

- ▶ Most bylaws allow directors who must be absent to participate by telephone or electronic means.
  - ▶ Massachusetts law specifies that all directors must be able to hear each other at the same time, eliminating the use of “chat” rooms and “email meetings”.
  - ▶ Bylaws usually authorize “Action by Consent” which may be used outside of meetings, but only when ALL directors approve the act; this is the only time when email is appropriate, and directors’ names should be clear in the email address. Consents are filed with the minutes.
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# A Few More Tips

- ▶ All Directors should have a Board manual containing basic documents, prior minutes, etc.
  - ▶ Establish expectations through job descriptions for the various roles—Director, Officer, etc.
  - ▶ Train Directors regularly & often; a Director or Cmte should be tasked to make sure this happens!
  - ▶ Recruit & select Directors wisely!
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# Resources

Many excellent books on Boards are available!

- ▶ ABA Nonprofit Organizations Committee. *Guidebook for Directors of Nonprofit Corporations*, ABA, 3<sup>rd</sup> Ed., 2012. Excellent, readable resource aimed at nonprofit Board members.
- ▶ Hopkins, Bruce R. *Starting and Managing a Nonprofit Organization: A Legal Guide*, Wiley & Sons, 6<sup>th</sup> Ed., 2013. *Good, readable overview.*
- ▶ Mancuso, Anthony. *Nonprofit Meetings, Minutes & Records*, Nolo, 2008. Offers CD of templates, but aimed at larger organizations.
- ▶ Tortorice, Donald A. *The Modern Rules of Order: A Guide for Conducting Business Meetings*, ABA, 3<sup>rd</sup> Ed., 2007. A brief approach to meeting procedure.

# Thank You for Attending!

Last Program of 2013!

**Unrelated Business Income**

**When must tax-exempt organizations pay taxes?**

Find out Thursday, December 12, 6:00 pm

Watch for Our Spring Program Schedule!

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