

BACK TO THE BASICS IN COMMUNITY ACTION GOVERNANCE



LEGAL ROLES AND FIDUCIARY RESPONSIBILITIES



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GOVERNANCE SESSION #1

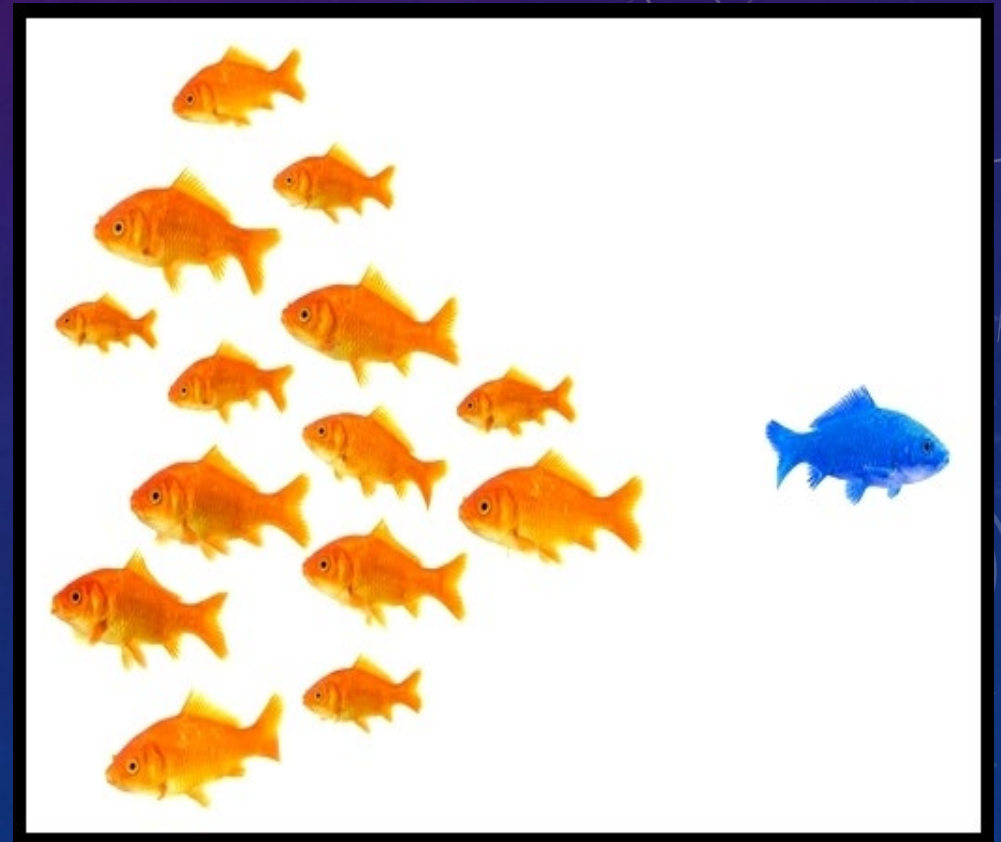
Back to the Basics in Community Action Governance: Legal Roles and Fiduciary Responsibilities

- The training goes back to the basics of governance in community action agencies. The session provides a detailed analysis of the tripartite board structure, while also examining board legal roles. Attendees will also discuss Chief Executive Officer/Executive Director roles and responsibilities in relation to Board roles. The training will conclude with helpful tips on how to approach board service and fiduciary responsibilities.



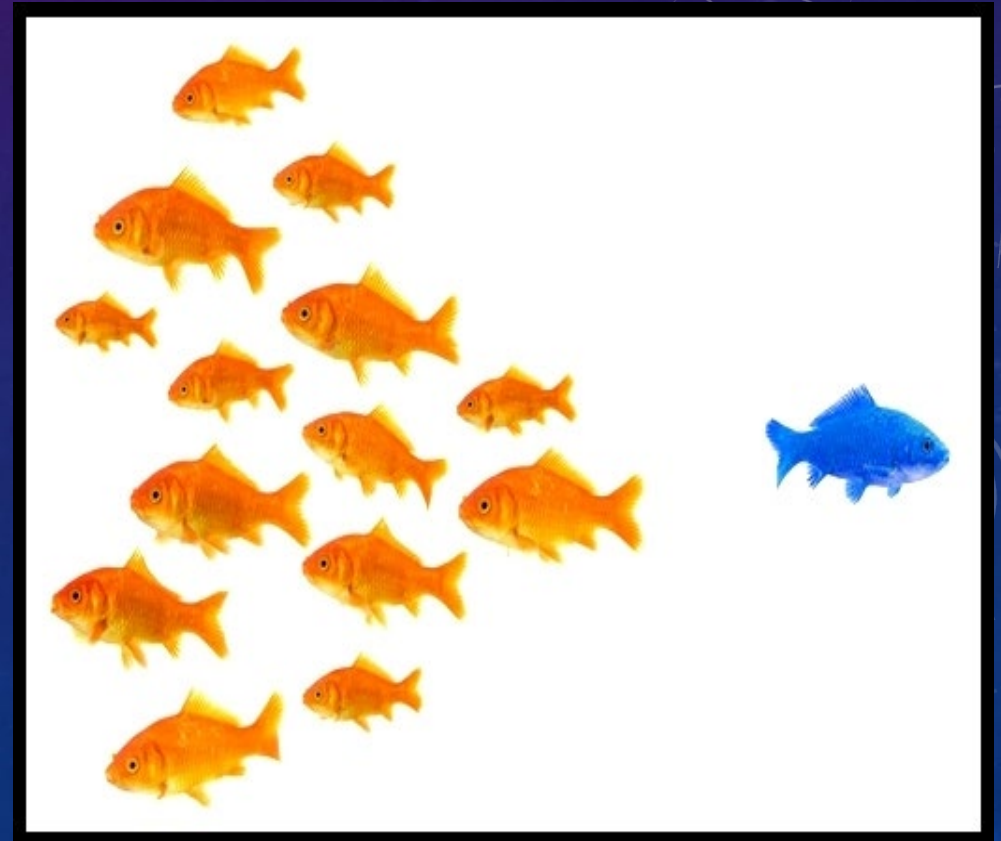
COMMUNITY ACTION IS THE BLUE FISH

- Community Action Agencies are mandated to be governed by a tripartite governance structure that includes representation of elected officials, businesses, and lower-income individuals.



COMMUNITY ACTION IS THE BLUE FISH

- 1/3 Lower-income individuals, customers of the community action agency or individuals from the community who represent the issues and concerns of lower-income individuals
- 1/3 elected officials or their representatives
- The remaining membership from major groups and interests in the community served



LEGAL DUTIES OF BOARDS



*Legal Duties
of Board Members*

A PRACTICAL APPROACH TO ENHANCE EFFECTIVENESS

LEGAL DUTIES OF BOARDS THREE D'S

**Duty of
Care**

**Duty of
Loyalty**

**Duty of
Obedience**

DUTY OF CARE

- ❑ Applies to the way the board makes decisions that affect the present and future of a community action agency.
- ❑ Must behave like a reasonably prudent person with common sense when examining the activities and operation of the agency. A prudent person exercises restraint that is guided by sound, careful judgement and **PRACTICAL** wisdom. (Shrewd in management of **PRACTICAL** affairs; reasonable; wise and well-thought through decisions or actions; fair; sensible.
- ❑ Must act in good faith by exploring all of the options for a particular business decision and choosing the option that the board member believes is best for the agency.



DUTY OF CARE AND THE COMMUNITY ACTION TRIPARTITE BOARD

3 P's	3 C's
Proper Planning	Compelling Capacity
Persistent Preparation	Consistent Compliance
Productive Participation	Candid but Courteous Conversation

3 P'S DEFINITIONS – PROPER PLANNING

Effectively utilize board standing and ad hoc committees to conduct agency business.

Ensure a robust board meeting agenda that handles the agency's programmatic, financial, and other important business matters.

Have professional and effective board meetings with board minutes that document strong governance and oversight.

Complete effective annual planning and agency-wide strategic planning.



3 P'S DEFINITIONS – PERSISTENT PREPARATION

Complete a thorough review of board and committee meeting informational packets prior to the meeting.

Pay particular attention to programmatic reports, financial reports, and any action items.

Be familiar with core agency information such as agency bylaws, articles of incorporation, sources of funding, agency goals and programs, pertinent federal laws and CSBG statutes.

Ensure there is effective decision-making based on a detailed review of information.



3 P'S DEFINITIONS – PRODUCTIVE PARTICIPATION

Ensure there is open communication that includes board members not being afraid to ask questions and request additional clarification if needed.

Engage in effective communication that is clear and concise, honest, kind, two-way, and intentional.

Provide valuable suggestions and recommendations as well as participate in important discussions.

Successfully manage conflict in order to maintain good working relationships among board members.



3 C'S DEFINITIONS – CONSISTENT COMPLIANCE

Have regular attendance at board meetings and any committee meetings. Be intentional in having a quorum at board and committee meetings.

Consistently review and approve required policies.
Examples: HR Policies, Finance Policies, Bylaws, etc.

Be committed to ensuring that your community action agency is in compliance with laws, rules, regulations, and any performance management standards.

Always comply with agency bylaws and governance documents.



3 C'S DEFINITIONS - CANDID BUT COURTEOUS CONVERSATION

Be honest in any evaluations and assessments, while offering recommendations, suggestions, and any discussion in a kind and respectful manner.

Be intentional in being straight-forward in a way that will not harm the effectiveness of the board, overall board dynamics or interpersonal relationships.

Effectively solve problems and manage conversations.

Always exhibit a high level of professionalism.



3 C'S DEFINITIONS – COMPELLING CAPACITY

Implement a robust new board member orientation process and curriculum.

Provide periodic and intentional training for board members.

Provide training to board members to ensure their understanding of procedures for making motions, discussion of motions, and voting with a goal of enhancing knowledge of how to follow Roberts Rules of Order. This will prompt the professionalism of meetings.

Fully understand board legal duties (Duty of Care, Duty of Loyalty, and Duty of Obedience) and Fiduciary Responsibilities.



capacity

RECAP OF DUTY OF CARE AND THE COMMUNITY ACTION TRIPARTITE BOARD

3 P's	3 C's
Proper Planning	Compelling Capacity
Persistent Preparation	Consistent Compliance
Productive Participation	Candid but Courteous Conversation

DUTY OF CARE AND A COMMUNITY ACTION TRIPARTITE BOARD

- Implementing the Duty of Care should not entail the board being involved in the day-to-day operations of the Community Action Agency.



DUTY OF CARE AND THE COMMUNITY ACTION TRIPARTITE BOARD

Board Roles	Executive Director/Chief Executive Officer Roles
Establishes and Approves Policy/Oversees Compliance to Policy	Recommends Policy/Executes Policy Approved by the Board/Ensures Compliance to the Policy
Sets Agency Mission	Accomplishes Agency Mission
Approves Performance Targets	Sets Performance Targets/Guides Work to Achieve Performance Targets
Approves Strategic Plan	Oversees the Implementation of the Strategic Plan
Approves Budget	Recommends Budget/Oversees the Approved Budget
Evaluates Agency Performance via Effective Governance and Oversight	Evaluates Agency Performance via Reporting and Strategic Data Analysis

DUTY OF LOYALTY

Duty of Loyalty in Community Action

Giving or showing firm and constant support or allegiance to a community action agency by consistently having the agency's best interests at heart in all business matters and dealings.



- Board members do not allow any outside interests, personal affiliations, and allegiances to interfere with their responsibility to the community action agency. This includes other agencies where there is a formal relationship.
- The Duty of Loyalty requires board members to be committed to the interest of the community action agency over their own personal interests and concerns. Consistently perform board duties and responsibilities in good faith.
- Board members should not seek any indirect and direct personal gain from the Agency's business transactions.

BOARD SOURCE'S SAYS THAT DUTY OF LOYALTY IS CARRIED OUT AS FOLLOWS

Adhering to the Community Action Agency's Conflict of Interest Policy.

Disclosing any Conflicts of Interest.

Avoiding the use corporate opportunities for personal gain or benefit.

Maintaining the confidentiality of information about the Community Action Agency.

TIPS TO IMPLEMENTING DUTY OF LOYALTY

- Have a clear, written policy concerning conflicts of loyalty or interest for board members.
- Review current conflict of interest policy if you have some concerns. Conflict of Interest policy should be signed by board members at least every 2 years.
- Avoid Conflicts of Interests and the **appearance** of impropriety.



DUTY OF LOYALTY SMELL TEST

- “Agencies and boards should operate on the side of caution in all matters that might create or appear to be a conflict of interest. They should use the proverbial "smell test" in all potentially questionable conflict of interest situations and call upon independent, outside counsel, both legal and ethical, to screen plans before action. “
- Information Memorandum 82, Office of Community Services



DUTY OF OBEDIENCE

- Must ensure the agency functions within the “law of the land” and its own bylaws, Articles of Incorporation, and other policies.
- Act in alignment with the Agency’s mission and make decisions that fall within the scope of the mission and governing documents.
- Ensure compliance with regulatory and reporting requirements.
- Disclose a conflict of interest regarding a business decision or any matter that involves the agency.



DUTY OF OBEDIENCE

- Disclose financial, business, or personal interest in an entity with which the Agency is or will be doing business.
- Disclose if family member has financial, business, or personal interest in an entity with which the Agency is or will be doing business
- Disclose if a business relationship or business competition exists with a director or employee of another organization.



RECAP OF LEGAL DUTIES OF BOARDS

- ❑ **Duty of Care** – Apply to the way the board makes decisions that affect the future of the community action agency. Must behave like a reasonably prudent person (common sense) and act in good faith by exploring all of the options for a particular business decision and choosing the option that board members believe best serves the interest of the agency.
- ❑ **Duty of Loyalty** -Give or show firm and constant support or allegiance to a community action agency by consistently having the agency's best interests at heart in all business matters and dealings. Do not allow any outside interests or personal affiliations or allegiances to interfere with their responsibility to the agency.
- ❑ **Duty of Obedience** - Act in alignment with the organization's mission; Must ensure the organization functions within the “law of the land” and its own bylaws, Articles of Incorporation, and other policies. Disclose a conflict of interest regarding a business decision or any matter that involves the agency.



ROLES AND RESPONSIBILITIES OF THE TRIPARTITE BOARD AS OUTLINED IN INFORMATION MEMORANDUM 82



A PRACTICAL APPROACH TO ENHANCE EFFECTIVENESS

THE TRIPARTITE COMMUNITY ACTION BOARD PER IM 82

Information Memorandum 82

Dated March 23, 2005

Discussed the composition, role, and responsibilities of community action agency tripartite boards and advisory councils

Provided guidance on how to promote the **effectiveness** of community action agencies through **well-functioning tripartite boards and advisory councils**

Detailed **operational blueprint** that highlighted how community action agencies should operate, meet legal requirements, and provide services/resources to combat poverty

SIDE-BY-SIDE COMPARISON OF OFFICE OF COMMUNITY SERVICES AND BOARD SOURCE ROLES FOR BOARDS

Information Memorandum 82 (Federal Guidance for Tripartite Boards)

Development – Comprehensive Community Needs Assessment and Clarify Agency Mission

Planning – Long Range Strategic Planning and Annual Planning

Implementation – Legal and Fiduciary Responsibilities

Evaluation – Outcomes-Focused Evaluation That is Used for Agency Planning; Results-Oriented Management and Accountability (ROMA)

Board Source (Guidance for Nonprofit Boards)

Direction – The board guards the mission of the organization and, through guidelines, steers it in the right direction.

Governance – The framework that structures the board and how it operates.

Oversight – The board monitors the activities, the health, and the ethical behavior in the organization.

Resources – The board ensures that the organization is well-equipped to fulfill its mission, i.e., has sufficient finances, capable staff, and esteemed reputation.

HELPFUL TIPS ON HOW TO APPROACH BOARD SERVICE



AS A REMINDER

FIDUCIARY RESPONSIBILITIES OF THE TRIPARTITE BOARD

Have regular attendance at board meetings and any committee meetings.

Complete a thorough review of board and committee meeting informational packets prior to the meeting. Pay particular attention to programmatic and financial reports.

Spend more time on reviewing information related to action items to ensure sufficient knowledge to make an effective decision.

Do not be afraid to ask questions and be committed to obtaining additional clarification as needed.

Consistently review and approve needed and required policies.

Be committed to ensuring that the community action agency is in compliance with laws, rules, regulations, and performance management standards.

GOVERNANCE SESSION #2

Helpful Tips for Intentional Governance and Oversight in Community Action: Enhancing Capacity, Effectiveness, and Performance

- The training discusses strategies for intentional governance and oversight that will enhance the capacity and effectiveness of Community Action tripartite boards. Attendees will learn simple steps to strengthen board performance to achieve a higher level of success.



SERVICES PROVIDED BY BERNEITHA MCNAIR CONSULTING



Strategic
Planning
Facilitation



Board
Governance and
Policy Council
Retreats



Innovative
Leadership &
Management
Training



Staff
Development
and In-Service
Training



Coaching/
Mentoring
Project
Management

QUESTION AND ANSWER SESSION



Thank You!

