

SECTION I: MAKING BOARD MEETINGS MATTER

Part I: Board Role and Responsibilities	7
Part II: Board Meeting Basics	9
Part III: Board Meeting Structure	14
Part IV: Board Meeting Minutes	19



Meetings of the board of directors and its committees are at the heart of governing any nonprofit organization. They are the means to carry out the philosophy of collective decisionmaking that underlies the board of director form of governance. For Community Action Agencies, the meeting is even more important because of the tripartite board structure that requires wide community participation. In order to have truly effective governance, though, board members need to understand their roles and responsibilities and ensure that the appropriate structures and procedures are adopted and implemented to carry them out. This section addresses those issues in four parts: Board role and responsibilities; board meeting basics, board meeting structure, and meeting minutes.

CSBG ORGANIZATIONAL STANDARDS: This Section of the Toolkit contains information that will aid CAAs in complying with a number of different CSBG Organizational Standards. To assist with the numerous Standards that require reporting certain information to the board--such as customer satisfaction data (Standard 1.3), community assessment report (Standards 3.1 and 3.5), organization-wide risk assessment (Standard 4.6), programmatic reports (Standard 5.9), updates on the strategic plan (Standard 6.5), and an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary (Standard 9.3)--this Section addresses the structure of board meetings and provides guidance as to board meeting mechanics such as the process around voting to accept reports. Standards Category 5, Board Governance, contains a number of requirements that entail board decision-making, and the guidance in this Section on board meeting structure, board decision-making, board meeting logistics such as quorum and meeting frequency, and keeping board meeting minutes will be helpful in complying with those Standards. Finally, Part II of this Section discusses the role of board committees in hiring, appraising, and setting the compensation of the CEO/executive director, which will assist in compliance with Standards 7.4 and 7.5 regarding performance appraisals and compensation levels for the Executive Director. See [Compliance with the CSBG Organization Standards](#) for a comprehensive guide to finding Organizational Standards resources in this Toolkit.

Part I: Board Role and Responsibilities

The role and core responsibilities of nonprofit boards and board members are similar for all types of organizations regardless of mission, budget size, funding source, or the organization's unique history and culture. Like all nonprofit boards, a nonprofit Community Action Agency's tripartite board of directors is charged with oversight of the CAA mission and overall management of the CAA's assets. At a minimum, the CAA board's oversight role vests the board with five core responsibilities:

1. Defining mission and programs and monitoring activities to ensure that they are furthering that mission
2. Setting organization-wide policy
3. Monitoring finances to ensure the CAA has adequate resources and is managing them appropriately and in compliance with legal and funder requirements
4. Managing risk and safeguarding assets
5. Selecting, determining compensation, and evaluating performance of the chief executive

In addition to these core responsibilities, of course, nonprofit CAA boards have other unique responsibilities, based on the federal Community Services Block Grant (CSBG) Act, state nonprofit and CSBG laws and regulations, and the CAA's own articles of incorporation, bylaws and resolutions. The CSBG Act requires all CAA boards to administer the CSBG program and to "fully participate in the development, planning, implementation, and evaluation of the [CSBG] program."¹ The board will also likely incorporate in some way the purposes of the CSBG Act, as well as the historical mission of the CSBG program (i.e. reducing poverty, revitalizing low-income communities, and empowering low-income families and individuals)² in defining the mission of the CAA and its own role in ensuring that the CAA's activities focus on furthering that mission.³ Finally, each board will determine for itself other responsibilities that it will take on, such as fundraising, and advocacy for the poor.

The role, responsibilities, and authority of some public CAA tripartite boards may, however, be narrower than that of nonprofit CAAs. Although, like all CAAs, public CAAs are required by the federal Community Services Block Grant Act to administer the CSBG program and to participate in the development, planning, implementation, and evaluation of the CSBG program, their specific duties and powers are determined by the governing body of the public entity, such as the county board of commissioners. For example, many public CAA tripartite boards may not be as involved as nonprofit CAAs in setting agency-wide policy or in managing risks and safeguarding assets. For a fuller explanation of the role of boards in public CAAs, please refer to [CAPLAW's online training module for public CAAs](#) and our [Public CAA Case Study: The Power of a Tripartite Board](#).

Fiduciary Duties

Under state law, every member of a nonprofit CAA tripartite board owes a duty of care and a duty of loyalty to that CAA.⁴ Although the obligation to fulfill these legal or fiduciary duties extends beyond the board meeting, the board meeting is where the rubber meets the road.

- The duty of care requires that board decisions be based on a deliberative process, with an emphasis on fact gathering and the subsequent assessment of those facts. Was a decision based on facts that were developed through an orderly process, or did the board just do what felt right at time of the decision? The board has discharged its duty of care in making a decision despite the fact that the decision turns out to be a bad one if the decision was the result of a deliberative process and that process involved a weighing of facts and alternatives. Boards that rely heavily on committees to examine facts and weigh options are more likely to satisfy their duty of care when the committee synthesizes information to help the full board make an informed decision.
- The duty of loyalty requires each board member to act in the best interests of the CAA and its mission. The duty of loyalty becomes an issue whenever the board or one of its members faces a conflict of interest which is not disclosed or remains unquestioned in a board meeting.

Common Mistakes Boards Make

In discharging these oversight responsibilities, board members, either alone or acting as a group, often go awry. They make common mistakes, such as:

- **Micro-management.** Thorough oversight should never be confused with board involvement in day-to-day management decisions. As a general rule, boards do not directly interact with frontline staff or operations. That is senior management’s role. The board member who decides to attend weatherization staff performance evaluations or the board member who offers classroom management suggestions to a Head Start teacher has crossed the line into micro-management. Boards should actively engage with senior management. For example, the board finance committee should meet with the CFO to provide input into the preparation of the annual budget. The focus of this meeting should be on refining assumptions and discussing the resource allocation among programs. Members of the finance committee would be entering the realm of micro-management if they began to build their own budget spreadsheets.
- **Too Much Deference to the Executive Director.** Some boards view their role as cheerleaders, with the board deferring to the executive director in all matters. While this often happens when the executive director has significant input into the selection of board members, some boards simply don’t understand their oversight role. The board should be supportive of the executive director, sharing board’s insights and expertise, but there also needs to be some institutional tension between the board and the executive director. The board’s primary function is to evaluate senior management’s performance and progress in accomplishing the mission. A board that becomes too deferential to the executive director inevitably will be deficient when it comes to discharging the specific functions assigned the board, namely assessing the adequacy and utilization of the CAA’s financial and other resources, setting broad policy, and ensuring an adequate system of internal controls is in place. It is therefore incumbent upon the board and the executive director who is faced with this situation to act intentionally to devise and implement strategies and processes to empower the board. This may be done, for example, through changes in bylaws, board size, committee structures, or review and approval procedures for policies and financial matters. What may be most important, however, is setting the right tone and meeting structure to encourage questions and comments from board members.
- **Too Ceremonial.** Some boards don’t even recognize that there should be some relationship between the executive director and the board or that the board is supposed to be working with the executive director. They view themselves as having a purely ceremonial function. The board is there to attend events, occasionally tour a facility, and listen to stories when CAA clients appear before the board. This board is unlikely to engage in a deliberative process in reaching decisions. It more likely acts as a rubber stamp, approving whatever is put before it without much discussion.
- **Too Much Grand Policy.** As stated above, the CSBG Act requires a CAA’s board to participate in the development, planning, implementation, and evaluation of the CSBG program to serve the low-income community. This focus on program and mission is an important one, but the board’s efforts should not become a focus on the “big picture” to the exclusion of all else. Boards have some specific tasks, including evaluating the executive director’s performance and setting his compensation; reviewing the financial statements and budgets; working with the external auditor; developing governance policies; addressing conflicts of interest; approving major projects, expenditures, and new programs; and ensuring adequate resources. Boards shortchange their oversight responsibilities if they devote all their efforts to thinking about mission and policy. There is other work to be done.

The CAA board's task is to find the middle ground—not too much involvement in day-to-day management, but a willingness to ask questions about specific issues and concerns, to gather facts and data to support decisions, and to interact with senior management as needed. Along the way, the board must keep its focus on the overall mission and what policies and programs will support it. The primary—although not exclusive—venue for effective board oversight is the board meeting.

CASE SCENARIO:

WHEN DEFERENCE LEADS TO DERELICTION OF DUTIES

When BCA's longstanding executive director, Leslie Warren, retired, the board hired Gloria Watson to replace Warren. During the interview process, Watson made clear to the board that she wanted more autonomy than the board had allowed Warren. Because Watson came so highly recommended, the board agreed to Watson's terms. Since that fateful decision, Watson has taken control of board meetings. The board now listens to short presentations and then rubber stamps Watson's proposals. Little time is devoted to reviewing the financial statements anymore. Despite the change in the board's relationship to the executive director, Albert Matson, a banker, still makes a point to talk to the independent auditors in his role as head of the audit committee. Following completion of the audit, the auditor alerts him to

a secret slush fund that Watson has been using for late night dinners at expensive restaurants, to purchase professional sports tickets for her family, and to pay her speeding tickets. Overall, Watson has spent \$75,000 on inappropriate expenditures.

Matson calls an emergency board meeting. After hearing the evidence, the board decides to fire Watson. Some board members want to contact the authorities, but the board decides a quiet exit is in the BCA's best interests.

LESSON: Overly deferential boards often give executive directors enough rope to hang themselves, but it often comes at a cost to the organization.

Part II: Board Meeting Basics

The board meeting is the organizing force that facilitates the board's discharge of its fiduciary or legal duties. Like all events on the calendar, a meeting serves to concentrate everyone's attention and efforts. While board members are expected to do some work outside of the regular board meeting—often within the context of standing and ad hoc committees—the regularly scheduled meeting of the full board is where most important discussions and decisions should occur.

The board meeting belongs to the board, not management. Certainly, the executive director, CAA staff, or others may help facilitate meeting logistics, offer administrative assistance, and provide accurate and timely information to help guide board discussion, but CAA executives should not attempt to drive or control board meetings and boards should never cede control.

CASE SCENARIO:

NOT EVERY DECISION HAS TO BE PERFECT, JUST TAKEN WITH CARE

BCA's board is considering whether to begin an afterschool college prep program for students in the community. Its board chair asks board members, Larry Hartford, Marsha Harris, and Devon McDuff to review the staff's preliminary research and make a recommendation to the full board on the potential impact and financial viability of the program. The three committee members examine proposed budgets, a needs assessment, staffing and training requirements, and survey data from other CAAs with similar programs. As part of its review, the committee also questions BCA staff. The committee prepares a 10-page report for the full board,

together with a recommendation that BCA start an afterschool college prep program. At its next meeting, following a 90-minute discussion, the board unanimously votes to fund the program. Unfortunately, after a year, the program turns out to be much more expensive than the initial projections showed and youth participation lower than expected. The board has no choice; it must end the program.

LESSON: Even though the board's decision turned out to be a bad one in hindsight, the board satisfied its duty of care. It based its decision on an informed and thoughtful process.

Meeting topics

Board meetings should give precedence to topics and discussions that relate to the board's five core responsibilities. While the board may not discuss each of these matters at every meeting, these topics should often appear on the agenda.

Topic 1: Mission and Programs

The nonprofit board generally acts in a representative capacity for members of the community. For CAA boards, its representative capacity is even more explicit as each board member is required by the federal CSBG Act to be selected as a representative of one of three sectors of the community: public officials; low-income individuals; and major community groups and interests, such as business, labor, and education.⁵ It serves as a connection between the community and the mission. The board is in the best position to demand adjustments if the CAA provides subpar services or if the CAA's programs are failing to fulfill the stated mission. For this reason, mission-related matters should be a regular agenda items. In addition to the general responsibilities of a nonprofit board to ensure fulfillment of the organization's mission, the CSBG Act requires CAA boards to participate in the development, planning, implementation, and evaluation of the CSBG program. This would require, for example, paying particular attention to:

- **Community Needs Assessment.** The board should regularly assess whether there are services that the CAA should be offering because there is a need in the community that is not being met. Such an assessment, called a community action plan, is required by the federal CSBG Act for all CAAs.⁶
- **Ongoing Program Evaluation.** The board should periodically evaluate each program to assess whether the program is achieving its objectives. This may require the board to meet with service recipients, but measurement of effectiveness should not stop there. The board should work with staff to develop standards and benchmarks for each program so that board members can review data collected by staff—and draw upon their own experience in making sense of data—to objectively measure program effectiveness rather than rely on anecdotal reports. The board should also look at how the CAA is implementing the performance standards required by the state CSBG office, such as the Results Oriented Management and Accountability (ROMA)⁷ standards and other programs and using those standards to lead the goal-setting, planning, and assessment processes.

CAA boards should also be aware of matters that must be addressed pursuant to laws or requirements governing other programs. For example, the Head Start Act includes a plethora of specific responsibilities for the grantees' board of directors, including, for example: establishing procedures for recruitment of children; reviewing and approving all major policies; approval of all major financial transactions and the annual budget; and reviewing all funding applications.⁸

Topic 2: CAA Governance Policies

Nonprofit governance has been the topic du jour for the last decade or more. The consensus view is that boards are at least partly responsible for putting in place conflict-of-interest, whistleblower, record retention, and other policies that assure that the nonprofit's operates ethically, in furtherance of mission, and in ways that minimize organizational risk. Boards may approach governance policies in different ways. Some will look to the staff to draft the policies, while others will take a hands-on approach, working with a lawyer or a committee to design, draft and implement the policy. Even if the staff drafts the language of the policy, it is recommended that the board be involved in setting the objectives of the policy and the procedures set forth in it, be familiar with any legal requirements in connection with it, take the time to carefully review the policy with staff and/or lawyers or other experts, and edit and revise the policy as necessary. This detailed review is often done first in a committee to allow for more time. If an organization has not yet adopted one or more of these policies, the board should place these matters on the agenda. Once the board has put these policies in place, it should, on an annual basis, review and assess whether adjustments are required or necessary. More important, the board must set aside meeting time to respond to conflicts of interest when they arise and address concerns raised by whistleblowers. This may require five minutes of meeting time, or in the case of complaints that have employment practice implications (e.g. sexual harassment, discrimination), the board may have to devote considerable time to the matter. For more information on these policies, please see the [Conflicts of Interest](#) and [Whistleblower Policy](#) sections.

Topic 3: Financial Matters

One of the board's primary responsibilities is monitoring financial resources to determine that there are safeguards in place to protect those resources, to assess whether those resources are adequate for the CAA's sound operation, and to determine whether the resources are being used optimally to achieve the mission. Time should be set aside at each board meeting to review the current financial statements; the CAA's financial position, liquidity, budget variances, and other key financial metrics; and, when available, the annual audited financial statements. Ideally, the board discussion should be led by a qualified board member—often the finance committee chair—rather than the CFO or other staff member, but the CFO or other financial or senior management staff should participate in the discussion, as necessary. If a board lacks members with financial expertise—a void that should be addressed—a staff member with the expertise should lead the discussion. Many of the matters described below should be reviewed first by a finance or audit committee that includes members with a range of finance-related expertise. At minimum, board must pay attention to:

- **Financial Statements.** The financial statements reviewed should include, at a minimum, a statement of actual revenue and expenses compared to budget and a balance sheet. The board should also consider reviewing cash flow statements and a report on the age of accounts payable (bills to be paid), which is a good indicator of the availability of cash to pay current obligations. For more information on this topic, please see the Reading Financial Statements section.
- **Annual Budget.** The board should actively engage in the annual budget process. The board should understand the underlying assumptions that guide budget development, offer input, and, ultimately, review and approve the final organization-wide budget,⁹ in addition to budgets for individual programs and central administration. The board should review budgetary performance data at every meeting. For more information on this topic, please see the [Annual Operating Budget](#) section.
- **Major Transactions.** Any organization will engage in major transactions during its lifetime, including buying or leasing major facilities, borrowing funds, entering new areas of activity, settling lawsuits, and making major investments. Many of these transactions will originate and be developed by management, which is appropriate. The board, however, should retain final authority over approving these actions. As a consequence, the board must set aside time during board meetings for presentations and discussion of these matters.
- **Review IRS Form 990.** This form, which is an informational return required to be filed annually by 501(c)(3) tax-exempt organizations with the Internal Revenue Service asks in Part VI whether the board of directors has received and/or reviewed a copy of the Form 990 prior to submission to the IRS. Although review is not legally required, since the form contains so much information about both the activities and the finances of the organization, and is available to the public online at www.guidestar.org, we recommend that boards do review it before submission.
- **Audit and Internal Control Matters.** The board (or with larger boards, an audit committee) should review the annual audit report and management letter from the CAA's independent auditor and meet with the auditor. It should also review the CAA's relationship with the auditor, including whether the contract for services should be renewed, and/or selects a new auditor. Finally, the board should have periodic discussions regarding internal controls, fraud prevention measures, and other risk management issues. The board, or an audit committee, may also be tasked with reviewing whistleblower complaints and conflicts of interest. Each board will need to find the right mix. The board should focus particular attention on whether management is responding adequately to comments from the CAA's outside auditors. The board should look to the chair of the audit committee or a designated member of that committee to lead these discussions. For more information, please see the [Improving a CAA's Financial Capacity](#) section.

Topic 4: Risk Management

In recent years, both for-profit and nonprofit boards have taken a more proactive approach regarding organizational risk. This is reflected by the emphasis on governance policies and financial review and management. Some boards have chosen to go further, reviewing employment practices, identifying risks to stakeholders that could lead to lawsuits, assessing compliance with laws and grant requirements, and identifying vulnerabilities that could lead to fraud, waste, and mismanagement. At this time, there is no agreed upon approach to risk management by a board or the extent to which a board should engage in this sort of review. The trend, however, is clearly moving toward more board involvement. Whatever approach the board adopts, it should be a considered one. Most importantly, the board should recognize that management still is primarily responsible for risk management. Even if a board decides to rely heavily on management, it should ask for periodic reports from management.

Topic 5: Executive Hiring, Compensation, and Performance

The board is responsible for hiring and evaluating the CAA's chief executive officer, often referred to as the executive director. Most CAA boards delegate hiring decisions regarding other employees to the executive director, however, some CAAs may involve the board in hiring other members of the senior management team, such as the CFO. Hopefully, the decision to hire a new executive director does not need to be revisited annually, but the board should evaluate the existing executive director's performance annually, including how the board and the executive director interact.

The board also sets the executive director's compensation. Although the board should not set specific salaries for staff members below the executive team, and often does not set those either, it should review the overall levels of compensation throughout the CAA. It should also review the overall cost and structure of fringe benefit and retirement plans.

Federal tax law requires that the compensation paid to officers and key executives be reasonable. If it is not, the IRS can invoke what are called "intermediate sanctions," thereby forcing the executive who received unreasonable compensation to return the unreasonable portion to the CAA and possibly pay a 25 percent penalty, as well as require the managers that approved the compensation to pay a penalty.¹⁰ The law presumes that compensation is reasonable if the board can demonstrate that it: 1) used comparables in setting the compensation; 2) those on the board who approved the compensation were independent; and 3) the board documents the compensation package and decision process in writing. The IRS has the right to challenge this presumption. The board should make sure that the CAA and the executive have the benefit of the presumption, which means incorporating the three requirements into decision process.



TALK TO AN ATTORNEY TO UNDERSTAND BOARD REQUIREMENTS

Many state laws affect the operation of nonprofits and their boards. Board members are not expected to be experts on these laws' specific provisions, but they should consult with local attorneys to understand the impact of state law on board procedures. Any provision of the nonprofit's articles of incorporation (or similar documents) or bylaws that is inconsistent with the state law is void and has no legal effect. For example, if the state nonprofit law provides that board members may not vote by proxy, and an organization's bylaws allow a board member to appoint someone else to vote for him or her at a board meeting that he or she cannot attend, the provision allowing this delegation of voting authority is illegal, and can be challenged.

Board Committees

The board is responsible for much more than just passively listening to reports from the executive director. It must develop and synthesize a wide range of information and then make judgments and decisions based on that information. The board will not function effectively if this synthesis becomes a group activity that takes place during regular board meetings. The board will quickly become bogged down in details. For this reason, the board should rely heavily on committees to divide the work, build on the expertise of individual board members, and develop recommendations and solutions to problems. Some boards may decide to delegate decision-making authority to committees (assuming state law permits such a delegation), but the better practice is to have the committees report to the full board with background information and to make recommendations for board action. Most CAA boards will have both standing committees and ad hoc or special committees to handle short term special projects. Board committees should operate pursuant to a written charter, maintain minutes for committee meetings, and regularly report to the board on their activities.

CAA boards should consider having the following permanent—or standing—committees.

- **Executive Compensation or Personnel Committee.** The executive compensation committee, the personnel committee, or if neither exists, then the executive committee, should be charged with spearheading the search process for the executive director. A committee is needed to handle the heavy lifting that comes with hiring decisions and performance evaluations. The board needs a mechanism for developing position descriptions, working with head hunters, reviewing resumes, setting performance standards, and measuring performance. The full board simply does not have enough time to perform all of these tasks during regular board meetings. Nor is such an approach practical.

The committee should also develop the executive director's compensation package. This may include working with compensation consultants and/or using other resources, such as IRS Form 990s (available on www.guidestar.org) and compensation surveys to develop comparables. This committee should also be charged with developing performance benchmarks for the executive director and developing performance reviews. Finally, this committee can be charged with review of employment practices and assessment of fringe benefits and retirement plans. The committee should make recommendations to the full board, particularly on hiring, evaluation, termination, and compensation of the executive director, with final decisions remaining with the full board.

■ **Audit Committee.** The audit committee should conduct the search for the CAA's independent auditor and make a recommendation to the board based on its search. The committee should then manage the relationship with the auditor by discussing plans for the audit, receiving periodic reports from the auditor during the audit, and meeting with the auditor following the completion of the audit. The committee should carefully review the management letter provided by the auditor and then work with management to see that appropriate action is taken with regard to the auditor's recommendations and observations. The committee should also be engaged in an ongoing review of the CAA's system of internal controls. Finally, the audit committee should be focused on compliance with government contracting and grant requirements.

The skills of those available to serve on the audit committee will vary from CAA to CAA, but should include at least some with financial expertise, such as a banker, accountant, or CFO at a business or nonprofit. The committee's independence from management will increase as the financial acumen of its members increase. In many instances, however, the committee may need to rely on management for assistance. In these cases, the committee members must be willing to ask questions and probe management's responses rather than accepting whatever management tells the committee.

■ **Finance Committee.** The finance committee performs an entirely different function from that of the audit committee. Although CAPLAW recognizes that currently many CAAs have a combined finance/audit committee, we recommend, at least for medium to large boards, that it be a freestanding committee rather than combined as part of the audit committee. The finance committee's focus should be on assessing the adequacy of the CAA's financial resources. It should review the financial statements and prepare reports to the full board regarding the CAA's financial performance, liquidity, and financial condition. It should also be looking at long-range financial issues, such as how best to finance the CAA's operations. The finance committee should also be working with management on budgeting. The actual construction of the budget is best left to management, but the finance committee should focus on the assumptions underlying the budget and program priorities and resource allocation.

■ **Governance Committee.** The governance committee should develop and periodically review key organizational governance policies, including the conflicts of interest and whistleblower policies. CAAs should consider including an attorney on the committee to assist in identifying needed policies and developing and reviewing them. Some committees will be quite active in developing these policies, while others will look to management to undertake the actual drafting. The governance committee should also periodically review the CAA's bylaws and other governing documents. It should also be involved in setting and implementing the selection process for, and recruiting, new board members, consistent with the CSBG Act tripartite board selection requirements.¹¹

Attendance

Nonprofits that experience governance-related scandals often report poor attendance on the part of some board members. People should not seek a position on a CAA board unless they are prepared to attend the meetings on a regular basis. Those board members who do not regularly attend board meetings deny the CAA their insights, or at least the insights of someone else who would otherwise occupy that seat. Those who are regularly absent also increase the level of work required of other board members.

The board should track attendance. The meeting minutes should identify board members who are in attendance and who are absent. If someone is consistently absent, the board chair or other designated person should have a discussion with that individual about their commitment to the CAA.

CAAs should add a provision to their bylaws that provides the board with the ability to remove a board member when there is a certain level of absences. A CAA's bylaws should be as specific as possible in defining acts that can lead to the removal of a board member; although a general catchall standard should be retained. This is particularly important where members of the public

participate in the election process. Any provision making continued board membership contingent on some level of attendance should provide the board with some discretion. For example, the board may not want to be forced to remove a longstanding board member who is undergoing chemotherapy over a six-month period.

Part III: Board Meeting Structure

In most cases, a CAA's bylaws will govern many aspects of board meetings, such as frequency, location, quorum size, voting procedures, notice and attendance requirements, and use of parliamentary rules.¹² When making changes to board meeting procedures, CAA leaders should consult their bylaws to ensure changes do not conflict with the bylaws, and if they do, to update the bylaws to reflect the CAA's current practices. When updating bylaws, it is best to work with an attorney who is familiar with nonprofit law.

Board Meeting Logistics

Most board meetings should be held on regular basis on predetermined days and at times that accommodate work schedules and family obligations of board members. Key considerations are:

- **Frequency and Regularity.** The full board should meet at least several times a year at regular intervals. For many CAAs, this means monthly; which is generally preferable, for others particularly those covering large geographic areas, it may be every other month. The state CSBG law may dictate a minimum frequency. A board that meets less frequently (e.g., quarterly) faces increased risk of failing in its fiduciary responsibility. Whenever possible, the regular board meeting should be held on the same day of the week and at the same time. People should be able to block out time for meetings on their calendars for the upcoming year. Attending the meeting should become a habit. Some boards may find that they are simply unable to accommodate everyone's schedule by fixing one recurring day and time for the meeting. In those instances, consideration should be given to two recurring times that alternate. If consistent with state law and the bylaws, the CAA may also call special meetings when necessary.
- **Open Meeting Law Requirements.** Open meeting laws vary by state but generally require that board meetings and other official proceedings of government agencies, and sometimes some nonprofits, be open to the general public. All public CAAs would be subject to their state open meetings laws. Some nonprofit CAAs are subject to open meeting requirements of their state laws because the CAA receives government funds or the CSBG regulations require open meetings. Other CAAs are not required by law, but the CAA's governing documents require open meetings. Each CAA's board must determine, in consultation with its attorney, whether it must comply with open meeting requirements and what compliance requires (for example, whether board committee meetings must be open to the public).
- **Executive Sessions.** Open meeting laws recognize that certain sensitive matters are best discussed in a private forum. With that in mind, the laws often permit boards to adjourn to an executive session, which simply means the public is excluded from that portion of the meeting. The list of items that can be discussed in an executive session vary from state to state, but often include pending litigation and employment-related matters. In many instances, if the board makes a decision regarding the matter, it must take the formal action in the public portion of the meeting. Because boards are comprised of human beings, they have a tendency to like secrecy, which means that other sensitive topics—topics that are not on the permitted list of matters reserved for executive sessions—often seep into the discussions during executive sessions. As in, “As long as the door is closed, I’ve been meaning to raise this topic that I don’t want the press to know about.” Everyone present during an executive session should be sensitive to what is a permissible topic and what is not. When someone strays beyond the bounds of permissible topics, the group should immediately cut off the discussion. There may be criminal liability for violating open meeting laws or actions taken based on those discussions may be invalid.
- **Notice.** A notice informs all board members—and the general public if the CAA is subject to open meeting laws—of the date, time, location, and specific topics under consideration. Boards should make compliance with notice requirements a part of the routine and clearly assign the task to a specific role or individual (e.g., board secretary, member of the CAA staff). Without proper notice, all actions taken at a board meeting could be deemed invalid.
- **Agenda.** The board should always rely on an agenda to organize and conduct the meeting. The agenda should be sent to board members in advance of the meeting. Where a CAA is subject to a state open meetings law, it may

also be required to make the agenda available to the public and be limited to discussing only agenda items at the meeting.

■ **Meeting Length.** There is no set rule as to how long a board meeting should last. As a matter of discipline, the board should set a time for adjournment, but there is nothing wrong if the meeting runs several minutes beyond the allotted time. Given the many tasks that are assigned to a CAA board, meetings are likely to last at least two hours, particularly if there is robust discussion. On occasion, a meeting may go beyond four hours, but at this point, fatigue will set in, with the result that board members may not be as attentive or effective. If meetings regularly exceed three or four hours—or what the board finds tolerable—this may be a sign that the board is not effectively using committees to filter and organize information and proposals.

■ **Chairperson.** The board chairperson, or if there is no chairperson, then the board president, typically leads the board meeting. That isn't required, but there should be a meeting leader who follows a schedule, indicates who has the floor to speak, and keeps an eye on the clock so that all business is accomplished within the allotted time.

■ **Quorums.** Under state corporate law and the CAA's bylaws, a CAA's board cannot take action unless a certain percentage of the board members are present—a quorum exists. All board members have an affirmative duty to notify the board chair, secretary, or other designated person if they are unable to attend. There is nothing more annoying or dispiriting than arriving at a meeting to discover that a quorum does not exist, with the meeting then being rescheduled. E-mail, text messages, and cellphones eliminate most excuses for failing to provide timely notice.

Tip

SEEK LEGAL COUNSEL IF SUBJECT TO OPEN MEETING LAW

Often the requirement that meetings be open to the public looks to and references the open meeting laws that apply to governmental bodies. These rules tend to be complex, with the state attorney general supplementing statutory requirements with legal opinions interpreting the requirements. Any CAA subject to open meeting requirements should obtain a compliance checklist from a lawyer who is familiar with the applicable requirements. The CAA should check with that lawyer before deviating from the compliance checklist. In many states, the attorney general, secretary of state, or other state agency publish compliance handbooks that are often quite helpful. CAAs should focus on the laws applicable to them. The laws differ from state to state.

Meeting Agenda

Meeting agendas should be drafted with care by the board chair (or executive committee) in consultation with the executive director, with an eye to involving the board in decision-making on critical issues and providing information the board needs to make informed decisions. Some items – such as the date, time and location of the meeting; roll call/quorum determination; review and approval of the prior meeting's minutes; and a report on the CAA's financial condition – will generally be on every regular meeting agenda. If the CAA is subject to its state's open meeting law, it may be required to include certain items on its board meeting agendas. However, this does not mean that the agenda for every meeting must be the same. Instead, the agenda should emphasize issues facing the organization that are particularly essential for the board to be aware of or to decide – such as whether to purchase a new facility rather than lease, how to respond to Head Start monitoring findings, or what action to take in light of the President's proposal to cut CSBG funding by half. In each of these cases, staff should provide the board with a short, concise memo with sufficient information to enable board members to ask questions, have an informed discussion, request additional information, and, where necessary, make a decision that will help the CAA fulfill its mission. (In fact, some boards include the CAA's mission statement on the agenda to help the board evaluate the impact of its decisions on the mission.)

Rather than having program directors or other members of the management team present detailed reports on CAA programs and activities at every meeting, whether or not board discussion or action is needed, CAPLAW recommends having them prepare concise written reports that highlight recent developments. These reports should be included in the board meeting packet sent to board members prior to the meeting. At the meeting, the executive director can summarize the developments and issues outlined in the reports and board members can ask questions about the reports. However, unless a board member has a question or an issue has been flagged for discussion and/or decision-making, the focus of the meeting should turn to other matters.

Board Meeting Packet

In addition to the agenda, the CAA should send each board member a packet of information so that the board member can prepare for the meeting. The typical CAA board has many issues to deal with during a board meeting. Efficiency and economy warrant asking board members to come to the meeting with knowledge of the issues to be addressed. Ideally, board members should receive the packet at least one week in advance of the meeting. The packet should include:

- The minutes for the prior meeting that the board will be asked to approve
- The financial statements/budgets that will be reviewed at the meeting
- The terms of any major contracts or other decisions that the board will be asked to consider, including background information and, when possible, actual copies of the original documents
- Any studies or reports (e.g. from committees) that will be discussed at the meeting
- Other relevant information that will eliminate wasted time during the board meeting

Although each board member may not be under a legal duty to read this material in advance of the meeting, board members should review the material in advance as a common courtesy to their fellow board members.



CONSIDER PAPERLESS PACKETS

Many nonprofits now distribute board materials electronically. Options include email distribution; document sharing tools, such as Google Docs; or commercial online board packet providers. Some nonprofits have gone as far as giving each board member an e-reader or tablet that can handle PDF documents. The documents are then emailed to the board member before the meeting, who then transfers them to the e-reader or tablets. It is conceivable that the full cost of the electronic readers may be recovered in the form of saved copying and postage/delivery service charges within a year. CAAs that are interested in this approach should weigh potential security issues, tax considerations, and potential public relations issues. They should also give board members the option of receiving hard copies through regular mail.

Rules of Order

Many people assume board meetings must be conducted in accordance with Roberts Rules of Order. This is not necessarily true. In fact, most CAA boards should avoid Roberts Rules of Order since they are designed for parliamentary bodies such as city councils and state legislatures. The rules are overly long and complex, and if followed, result in a very formal proceeding. A CAA's board should take a more working group approach when permissible.

- **State corporate laws do not mandate that boards follow Roberts Rules of Order.** Some lawyers will insert a provision in corporate bylaws that require an organization to use Roberts Rules of Order, or a board early in the history of an organization may adopt a resolution requiring the use of Roberts Rules. If this is the case, the CAA should work with an attorney to eliminate this requirement, especially since there is a good chance that the board has not followed it.

While Roberts Rules of Order may be out, there is nothing wrong with having an agreed upon set of rules designed to keep the conversation flowing in an orderly manner. There are no fixed rules, and there is nothing wrong with the board making up its own procedures, or adopting the “modern” rules of order published by the American Bar Association.¹³ CAAs should consider designating a board parliamentarian who is familiar with whatever rules the board chooses to follow.

Motions

Unless state law or the CAA's bylaws or other governing documents require otherwise, formal motions and seconds do not need to precede board decisions. They are, however, important. They tell the person taking the minutes that a decision is being made that most likely should be reflected in the minutes. A motion also informs the board that it needs to pay close attention to the proceedings and focus on the upcoming vote. The person making a motion should word it simply, avoiding trills and flourishes. It is a good practice, although generally not legally required, to require a second of a motion to keep events moving forward.

If no one is willing to second, it reflects lack of support for the proposition and, if no further action is taken on it, will avoid wasting time on the matter. In addition to motions to accept or decline proposals under consideration, some boards may also use formal motions to:

- **Refer a matter to the appropriate committee.** When a board lacks sufficient information to consider a matter, a formal motion to assign the matter to a committee documents the status and vests the committee with responsibility to investigate and return to the full board at a later date.
- **End debate.** Sometimes the vote begins and then someone has a second or third thought that they want to add to the mix. This often leads to confusion over what exactly is being considered for a decision. Is the original proposal still on the table or has it now been modified? By formally ending debate, the group now has permission to tell someone that they are out of order if the vote has begun. Before the vote, the chair or the secretary should restate the proposal.
- **Withdraw a motion under consideration.** When a subsequent discussion leaks into the voting process, the person making the original motion may withdraw the original motion to force the board to restate the proposal being considered.

Tip

BE COURTEOUS AND ATTENTIVE

Board members should come prepared to engage fully in deliberations. They should not multi-task during the board meeting. That means no emailing, text messaging, telephone conversations, web surfing, checkbook balancing, or side conversations about weekend plans or fantasy football standings.

Board members should also refrain from rude, domineering, or close-minded behavior, or participating in board cliques or gossip. They should also recognize that too much silence is not golden. The tripartite structure reflects the belief that input from different constituencies is valuable. Board members should not be reluctant to share their views.

Proxies

Many states do not permit board members to act through proxies, i.e. permit a non-board member to vote on behalf of a board member at a board meeting or to permit a board member to send a written proxy notifying the board of his intended vote. Nevertheless, people will on occasion send proxies to board meeting. Unless the CAA is absolutely certain that a board member can legally send a substitute to act on his behalf, the board should not permit a proxy to vote or count the proxy toward the quorum determination. Organizations should address this with counsel when it becomes an issue.

Once again, unless the board is absolutely certain that proxies are permitted, it should exclude the proxy from any discussions with the CAA's legal counsel when those discussions may be protected by attorney-client privilege. The proxy's presence could jeopardize the claim to privilege.

If the board member, who is regularly absent, is with an institution that has traditionally been represented on the board, the CAA should consider replacing the absent board member with the person he routinely sends as a proxy by following the procedures outlined in the CAA's bylaws. This may require some diplomacy.

Decisions Without In-Person Meetings

State corporate law traditionally required that to participate in a meeting, a board member had to be physically present. With the widespread availability of telephone and video conferencing, many state legislatures have modified corporate statutes to permit boards to hold meetings by telephone or video conference. Many state statutes, in authorizing electronic meetings, do require that each participant be able to communicate synchronously with the group. This means that the technology must permit each participant to interrupt someone speaking or interject a thought without any delay. If state law permits telephone or video conferencing, boards should not hesitate to avail themselves of these technologies when there simply is no way for someone to attend the meeting—the person is on vacation or is out of town on business. Most state laws will not allow actions to be taken via either phone surveys or emails. The only exception may be instances where every board member signs a written consent in favor of an action. The unanimous affirmative vote could take the place of a similar vote at an in-person meeting. This is called a “written consent in lieu of a meeting” and is described below.

The best practice is for board and committee members to be physically present for board meetings. There is a context and interaction that comes with face-to-face communications; body language offers important cues. Those in attendance also are able to view PowerPoint and flip chart presentations, as well as viewing paper that is distributed at the meeting. Moreover, there is no opportunity to push the mute button or do other work while the meeting is in progress. Because of the advantages that come with face-to-face meetings, boards should not make a habit of relying on this technology when board members can be physically present. Any CAA that is subject to an open meeting law must consider the open meeting requirements before holding a meeting through otherwise permissible electronic means.

■ **Written Consent Resolutions May Be Helpful.** Most state corporate laws permit boards to take action through a written consent resolution without a formal board meeting. Typically these laws require unanimous written consent, meaning that all board members must be in agreement. Written consent resolutions are particularly useful when the board is faced with an unexpected decision that cannot await the next regularly scheduled board meeting. However, CAAs subject to open meeting laws are unlikely to be able to use written consent resolutions.

■ **The question has arisen whether a written consent resolution can take the form of an email.** The answer can be tricky if the statute requires each board member's signature. Unless state corporate law statutes specifically address the question, conservative boards will want to obtain an opinion of counsel if the resolution takes the form of emails. Others may be comfortable without a legal opinion if the statute leaves some room for interpretation. In all cases where reliance is placed on email, the emails (with full email headers) should be printed out and retained in the minute book. It may be good practice to ratify the consent resolution as the next regular board meeting. Before utilizing a written consent resolution, the board should determine whether open meeting laws pose any obstacles.

CASE SCENARIO:

ABSENT MEMBERS MAY REQUIRE ACCOMMODATION

Several BCA board members want to remove Maureen Whipple and Loretta Chapman from the board. Both have missed the last six regular meetings, which are held at 7 p.m. on the first Thursday of the month. Anita Nilsson, the board chair, is reluctant to ask them to resign. Both Whipple and Chapman volunteer for one of BCA's clinics every other Saturday morning. Nilsson decides to ask both whether there is a scheduling problem. She finds out that both work for restaurants and that Thursday night is considered a weekend night in the restaurant business.

At the next board meeting, Nilsson asks whether the board would consider rescheduling the regular board meeting to Wednesday nights. Whipple and Chapman told Nilsson that there would be no

scheduling conflict if the meetings were held on Wednesday. A number of board members are thrilled because they like starting the weekend early with their families.

LESSON: Never assume a board member's absence indicates disinterest or disengagement. If several people are consistently absent, this may be a sign that the board should reconsider the day and time for regular meetings. The board should be polled regarding their preferred times. Depending on work schedules, evening meetings may be necessary, but early morning meetings or meetings on a Saturday morning should not be ruled out if those times accommodate people's schedules.

Part IV: Board Meeting Minutes

Simply defined, meeting minutes are a contemporaneous written record describing what transpired at a board or committee meeting. A minute book is a chronological compilation of all meeting minutes.

MINUTES AND THE IRS FORM 990

The IRS asks on the Form 990 whether the organization “contemporaneously document[s] the meetings held or written actions undertaken during the year by the following: (1) the governing body; and (2) each committee with authority to act on behalf of the governing body.” Moreover, the tax rules governing executive compensation and financial transactions between a charity and insiders provide the organization and insiders special protections if the decisions are contemporaneously documented and certain other requirements are satisfied. The meeting minutes are the logical place for recording those decisions and transactions—and one of the first places external parties will look for documentation.

Importance of Good Minutes

Maintaining good meeting minutes for all board and committee meetings is important for four reasons:

- **Sound Board Functioning.** Memories are surprisingly short, particularly in the case of volunteer directors and committee members who may not have contact with the CAA every day. Meeting minutes permit the board to review the history of how it addressed a matter, better assuring consistency in its decisions.

Meeting minutes create and preserve institutional memory. A board can review actions that an earlier board took and understand what those actions were and why they were taken. When a board decision is a controversial one, the board may be required to revisit and fine tune it. If the board does not have a clear written statement of what was decided and why, those who opposed it may try to “re-litigate” the decision when the board needs to refer back to the decision. This can result in inconsistencies and wasted meeting time; “What did we decide?” Detailed minutes describing each decision will minimize this possibility.

- **Regulatory Compliance and Oversight.** All CAAs are subject to scrutiny from federal and state funders, the IRS, and the agencies that oversee health and safety, employment, and the myriad of other matters that governments regulate. Most are also subject to the Single Audit requirements of the Uniform Guidance; which are conducted by an independent auditor. Outside monitors and independent auditors often ask to review the CAA’s meeting minutes, and some funding sources, such as state CSBG offices, often request minutes to be sent to them after each meeting. Up-to-date and thorough meeting minutes create the perception that the CAA is well-governed. Minutes may also quell more extensive inquiries if they answer more questions than they raise.

Government monitors and independent auditors may take an unfavorable view of the organization if there are no meeting minutes, the minutes are haphazard, or the minute book is in disarray. The additional work on the monitor or auditor’s part may lead to findings and/or additional fees.

- **State Statutory Requirements.** Many state statutes require nonprofits to maintain meeting minutes for board and committee meetings, so doing so is a legal requirement. These same statutes rarely specify the level of required detail. Sketchy minutes may satisfy the letter of the law, but if board actions are ever questioned, highly abbreviated minutes may pose a problem for officers and board members.

State charity officials generally don’t engage in the regular review of meeting minutes or conduct audits of charities. Regulators tend to be reactive, opening investigations when they have reason to believe that charitable assets are being misused or the board or management have been derelict. Once on the scene, however, charity regulators sometimes review corporate records, including meeting minutes. Several state charity regulators have commented on the quality of meeting minutes and have imposed requirements regarding the maintenance of meeting minutes as part of settlement agreements with officers and board members.

- **Risk Mitigation.** Meeting minutes are not only of interest to regulators and auditors, but they also can protect board members and officers in the event of lawsuits or media scrutiny. When called upon to examine the board’s diligence, some courts have examined the meeting business to assess whether the board exercised business judgment and discharged its legal duties. Sketchy minutes may suggest that one or more board members have been derelict in discharging their fiduciary duties.

**CASE SCENARIO:
ESTABLISHING EXERCISE OF BUSINESS JUDGMENT**

The Blue Community Action (BCA) board is considering whether to borrow \$5 million to finance the construction of a low-income housing project. A number of members of the community oppose the project because they believe single-family units are preferable to the proposed 20-unit building. Larry Jones, a mayoral aide and BCA board member, agrees with the low-income members of the board who object to the proposal. Several board members have expressed concern that BCA should not proceed with the project because of poor economic conditions and BCA's already high level of indebtedness.

After a lengthy discussion and presentations by experts, the board voted to approve the borrowing. An expert on low-income housing made a 45-minute presentation outlining the reasons the project would be self-sustaining. A special committee of the board, which included a banker and accountant, also reported on the viability of the proposal. They had run a series of projections, including ones based on low levels of occupancy. The stress tests demonstrated that the project

would be self-sustaining at even a 50 percent occupancy rate. Market studies reviewed by the board indicated that there would be significant demand for the units.

LESSON: Given the controversy and the concern of several board members over the propriety of incurring additional debt, whoever prepares the minutes should describe: (1) the concerns expressed at the meeting; (2) the presentation by the expert; (3) the special committee's study; and (4) the data on demand. The minutes should also describe why those in favor of incurring the debt prevailed. Finally, appropriate studies reviewed by the board or presented by experts should be attached to the minutes. While this may be more detail than some believe is appropriate, the detail and exhibits demonstrate that the board's decision was a considered one. This will help the board mount a defense based on the exercise of business judgment should a regulator, outside group, or media question the board's judgment.

Special Considerations for Community Action Agencies

Community Action Agencies, whether private nonprofits receiving large amounts of government funding, or public agencies that are part of a local government, should carefully consider how their minutes comply with explicit laws concerning access to and retention of records, or may serve as key evidence of compliance with financial, governance, administrative, and programmatic requirements.

Community Services Block Grant Act

The Community Services Block Grant Act requires a CAA's board to participate in the development, planning, implementation, and evaluation of the CAA's program to serve the low-income community.¹⁴ The board's meeting minutes provide an opportunity to build a record demonstrating that the board is fulfilling this obligation. In addition, the CSBG Organizational Standards require that the board review, accept, approve or receive updates on various documents, policies and decisions, such as the CAA's bylaws, personnel policies, completed community assessment, mission statement, organization-wide risk assessment, and agency-wide strategic plan.¹⁵ When evaluating a CAA's compliance with the Organizational Standards, state CSBG monitors will look to the board minutes for documentation that the board received the information and took the actions required by the Organizational Standards.



USE MINUTES AS BOARD ORIENTATION TOOL

CAAs can use meeting minutes to orient new board members. A new board member can gain insight and context for future decisions by reading two or three years of meeting minutes. Prospective board members may ask to review meeting minutes to help them decide whether they want to join the board. Unless the CAA is subject to an open records requirement, there is nothing that requires a CAA to make those minutes available to an outsider, but doing so may help in recruiting new board members.

Office of Head Start

Office of Head Start monitoring protocols may instruct reviewers to examine meeting minutes for evidence that the governing board approved the annual self-assessment and financial audit; approved personnel policies regarding hiring, evaluation, termination, and compensation; reviewed applications for funding and related amendments; and received and reviewed audit reports. Monitors may also review the minutes for evidence of financial conflicts of interest, such as transactions between the CAA and business owned by board members, and related-party leases. Those CAAs operating Head Start programs should therefore, prepare for program reviewers to request minutes for board meetings.

Open Record Laws¹⁶

Public CAAs are generally required to make their meeting minutes available to the public, so their meeting minutes should be prepared with the expectation that they will be reviewed by members of the public, including the media. Generally, there is an exception for those portions of the minutes that pertain to certain sensitive matters reserved for executive sessions. Under some state statutes, the minutes of nonprofit CAAs may be considered public records, opening them up to public review. Each CAA, whether public or private, should consult with counsel to ensure that it complies with all public records requirements.

The Minute-Taker

CAAs have some discretion in who prepares the meeting minutes. The most common minute takers are:

- **Corporate Secretary:** By tradition, the corporate officer charged with preparing board meeting minutes is the corporate secretary. Regardless of who prepares the minutes, the secretary is ultimately responsible for ensuring the accuracy of the minutes, and for safeguarding the minute book.
- **Lawyers:** If the CAA has a lawyer as a member of its board or has a general counsel, the organization should consider having that lawyer either draft the minutes or review a draft of them before the minutes are circulated. A lawyer's legal training sensitizes him to the ramifications of word choice and tone.
- **Administrative Staff:** Some boards and members view the task of taking notes during meetings as a distraction, often assigning it to an administrative assistant. First, and foremost, the administrative assistant should receive concrete direction as to what is expected and what should be included in the notes. Until the assistant "gets the hang of it," the assistant should be given feedback. Even when an administrative assistant prepares the minutes from the notes, the assistant's work should be treated as a first draft. A designated board member, officer, or a lawyer should review and finalize the draft.

Some CAAs may adopt a process involving more than one person. Whatever the process, the CAA should ensure that it is in conformity with state law and the organization's bylaws.

Tips

EXERCISE CAUTION WHEN RECORDING

Some organizations record their meetings using audio or video tape. While this may appeal because of the verbatim nature of a recording, it is unnecessary. Despite the potential for accuracy that comes with a recording, the minutes should never adopt a "He said, She said" format as this will lead to overly long minutes and increase the likelihood that potentially inflammatory or indiscreet statements will be included. There are at least two disadvantages to recording a meeting: first and foremost, a mike and tape recorder can chill open discussion. There are some people who simply will not be as candid as they would otherwise be. Second, while fear of lawsuits should not drive the decision, a recording is open to discovery in the event of litigation. Routine destruction of tapes shouldn't carry adverse legal consequences if the destruction is routine and litigation is unforeseeable at the time the recording is destroyed. Courts can and will, however, sanction a CAA for destruction of evidence if the evidence (tapes in this case) are destroyed in anticipation of pending or foreseeable litigation in an effort to hide something that was on the tape. Before adopting any document destruction policy, a CAA should seek legal counsel.

USE A STANDARD TEMPLATE

Standard fonts, margins, headings, sequence of headings and overall consistency in content and narrative structure make the task of preparing the minutes more efficient. Moreover, someone reading minutes for 10 or 20 prior meetings in an effort to find one piece of information will appreciate standard headings and consistency in content and format.

INCLUDE KEY EXHIBITS

Any policy or other written document that was approved at a meeting should be included with the minutes. In addition, although the practice will vary from CAA to CAA, serious consideration should be given to attaching financial statements, reports, studies, or other items that were distributed at the meeting and informed board deliberation on matters of importance and provide support for final decisions reached.

MAKE SURE YOU CATCH EVERY WORD

The person charged with drafting the minutes should arrive at the meeting several minutes early with a copy of the meeting agenda in hand. Because rooms have dead spaces, echoes, and sound bleed from adjacent rooms, the person drafting the minutes should assess where the sound quality will be best and position themselves accordingly.

When Minutes Should be Written

Ideally, minutes for board meetings should be drafted within 48 hours of the meeting. In drafting the minutes, even someone who is an excellent note taker will recall points that should be memorialized in the minutes, but that did not find their way into the notes from the meeting. The sooner drafting commences, the more likely those points will be recalled. Under no circumstances should preparation be put off until the week or day before the next regular board meeting.

Contents of Minutes

At minimum, minutes must include:

- **Date, Time, and Location:** The date, commencement time, and location of the meeting.
- **Regular or Special Meeting:** Whether the meeting is a regularly scheduled meeting or a special one.
- **Attendees:** A list of the board members who were present and a list of those who were not. If board members have differing voting rights, those should be noted. As an example, those with full voting rights might be identified separately from honorary or advisory board members.
- **Quorum:** Whether there is a quorum present to conduct business. The act of documenting that a quorum was present serves one critical purpose: It forces someone to ask the question.
- **Guests:** The names and affiliation of any guests who were present at the meeting. This information is particularly important in the case of professionals, contractors, or others who advise the board or submit proposals. Listing the names of members of the public who attend if meetings are open is less important, but may be useful if members of the public are allowed to speak at meetings. Moreover, the list can be used to recruit new board members: Those who regularly show up at board meetings certainly are interested in the CAA.
- **Action on Minutes:** An indication whether minutes from the prior meeting were approved or modified by the board.
- **Major Proposals and the Actions Taken:** Each major proposal placed before the board and the action taken. The person drafting the minutes should not hesitate to ask for a clear statement of the motion under consideration. By asking, this person forces the person placing the decision before the board to clearly state the proposal that the board is being asked to consider. This signals to other board members “Something important is about to happen, so pay attention.”
- **Treasurer’s Report:** A summary of the financial report made by the treasurer, CFO, head of the finance committee, or other person responsible for reporting on financial matters. Unless there is a specific requirement under state law, the CAA’s bylaws, or a grant, the board need not separately approve the treasurer’s report, but there certainly is nothing wrong with doing so, particularly given the importance of finances.
- **Major Discussions:** Not all board business requires a decision. For example, the board may receive a quarterly report about a program or review a consultant’s report about a program’s efficacy. To meet the requirements of the Community Services Block Grant Act, the board should have these discussions and others that pertain planning, implementation, and development of programs. These discussions should be evidenced in the minutes.

CASE SCENARIO: SEEKING CLARITY

BCA’s board has been asked to consider whether to allocate \$50,000 to an emergency program designed to help people who have been out of work for more than 99 weeks. Rita Newman is charged with preparing the meeting minutes for BCA’s board. Aki Taan has just put the following motion before the board, “I move that we approve the emergency program.” Prior to the motion, board members questioned whether BCA could afford to allocate \$50,000 to the program. A consensus was developing that \$40,000 might be the more appropriate amount.

LESSON: Minute taker Newman should ask Taan to clarify his motion by indicating the amount to be allocated to the program and over what time period. By doing so, Newman not only makes sure that the minutes will correctly reflect the board’s decision, but she assures that everyone who votes understands exactly what they are voting for or against.

- **Committee Reports:** In addition to describing what each committee reported at the meeting, the minutes should identify any standing committees that did not make a report. This will help the board chair identify any committees that have ceased functioning.
- **Compensation Decisions:** Government grant making agencies, state charity officials, and the IRS focus on whether executive compensation is excessive. If the board has a compensation committee, the minutes should thoroughly document the process that the committee (and the board) used to assure that executive compensation packages provide for reasonable rather than excessive levels of compensation. At a minimum, the minutes should:
 - Include the compensation comparables that were used to set executive compensation, including a discussion of why the comparables are for similar organizations and/or similar positions.
 - Establish that those approving executive compensation were independent of those receiving the compensation.
 - Document each material component of the compensation package (including base compensation, retirement benefits, health, disability, and life insurance benefits, expense account allowances, and other perks).
 - This same information and any specific recommendations by the compensation committee to the full board should be included as part of the full board's meeting minutes, particularly if the full board is the body that approves the compensation packages.
- **New Business:** A summary of each item of new business that was discussed.
- **Appointments and Resignations:** Any appointments or resignations from committees or the board that were announced at the meeting. In the case of new board members, their classification within the tripartite structure should be indicated.
- **Next Meeting:** The date, time, and location of the next meeting. In most cases, this will not serve as a timely notice of the next meeting because the minutes will be finalized at that meeting, but it will assist when reading minutes in the future.

CASE SCENARIO:

WHEN DEBATE BECOMES EMOTIONAL OR HEATED

At its last monthly meeting, the BCA board had to decide whether to close its Head Start program. Several parents who are board members were adamant that the program should not be closed. Mary Litwin, a banker who sits on the board, attempted to demonstrate why BCA simply could not afford to retain the program. Martha Jones, one of the parents, started screaming at Litwin, getting into her face and poking her in the arm. Someone finally had to restrain Jones. Board chair Anita Nilsson excused Jones, hoping some time away from the proceedings would permit her to regain her composure.

LESSON: The meeting minutes should indicate that several board members were opposed to the closing. They should also briefly describe the pertinent financial information that Litwin presented. There is no need to indicate that Jones lost her temper or was asked to leave the meeting so that she could regain her composure—although if the minutes do track people who leave the meeting early or step away for more than a quick personal break, the minutes should note that Jones stepped outside.

Level of Detail

CAAs should adopt a more informative style that offers more detail than traditional minutes. For decades, corporate lawyers have prepared meeting minutes for large corporations, establishing the style that others use when preparing minutes. The historic preference of corporate lawyers has been to say as little as possible, viewing minutes as a formality, but one that could lead to litigation and trouble if too much is said. Many lawyers and others continue to hold this view. There are several reasons why the traditional view is counter-productive and has become outdated.

- **It Creates a False Sense of Security.** The historic view assumes that by putting nothing in writing, no evidence exists that could support future litigation against the organization or its officers and board members. The absence of details in the minutes is unlikely to dissuade someone from filing a lawsuit, but a detailed account of thoughtful deliberations may. Equally, if not more noteworthy, the historic view reflects the misguided belief that no other evidence exists that could support a lawsuit. People may be emailing or blogging descriptions of what they believe transpired at the meeting. When there is litigation, people who were in attendance will be asked to give depositions or court testimony. A CAA has no control over that testimony. By detailing what transpired at the meeting in formal minutes, the CAA creates a contemporaneous record that can be used to refute claims by others.

- **It Doesn't Create Institutional Memory.** Details create institutional memory. Decisions are rarely discrete events. Boards revisit, modify, and base other decisions on previous decisions. Future boards can make better decisions if they know what decisions and why those decisions were made by prior boards.

- **It Results in Unnecessary Reviews of Past Decisions.** Sometimes the losing faction does not give up the fight. A divided board will make a decision, and then six months later, a question involving the original decision comes up. If the minutes are less than clear about what the board originally decided, the losing faction may try to force a reconsideration of the original decision. Clear and detailed statements of what was decided and why can eliminate "re-litigation" of what people believed were final decisions.

Informative Minutes:

- **Avoid abbreviations.** Those at the meeting may understand the abbreviations, but people serving on the board five years hence may not.

- **Record Last Names.** Mr. or Mrs. are optional, but last names are essential. There are a lot more Toms, Justins, and Jennifers than Bradys, Biebers, and Hudsons.

- **Follow the Thread of the Debate.** The minutes should briefly summarize the threads of the debate or discussion. When appropriate, the minutes should describe the decisive factor that drove the decision.

- **Identify Documents and Experts.** The minutes should list the critical studies and other documents that the board reviewed and the experts that were consulted.

- **State the Vote.** Unless the vote is unanimous, the minutes should identify by name those who voted for and against the matter. If someone abstained, their name and abstention should be noted.

- **Note Objections.** The minutes should identify who voted against the matter even if the minutes don't identify who voted for it. Under some state laws, those who vote against a matter have the right to have their opposition vote noted in the minutes. This absolves them of liability with regard to the particular vote. If the person keeping the minutes refuses to note the objection in the minutes, the person objecting should note their objection in a letter to the board.

CASE SCENARIO:

REGISTERING OBJECTIONS IN THE MEETING MINUTES

Delaney Clayton is a member of BCA's board of directors. At the last meeting, Clayton staunchly opposed and voted against a proposal to lease office space from a company wholly-owned by Lydia Staves, the sister of BCA executive director Gloria Watson. The board approved the lease over Clayton's objections. In reviewing the minutes that were circulated for that meeting, Clayton noticed that the minutes didn't note of his strong objections or vote against the lease.

LESSON: At the next board meeting, Clayton should request that his vote against approving the lease be explicitly noted in the meeting minutes. If the person preparing the minutes refuses to note

Clayton's opposing vote, Clayton should send a brief letter to BCA's secretary (or the other person maintaining the minutes if that person is not secretary) indicating that he voted against the lease. Clayton should request that the letter be included in the minute book. The exact procedure required of Clayton may vary from state to state, but many statutes provide Clayton with protection from liability stemming from the board action if his opposition is noted in the minutes or through a written communication. Clayton should check with a lawyer about the proper procedure to follow.

Tip

PAY ATTENTION TO TONE

Tone does matter. While each organization should find its own voice, certain practical considerations should apply.

- Take the Sergeant Joe Friday approach. Minutes should stick to the facts and avoid colorful, inflammatory, or indiscreet language.
- Avoid “He Said, She Said.” More detail does not mean that discussion and debate must or should provide a verbatim recitation of what was said at the meeting. That should be avoided. On occasion, if someone made a particularly persuasive argument, it might be noted with a reference to that person.
- Avoid Noting Personal Attacks. Despite the best of intentions, on occasion, debate can become personal and heated. Such incidents should not be reflected in the minutes.

Board Review

The person charged with maintaining the CAA’s meeting minutes should circulate the proposed version well in advance of the next regularly scheduled board meeting. In many cases the proposed minutes will be approved as is, but the use of the word “proposed” here signifies that the board has not formally approved the minutes. The proposed meeting minutes should always be labeled as “Draft” or as “For Review and Approval” when circulated to board members for review.

The exact process will vary from CAA to CAA. In some cases, the proposed minutes will be circulated as part of an information packet for the upcoming meeting, which might include an agenda, financial information, and special reports. Other CAAs will distribute the proposed minutes separately. However distributed, the proposed minutes should be in the hands of board members at least one week in advance of the board meeting. Board members should not be forced to waste valuable meeting time by reading the proposed minutes during the meeting.

Destruction of Draft Copies

After the minutes are finalized and approved, all paper drafts should be collected and destroyed and electronic copies deleted. No organization should assume that circulating and then destroying paper copies eliminates the proposed version. Somebody will inevitably make a copy or “forget” to turn in their copy, particularly if there is something controversial in the draft. For this reason, great care should be taken in preparing proposed minutes.

CASE SCENARIO:**SENSITIVE TOPICS DISCUSSED IN EXECUTIVE SESSION**

BCA’s board convened an executive session when the board considered whether it should dismiss Coleman Hall, a counselor who works in BCA’s family counseling program. Liz Larson claimed that Hall had been sending her sexually provocative text messages and making inappropriate physical advances. Hall denied Larson’s allegations, but Larson had copies of the text messages and the messages were also stored on Hall’s company-issued cell phone. In response to the allegations, the HR Department opened an investigation. It learned more disturbing information about Hall from other employees. The board decided to terminate Hall for cause. As sometimes happens in these situations, a number of board members (of both sexes) made catty comments about Hall and Larson during the discussions despite being asked by the board chair Anita Nilsson to avoid irrelevant and inappropriate comments. Nilsson is particularly concerned in this case because Hall has threatened to sue BCA if he is terminated.

LESSON: Rita Newman, the board secretary, should exercise care in drafting the minutes, paying particular attention to word choice. Under no circumstances should she refer to the catty comments. She should note the allegations as such, the evidence that was taken into account by the board, and the board’s decision. The discussion should be brief, neutral, and judgment free. If at all possible, it should be reviewed by the organization’s attorney before the minutes are circulated for review. Because this discussion occurred during executive session, the portion of the minutes relating to the Hall matter should be segregated from the minute book regularly used for housing meeting minutes so that this discussion in the minutes is secure.

Executive Session Minutes

While minutes should be maintained for executive sessions, they should be stored in a separate minute book from the minutes of the regular board meetings. Many CAAs must comply with open meeting laws, or have bylaws that require meetings to be open to the public. These laws and requirements often permit a board to consider sensitive matters in closed or executive session. These matters often include personnel, sensitive contract negotiations, and pending or threatened litigation—each board must review the specific law or requirements for executive sessions to determine what can be considered during these sessions.

- **Establish Basis for Executive Session.** If statutes or bylaws restrict what can be discussed in executive session, the minutes should state the legal basis for the executive session.
- **Watch Tone.** Whoever drafts meeting minutes should always do so with an eye toward avoiding controversy or creating potentially damaging language should the minutes become public or the subject of a discovery request from the opposing side during litigation. This is particularly true in the case of minutes for executive session meetings given the sensitive nature of the matters typically reserved for those sessions. When appropriate, the drafter should have the CAA’s lawyer review drafts before circulating or finalizing them. In sum, the tone and substance of executive session minutes should be more in keeping with the corporate lawyer’s traditional view of how minutes should be maintained.
- **Take Precautions When Storing.** Executive session minutes should be stored in a special minute book physically separated from the minutes for regular sessions. In at least one known instance, an organization was asked to turn over its minute books for review in connection with potential litigation. While portions of the executive session minute books were subject to attorney-client privilege, nobody drew that distinction. The adversary was given access to the minutes books that contained those privileged minutes right alongside minutes for the regular meeting.

Executive session minutes should be stored in a special minute book physically separated from the minutes for regular sessions.

Committee Minutes

State law sometimes requires that minutes be maintained for board committee meetings. Regardless of whether required by state law, minutes should be maintained for board committee meetings.

- **Follow the Same Format and Content Rules.** There is no reason why those preparing and maintaining minutes for committee meetings shouldn’t follow the guidelines outlined above.
- **Store Committee Meeting Minutes Separately.** The meeting minutes for each committee should be stored separately rather than being collated in one minute book containing all board and committee meeting minutes. This approach should make finding information easier, particularly if there are multiple committees, but CAAs should feel free to ignore this suggestion in favor of any system that they develop to make the minutes easily accessible, including electronic minute books.



CREATE AN ELECTRONIC MINUTE BOOK

Given the ease with which Word files can be converted to PDF files, there is no excuse for not creating an electronic minute book using Adobe Acrobat or comparable software.

Benefits include:

- **Ease of creating, updating, and storing back-up copies:** An electronic file may be stored and updated on a flash drive in a fire safe box or an offsite computer or on a web-based service.
- **Search function:** If the CAA needs to reconsider a matter that came up five or ten years ago, an electronic search will prove to be much more efficient and effective than a search through binders holding paper minutes.
- **Portability:** If someone needs to review the minute books, such as an auditor or regulator, it is easier to provide the minutes in electronic rather than paper form.

Retaining minutes

Traditionally, minutes are kept in a formal minute book or a less formal binder. CAAs should adopt whatever packaging works best for their circumstances, but consider the following:

- **Number the Pages.** Each page of the minutes should be numbered (Page X of Y) and dated. This will make efforts to tamper with the minutes more difficult and will help others in future reviews involving more than one meeting.
- **Keep At Least Two Copies.** At least two copies of the minute book should be created and maintained. One should reside in a safe place in the CAA's offices. The other should be stored in a different location to provide backup in the event of fire, theft, flood, or other acts of God.
- **Avoid Using a Board Member as the Repository.** There will be instances where the CAA does not have a physical or a secure facility, meaning that a board member or officer will store the minutes at his home or place of business. This should be viewed as a last resort and should be avoided. If the keeper of the records dies, is away on business, or has a falling out with the CAA, the CAA may lose access to its minute book.
- **View Meeting Minutes as Core Organizational Documents.** There is no one right answer as to how long corporate meeting minutes should be retained. At least one state sets the minimum period at three years. Clearly CAAs subject to that state's jurisdiction want to retain meeting minutes for at least three years. However, like all record retention issues, the answer should turn on how long the CAA needs the information contained in the minutes. Consider the following two examples:
 - BCA borrows \$1 million from the bank to finance the acquisition of a new office building. The loan is for a 15-year term. At a minimum, BCA should retain the minutes from the meeting authorizing the loan for at least 15 years from the date of the loan, or if a shorter period, until the loan is retired.
 - BCA is organized under the laws of State X. Under State X's laws, an action can be brought against a board member for breach of his fiduciary duties within six years of the breach. At a minimum, BCA should retain the minutes for at least six years from the date the minutes were approved. However, determining how long statutes of limitation remain open is tricky, so BCA and its board would be well advised to retain the meeting minutes for each meeting much longer.

Given their importance and minimal demand for space, particularly if maintained in electronic form, there is no reason why any CAA should ever discard its meeting minutes. In other words, in an effort to maintain institutional memory, the meeting minutes should be retained permanently.

Endnotes

1. 42 U.S.C. 9910
2. 42 U.S.C. 9901(1).
3. For more information on this topic, see CSBG Information Memorandum No. 82, published by the Office of Community Services within the Department of Health and Human Services' Administration for Children and Families: <https://www.acf.hhs.gov/ocs/resource/im-no-82-tripartite-boards>. Also see the Community Action Partnership's Standards of Excellence at www.communityactionpartnership.com.
4. Some nonprofit literature also mentions a third separate duty—the duty of obedience—which requires a board member to act in furtherance of the organization's mission and to ensure compliance with applicable laws. However, other nonprofit experts and the model acts do not include it as a separate duty and/or believe it is more appropriate to incorporate it into one of the other two recognized fiduciary duties. Whether it is considered a separate duty or subsumed within the other duties, boards should consider furtherance of the mission and compliance with applicable laws to be an important part of its role. As always, CAAs should check with their attorney on their state's laws with respect to board members' duties.
5. 42 U.S.C. 9910.
6. 42 U.S.C. 9908(b)(11).
7. See OCS Information Memorandum No 49: <https://www.acf.hhs.gov/ocs/resource/im-no-49-program-challenges-responsibilities-and-strategies-fy-2001-2003>.
8. 42 U.S.C. 9837(c)(1)(E).
9. An organization-wide budget allows for a comprehensive financial snapshot of the organization, and is required for Head Start grantees. See 42. 9837(c)(1)(E)(iv)(VII)(bb).
10. 26 U.S.C. 4958.
11. 42 U.S.C. 9910.
12. To learn more about bylaws, see CAPLAW's Bylaws Toolkit, available for purchase at: <http://www.capl原因.org/publications.html>
13. See Tortorice, Donald A, (2015). The Modern Rules of Order, Fourth Edition: A Guide for Conducting Business Meetings. Chicago, IL: American Bar Association.
14. 42 U.S.C. 9910.
15. CSBG IM 138, State Establishment of Organizational Standards for CSBG Eligible Entities: <https://www.acf.hhs.gov/ocs/resource/csbg-im-138-state-establishment-of-organizational-standards-for-csbg-eligible-entities>
16. See The Reporters Committee for Freedom of the Press Open Government Guide for a state-by-state summary: <http://www.rcfp.org/ogg/>