

Governance Evaluations: Legal Issues Checklist

ACTION ITEMS

DONE?

1	Basic Goals: (i) Preservation of the board as a body capable of exercising independent oversight of management and operations and informed business judgment/decision-making and (ii) address regulatory, judicial and constituent expectations of governance.	✓
2	Mission Duties: Position the system governing board to act in a manner consistent with, and in continuous support of, the charitable mission of the organization.	✓
3	Independence (Corporate Law): satisfaction of state corporate law (if any) and/or governance best practices standards of director independence so that the board is controlled by a majority of members who meet the appropriate definition of "independence".	✓
4	Exempt Organization Tax Law: a. Satisfaction of relevant IRS standards of director independence (which may be different than the corporate law standards) b. Satisfaction of appropriate nonprivate foundation status test as it applies to board structure c. Satisfaction of "disinterested director" definition for satisfaction of rebuttable presumption of reasonableness safe harbor under intermediate standards requirements (e.g., executive compensation decisions) d. Application of conflict of interest policy and procedures consistent with IRS template e. Board size appropriate for needs of organization f. Attribution of activities of taxable affiliate arising from board overlap	✓
5	State Corporate Law: a. Requirements, if any, regarding board size, composition/ independence, terms and qualifications b. Delegation of board authority to standing committees c. Ability to include non-board members as voting members of committees with board delegated powers d. Ascending liability issues (e.g., direct participant, alter ego) arising from overlapping director service e. Restrictions, if any, on ability to "bifurcate" responsibilities of board members (i.e., designate certain board members as specifically responsible for governance matters and allow others to contribute by other means, e.g., philanthropy) f. Other relevant issues re: officer and director conduct and participation, meeting requirements, etc. as may arise under state law g. Fiduciary duty standards of care and loyalty as interpreted by state courts h. State corporate law provisions addressing director compensation	✓
6	Corporate Responsibility Principles: a. Exercise of constructive skepticism b. Board as strategic partner to management c. Effective compliance and risk oversight mechanisms d. Timely and fulsome reporting channels from management e. Decision making process intended to satisfy Business Judgment Rule	✓
7	Governance Best Practices: Application of leading corporate governance best practices; on issues such as: a. Board size b. Qualifications/competencies of members; diversity of thought, perspective, gender and ethnicity c. Number and types of committees (e.g., size, structure, charter, composition as may be appropriate given the size and sophistication of the organization); committee composition d. Board "refreshment" practices e. Board and committee meeting frequency f. Role of executive officers serving as staff to the board and key committees g. Executive session practice of board and committees h. Lines of governance authority between board, committees and management	✓