

Standard 3: Board Accountability

The land trust board acts ethically in conducting the affairs of the organization and carries out the board's legal and financial responsibilities as required by law.

Volunteers serve on a board for many reasons, but most often because they enjoy working with others to carry out the mission of the organization. The board has legal and ethical responsibilities to maintain the public's trust and the land trust's credibility. Every board member must understand these responsibilities. A board member who does not exercise reasonable oversight for the organization may be held liable for the organization's wrongdoings or errors of judgment. To fulfill their duties, board members must be knowledgeable about the activities of the organization. A person who is not able to assume the responsibilities of a board member should not be on the board, but could serve the land trust in some other way.

Contents

Introduction

Practice 3A: Board Responsibility

The board is responsible for establishing the organization's mission, determining strategic direction and setting policies to carry out the mission, and, as required by law, the oversight of the organization's finances and operations.

- Legal Standards for Nonprofit Board Members

- Board Member Liability

- Protections Against Board Members' Liability

Practice 3B: Board Composition

The board is of sufficient size to conduct its work effectively. The board is composed of members with diverse skills, backgrounds and experiences who are committed to board service. There is a systematic process for recruiting, training and evaluating board members.

- Advantages of a Diverse Board

- How Large? How Diverse?

- Recruiting New Board Members

- Removing Inactive Board Members

Practice 3C: Board Governance

The land trust provides board members with clear expectations for their service and informs them about the board's legal and fiduciary responsibilities. The board meets regularly enough to conduct its business and fulfill its duties, with a minimum of three meetings per year. Board members are provided with adequate information to make good decisions. Board members attend a majority of meetings and stay informed about the land trust's mission, goals, programs and achievements.

- Informed Participation

- Educating Board Members

- Effective Board Operating Structure

- Board Meetings

- Board Meeting Attendance

- Making It Easy to Participate

- Frequency of Meetings

- Keeping Minutes

Practice 3D: Preventing Minority Rule

The land trust's governing documents contain policies and procedures (such as provisions for a quorum and adequate meeting notices) that prevent a minority of board members from acting for the organization without proper delegation of authority.

- Quorum

- Meeting Notices

- Holding Effective Meetings

Practice 3E: Delegation of Decision-Making Authority

The board may delegate decision-making and management functions to committees, provided that committees have clearly defined roles and report to the board or staff. If the land trust has staff, the board defines the job of, oversees and periodically evaluates the executive director (or chief staff person). (See 3F and 7E.)

- Delegation to Officers

- Delegation to Committees and Executive Committee

- Delegation to Staff

- Oversight of Delegated Activities

- The Board and the Executive Director

Practice 3F: Board Approval of Land Transactions

The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.

- The Approval Process

- The Importance of Accurate, Sufficient Information

- Informing the Board Throughout the Transaction

- Information for Final Action

- The Role of Committees in Project Approval

- The Role of Staff and the Policy Governance Model

- Emergency Approval Procedures

- Ratification as an Alternative to Full Board Action

- Examples of Land Trust Approval Procedures

Introduction

Service on a board is a serious commitment. The legal consequences of board service must be considered by every potential board member before he or she agrees to serve, and understood by every board member who does serve.

The board of directors carries the ultimate management responsibility for the nonprofit corporation. Board responsibilities cover all functions of directing and operating a land trust, including finances and fundraising, operations, programs, long-range planning, staff

and volunteer conduct, and public relations. The board of directors of a land trust is at the top of an accountability pyramid—followed by board committees, staff, advisory groups and consultants, and volunteers and members. The board of directors may be accountable and liable for decisions made and actions taken by any individual in the pyramid.

Just as board members of land trusts are accountable for many types of decisions, they are accountable to several different constituencies. Most directly they are accountable to the land trust, its employees, members (if it is a membership organization), donors of funds and property, and other individuals who participate in land trust events or use land trust property. In addition, land trusts and their board members are accountable for their actions to local, state and federal governments.

The active involvement of board members in the governance of a land trust and adherence to sound governing procedures are critical to a land trust's success. Poorly functioning boards lead to a variety of problems.

- **Ineffective operations.** An uninvolved board will lose its energy and ability to function. Board members will become disinterested and will fail to participate. The land trust will lose its leadership, its enthusiasm and its ability to move ahead effectively. As interest dissipates, the land trust is likely to miss important opportunities and, worse, possibly make serious mistakes.
- **Personal liability.** Board members of a land trust who do not meet legal standards of behavior will have fewer defenses against lawsuits brought against them. Although such suits are rare, individual board members *may* be held personally liable for damages. The land trust's status as a corporation provides protection to a board member only if the board member has conformed to legal standards of behavior. A board member who has not acted diligently, honestly, in good faith, or in the land trust's best interests, may invite personal liability.
- **Inactivity and dissolution.** The extreme results of an uninvolved board are inactivity and, ultimately, dissolution of the land trust. Questionable behavior by board members may not lead to a lawsuit, but it can destroy the trust's credibility. A board that cannot maintain sound and legal business practices will be unable to attract participation and support in the community and may become completely dormant. At worst, failure to be aware of and meet basic filing and reporting requirements could cause a land trust to lose its tax-exempt status or be legally dissolved.

In contrast, a board that understands and meets its basic responsibilities provides a firm foundation for the land trust that builds public confidence (as well as the confidence of board members, donors and staff), paves the way for financial success, and allows the land trust to focus its energies on creative, effective ways to accomplish its land-saving mission.

The practices that follow outline some of the fundamental elements necessary for the

operation of a board that meets its basic responsibilities. (*Land Trust Standards and Practices* in their entirety embody the basic elements that the Land Trust Alliance believes are necessary or appropriate for the responsible operation of a land trust.) A truly effective board, of course, goes far beyond meeting its basic legal responsibilities; it works hard at operating as a creative team that can guide the land trust on a path of achievement and success.

There are numerous books, courses, seminars, and consultants that can help a land trust learn how to improve its board operations or deal with internal problems. In addition to information available directly from the Land Trust Alliance, the three key resources for this standard are listed below.

Links to Helpful Resources

- [BoardSource](#) – formerly the National Center for Nonprofit Boards. [BoardSource](#) is the premier resource for practical information, tools and best practices, training, and leadership development for board members of nonprofit organizations worldwide.
- [Independent Sector](#) – committed to strengthening, empowering and partnering with nonprofit and philanthropic organizations in their work on behalf of the public good.
- [Wise Giving Alliance](#) – part of the Better Business Bureau. The Alliance reports on nationally soliciting charitable organizations that are the subject of donor inquiries.

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Practice 3A: Board Responsibility

- The board is responsible for establishing the organization's mission, determining strategic direction and setting policies to carry out the mission, and, as required by law, the oversight of the organization's finances and operations.
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The board has the ultimate management and fiscal responsibility for the nonprofit corporation. Board responsibilities include oversight of finances and fundraising, operations, programs, long-range planning, staff and volunteer conduct, and public relations. The board of an all-volunteer land trust takes on many of the day-to-day program and operations tasks. The board of a large staffed organization will focus on setting overall policies and management oversight. Regardless of size, a board that understands and meets its basic responsibilities provides a firm foundation for the land trust, builds public confidence, paves the way for financial success, and allows the land trust to focus its energies on creative, effective ways to accomplish its land conservation mission. A strong and informed board leads to a strong and effective organization.

While this practice outlines the major responsibilities of the board and its members, there are many other places within *Land Trust Standards and Practices* that describe the responsibilities of the board for specific actions.

Legal Standards for Nonprofit Board Members

The legal standards of behavior for board members of nonprofit organizations vary from state to state. Board members must be familiar with and follow applicable state law. The discussion below addresses many of the legal standards found in state laws, and the current thinking on nonprofit board members as embodied in the [Revised Model Nonprofit Corporation Act](#). (This is a model law drafted by the Committee on Nonprofit Corporations of the American Bar Association to offer direction to state legislators in developing individual state laws.) This discussion is intended as a general layperson's guide to board members' legal duties. It is drawn from *Board Liability: Guide for Nonprofit Directors*, by Daniel L. Kurtz, 1988, and *Nonprofit Organizations: Rights and Liabilities for Members, Directors and Officers*, by Elaine N. Hadden and Blaire A. Finch, 1987 (out of print), which land trusts may want to refer to for further general information on board liability. For definitive guidance, a land trust must look to its own state law.

State law generally embodies the following as major duties that board members owe their organizations:

- Duty of care,
- Duty of loyalty, and

- Duty of obedience.

These legal duties define the standards of behavior of board members. The organization or someone acting on its behalf, such as another board member or member, may enforce them. In general, they require honesty, good faith, and ordinary reasonable care and diligence.

Duty of care

A board member owes what in legal terms is called a “duty of care” to the land trust in the actions or decisions he or she undertakes on the land trust’s behalf. The duty of care concerns the competence with which board members serve the land trust.

PRUDENT PERSON RULE

The Revised Model Nonprofit Corporation Act states that a board member shall discharge his or her duties as a board member “with the care an ordinarily prudent person in like position would exercise under similar circumstances.” Many state laws currently employ the “prudent person” standard.

“Ordinarily prudent person” means that board members are expected to possess and exercise sound, practical judgment, to employ common sense and to reach sound, informed conclusions—although the conclusions may not necessarily be correct. Thus, board members do not need to guarantee the success of every action they take. Nor is prudence to be equated with excessive caution.

CONSIDERATIONS FOR VARYING CIRCUMSTANCES

The phrases “in like position” and “under similar circumstances” are intended to allow consideration of a variety of factors. “Like position” refers to how an ordinarily prudent board member of a similar (small, large, established, etc.) organization would act.

“Under similar circumstances” reflects the particular setting in which the board members make decisions. Thus allowances may be made, for example, for a board member who has been invited to participate primarily in the land trust’s fundraising. *However, the courts do not make allowances for a nominal board member*—for example, one whose only involvement consists of making a single large donation each year. The phrase also takes into account the size and complexity of the organization, the urgency of a decision, potential risks and rewards, and information available at the time.

STAYING INFORMED

At a minimum, the standard of care requires that board members be attentive and stay informed. This does not require board members to do exhaustive research on every issue themselves. The Revised Model Nonprofit Corporation Act provides that, in discharging his or her duties as a board member, a board member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by specifically listed persons, officers or committees of the board. But it does imply that board members will review materials provided them, request additional materials if necessary and make their own special inquiries into reports or explanations that appear incomplete. Board members generally may rely on information

and recommendations generated by others as long as they do so in good faith after reasonable inquiry.

The following list contains some of the most important areas in which board members must stay informed to manage the land trust's affairs:

- **Financial.** Board members have a fiduciary responsibility to the land trust. The standard that applies for day-to-day financial decisions is usually the same prudent person standard discussed above. Some states apply a heightened standard for investment of assets.
- **Tax-exempt status.** The protection of a land trust's tax-exempt status is crucial to its operation. Board members should pay close attention to maintenance of this status. (See practice 2C for further discussion of maintaining tax-exempt status.)
- **Land trust programs.** The programs of the land trust should be in direct pursuit of the purposes stated in the land trust's corporate charter. Board members should know what the land trust's mission is and question activities that deviate from it.
- **Property ownership.** Property ownership among land trusts varies from office leasing to fee ownership of land. Board members should learn as much as they reasonably can about a property before approving a transaction. They must also keep abreast of new issues arising from property ownership, such as toxic liability.
- **Staff.** The employment of staff involves legal issues and requirements relating to personnel policies, benefits and income tax withholding. Board members need to be sure these responsibilities are met.
- **Volunteers.** Board members may be responsible for volunteers' actions. Volunteers need to be appropriately trained and supervised by the land trust.

(See practice 3C for further discussion of how to ensure informed participation.)

VIOLATIONS OF THE DUTY OF CARE

The type of behavior that would violate the duty of care can be generalized as mismanagement resulting from negligence or incompetence. Some examples of this type of behavior include the following:

- Failure to attend meetings at which the consequences of a property acquisition were discussed, and then voting on the acquisition without having read past minutes or having discussed the matter with other board members.
- Hiring new staff without checking past employment references.
- Representing to contributors that contributions are tax deductible without having received a determination of status from the Internal Revenue Service (although an

advance ruling is sufficient).

Duty of loyalty

The Revised Model Nonprofit Corporation Act also specifies that board members, in discharging their duties, must act “in a manner the board member reasonably believes to be in the best interests of the corporation.” This means that board members owe a duty of loyalty to the land trust they serve. This duty requires that board members, in conducting the organization’s business, faithfully pursue the interests of the land trust over their own personal interests, financial or otherwise, or the interests of any other person or organization, including another land trust or conservation organization. Any opportunities for benefits or advantages based on service as a board member must accrue only to the organization, and never to the individual. Board members also must act “in good faith,” which generally means acting with honesty, openness, and fairness. The duty of loyalty is also discussed in Standard 4 on conflicts of interest and compensation of board members.

Duty of obedience

The duty of obedience requires board members to adhere to the land trust’s purposes as set forth in its charter, bylaws and other documents such as its tax-exemption application, fundraising appeals, grant applications, etc. Board members must understand the land trust’s mission and act in its pursuit. A land trust may be laudably concerned about other social needs in the community, but acting to address those needs, if they are not part of the land trust’s mission, is a breach of the duty of obedience. (Of course, a land trust may modify its purposes by amending its charter.)

Deviation from the stated mission of the land trust makes the organization and the board members vulnerable to liability. There are practical as well as legal drawbacks. A land trust’s ability to raise funds and conduct its operations depends on the confidence and support its donors and members have in those who manage their funds. If individuals, foundations or corporate grant makers believe an organization is not using the funds for the intended purposes, they may cut off such funding.

Board Member Liability

Individual board members can be sued. Liability may occur in three different situations. (The following discussion is drawn from *Board Liability: Guide for Nonprofit Directors*, by Daniel L. Kurtz, 1988.)

Breach of duties

Board members may be liable for breaching the duties—care, loyalty, obedience—that they owe to the corporation if, as a result of the breach, the corporation has been injured. These duties are enforceable only by the corporation or one acting on behalf of the corporation, including other board members, officers, members, and the state attorney general (to protect the state’s/public’s interest in the corporation.)

Wrongful conduct

The protection of limited liability offered by the land trust's status as a corporation shields board members from most tort liability—that is, the claim of injury to a third party or its property—such as bodily injury. To prevail in such a claim, the damaged individual would need to prove that the corporation or its board members engaged in wrongful conduct that led directly to the injury. If a board member was engaged in wrongful conduct that led to the injury, he or she could be held personally liable for damages.

Statutory liabilities

Finally, board members may be held liable for the violation of other civil or criminal laws. Some states impose sanctions on officers and board members for the submission of false or inaccurate information filed in connection with state regulatory and reporting requirements. Board members have been held personally responsible to the Internal Revenue Service for the violation of payroll withholding tax obligations (including the failure to pay taxes withheld) and for the failure to pay required state sales and use taxes. Other areas where board members have been held personally accountable include antitrust activities and civil rights violations. The limited liability of nonprofit corporate status does not shield a board member from his or her own illegal or fraudulent conduct.

Protections Against Board Members' Liability

The best protection against liability is a board of conscientious and committed board members who understand and meet their responsibilities. Board members should not be overly concerned about the prospect of personal liability. One legal guide notes, "Broadly speaking, courts are reluctant to hold nonprofit directors liable except in the clearest cases of dereliction of duty or misuse of corporate funds or property." (*How to Form Your Own Nonprofit Corporation*, by Anthony Mancuso, published by Nolo Press, now in its 6th edition 2004.)

Immunity

Nevertheless, board members do get sued—sometimes for cause, sometimes by a disgruntled party without cause. The cost of defending even one lawsuit against the land trust or any of its board members could bankrupt most land trusts and many board members. Fortunately, several legal protections exist to reduce this risk, as described below.

Since 1986, under the label of tort reform, many states have changed state law to add some protection from personal liability for board members of nonprofit organizations. This additional protection shields board members against claims of injury to persons or property, except where gross negligence on the part of the board member is involved. Most of these new statutes protect only uncompensated board members and apply in suits for monetary damages only, not suits for equitable relief such as an injunction. Board members should investigate their state's law to ascertain if they have this legal protection.

This immunity applies only in the case of a tort claim against a board member. Board members remain liable for other types of suits such as negligence in business matters, fraudulent actions or failure to comply with statutory requirements.

Indemnification

By enacting immunity statutes, many states recognized, and attempted to remedy, the fact that perceived exposure to liability deterred potential board members from serving nonprofit organizations. Indemnification is the land trust's attempt to remedy the same situation. Indemnification is a promise by the land trust to use its resources to pay the legal costs, judgments, fines, or settlements incurred by a board member in defending an actual or threatened claim. Insurance, as discussed below, usually can be purchased by the land trust to cover the costs of indemnification and any direct costs to the board member (although the insurance may be expensive).

The promise of indemnification is generally made in the charter, bylaws, by board resolution, or in a contract between the land trust and its board members. In most states, a land trust's ability to indemnify is limited and may also be limited by its tax-exempt status. In some states, the board members must have met certain standards of conduct, often the standards described above, and a majority of the board must vote to indemnify. Thus even with an indemnification clause in the charter or bylaws, indemnification may not be automatic. And, of course, it only provides protection if the land trust has the financial ability to pay. The land trust's attorney should research relevant state law before drafting indemnification provisions.

Insurance

If a land trust indemnifies its board members, it should consider carrying insurance—generally called “directors and officers” or “association” insurance—to cover the potential costs. This will prevent a situation where a lawsuit brought against its board members could force the land trust to sell its conservation properties to defend the board members.

Directors and officers or association insurance may be expensive and, for new land trusts, difficult to obtain. Most large land trusts with substantial assets have this coverage. Some individuals may insist the land trust carry this coverage before they will agree to serve as board members. Each land trust must decide—in consultation with its attorney and insurance agent, and considering its overall liability, risk management and insurance situation—whether to purchase this insurance. A land trust should certainly purchase general commercial liability insurance, which provides the first line and most common defense against liability suits.

The best protection against liability is for the board members and the land trust to be sure to operate in a way that meets legal standards.

(See practice 6I for a detailed discussion of risk management, liability and insurance.)

Links to Other LTA Resources

- [LTA group liability insurance program](#)

Links to Other Helpful Resources and Publications

- [Revised Model Nonprofit Corporation Act \(1987\)](#)
- [State Liability Laws for Charitable Organizations and Volunteers](#), 4th edition, 2001. Compiled by the Nonprofit Risk Management Center. It is not a substitute for a land trust's attorney's review of the specific implications of its state law.

More Helpful Publications

- *Board Liability: Guide for Nonprofit Directors*, by Daniel L. Kurtz, 1988. Published by Moyer Bell Limited.
- *How to Form a Nonprofit Corporation*, by Anthony Mancuso, Diana Fitzpatrick and Mari Stein, 6th edition, 2004.
- *The Ultimate Board Member's Book: A 1-Hour Guide to Understanding and Fulfilling Your Role and Responsibilities*, Kay Sprinkel Grace, 2004. Published by Emerson & Church.

Practice 3B: Board Composition

- The board is of sufficient size to conduct its work effectively. The board is composed of members with diverse skills, backgrounds and experiences who are committed to board service. There is a systematic process for recruiting, training and evaluating board members.

A land trust's board needs to be of sufficient size and diversity to minimize conflicts of interest, qualify the organization for tax-exempt status, provide credibility in the community, and ensure effective operations. A land trust can help ensure recruitment of good board members by standardizing board recruitment and evaluation methods, usually through a nominating or board governance committee. It is helpful for the land trust to provide board members with written expectations or a job description to explain the role of the board member, expectations for board service and evaluation processes.

The [Better Business Bureau's Wise Giving Alliance](#) in its [Standards for Charity Accountability](#) recommends a board of directors with a minimum of five voting members.

Advantages of a Diverse Board

A land trust's board needs to be of sufficient size and diversity for several reasons:

- **To minimize conflicts of interest.** The size and composition of the land trust's board can minimize conflicts of interest. Conflicts are more likely to occur with a weak board dominated by one or a small group of individuals who, as full-time officers and/or employees, have a financial interest in the organization. The board should consist predominantly of individuals who are financially disinterested.
- **To qualify the organization for tax-exempt status.** The Internal Revenue Service looks at the composition of an organization's board when determining if it qualifies for 501(c)(3) tax-exempt status. The IRS looks for a representative and financially disinterested governing body that reflects a range of public interests, not simply the personal interests of a small number of donors.
- **To provide credibility in the community.** A land trust needs to gain the confidence of a wide range of people in the community: people with the ability to contribute financially to the land trust, landowners, business leaders, the real estate and development community, and conservationists, among others. Perhaps the best way to gain this confidence is to have representatives of these groups on the board. The land trust certainly needs to avoid the appearance of being a small group of insiders of any type.

- **To ensure effective operations.** Land trusts, like all nonprofits, need a wide range of expertise represented on their boards to help them operate effectively. Financial, management, fundraising, and legal skills are among those needed on a board.
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How Large? How Diverse?

There are no hard and fast rules for the ideal board size. State law usually specifies a minimum allowable number of board members, frequently ranging from one to three, but as a practical matter, this is an insufficient number.

In general, a board should be small enough to act as a deliberative body but large enough to carry the necessary responsibility. Land trusts commonly have boards numbering from nine to 15 or 19 board members, which seems to be a good compromise between efficiency and diversity.

Likewise, the composition of land trust boards varies greatly. Some factors to think about in choosing members include: age; gender; professional skills; ties with people the land trust needs to work with; contacts; credibility in the community; ability to make donations; time and energy; and personal qualities that will contribute to the board's operation and land trust's governance.

Above all, a land trust operates to further public, not private, interests, and the composition of its board should reflect this purpose. A land trust's board should not be made up of a narrow group of individuals who want to protect their own interests. Just one or two people who use it to further their own personal conservation vision, unsupported by the community, should not control it. Land trusts succeed by working cooperatively with people in the community to pursue public goals. A land trust's board needs to reflect this.

Recruiting New Board Members

A land trust can reduce the risk of inactive board members by recruiting people who understand the organization and are willing to assume the responsibilities of a board member—and by making those responsibilities clear before the person agrees to serve.

Time and energy are two of the most important attributes of an active board member. In recruiting potential board members, the land trust and the potential board member both need to assess whether the individual has the time to devote to this obligation. The amount of time and energy required may vary depending on the size, activity and age of the land trust, and whether or not there is staff.

A land trust can help ensure recruitment of good board members by taking the following steps:

- **Standardize board recruitment methods.** Every land trust should have a nominating or board governance committee. Many organizations feel this is the most important committee on a board because it is the key to the board's effective governance over time. The nominating committee should require resumes from potential nominees and develop standard interviewing questions.
 - **Develop a written job description or set of expectations for board members** so everyone knows what is expected. If the land trust expects potential board members to undertake specific activities—such as donating legal services or using their connections to raise money for the land trust—these expectations should be stated. The potential board member should be given a reasonable, informed chance to evaluate his or her ability to commit to and maintain the expected level of performance.
 - **Establish alternative ways for key individuals to participate in the land trust,** such as participation on an advisory committee or task force or holding an honorary position. These structures can accommodate individuals whose participation would benefit the land trust, but who cannot commit to the level of involvement necessary for a good board member. The land trust should consider, however, that advisory committees without any purpose often flounder, and it should be sure not to disaffect important people by relegating them to meaningless roles.
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Removing Inactive Board Members

Although removing inactive board members is a painful process, land trusts generally cannot afford to leave inactive members on the board. An inactive board member holds space that could be occupied by someone with energy, talent and drive beneficial to the land trust. Removing nonparticipating board members also reduces the risk of mismanagement of the land trust. Here are some suggestions that may ease the process.

- **Talk to the board member about his or her lack of effort.** If the board member has the best interests of the land trust at heart and truly does not have the time to participate, asking the board member to step down is reasonable. It also demonstrates that the other board members are willing to work in good faith with the nonparticipating member to try to solve any problems that have led to the lack of participation. In addition, it allows the board member to explain and possibly change his or her behavior. This step may prevent hard feelings and charges of discriminatory action.
 - **Add provisions to the bylaws allowing removal of a nonparticipating board member by resolution.** If land trusts choose this route, they should include a definition of nonparticipation that can be applied in an objective manner, such as requiring participation in a certain number of meetings.
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Links to Other LTA Resources

- [Building an Effective Board of Directors. Rally 2003 Workshop.](#)
- [Starting a Land Trust](#), published by the Land Trust Alliance, 2000 – for further information on board composition.

Links to Other Helpful Resources and Publications

- [Blank board matrix for planning board recruitment.](#)
- [Standards for Charity Accountability](#), Wise Giving Alliance, Better Business Bureau, 2003.
- [“What to Do with Board Members Who Don’t Do Anything”](#), excerpt from *The Best of The Board Café*, available at compasspoint.org.
- [Wise Giving Alliance](#) – part of the Better Business Bureau. The Alliance reports on nationally soliciting charitable organizations that are the subject of donor inquiries.

Practice 3C: Board Governance

- The land trust provides board members with clear expectations for their service and informs them about the board's legal and fiduciary responsibilities. The board meets regularly enough to conduct its business and fulfill its duties, with a minimum of three meetings per year. Board members are provided with adequate information to make good decisions. Board members attend a majority of meetings and stay informed about the land trust's mission, goals, programs and achievements.

The legal standards of behavior for board members of nonprofit organizations vary from state to state. State law generally embodies a “duty of care,” “duty of loyalty” and/or “duty of obedience” as the major duties that board members owe their organization. In general, they require honesty, good faith, and ordinary and reasonable care and diligence. A truly effective board, of course, goes far beyond meeting its basic legal responsibilities; it works hard at operating as a creative team that can guide the land trust on a path of achievement and success. The board should meet often enough so that board members are sufficiently informed and involved in decisions to meet their legal duty of care. Many boards of smaller organizations meet monthly; boards of larger organizations may meet less often. Often a board has committees that meet between board meetings. IRS guidelines for tax-exempt organizations suggest that an organization hold a minimum of three in-person meetings a year.

Informed Participation

As discussed in practice 3A, the duty of care requires each board member to be an active, informed participant in the management of the land trust. Moreover, informed participation by all board members is essential for the successful, sound operation of the organization. A land trust should avoid having nominal board members who give moral or financial support but are not informed participants.

Board members may fail to participate for several reasons. The board member simply may not understand the importance of his or her involvement. The board member may have been recruited without having a clear understanding of the type of commitment involved. The board may operate in a way that discourages or prevents meaningful involvement by some of the board members, who may prefer not to waste their time if their abilities are not used and valued. Thus the board members as individuals and the land trust board as a governing body (and the chief staff officer if there is one) share the responsibility for ensuring that the trust's board members meet at least minimum participation requirements. Ultimately, the trust may be required to remove inactive board members from its board.

Educating Board Members

The land trust board or staff can take a number of steps to help ensure board members are informed.

- **Provide a board handbook or orientation package.** The land trust should provide board members with a handbook or package of materials containing all pertinent documents, policies and procedures. This may include:
 - ❑ Corporate charter and bylaws;
 - ❑ List of board members with addresses, phones and biographical sketches;
 - ❑ List of committees, their duties and members;
 - ❑ List of staff, their positions and duties;
 - ❑ Description of current programs and their status;
 - ❑ Strategic and/or annual plan;
 - ❑ History of the organization;
 - ❑ Most recent financial audit;
 - ❑ Minutes of the last several meetings;
 - ❑ Information on membership and fundraising;
 - ❑ Any brochures, recent newsletters, annual report, or other printed materials on the land trust;
 - ❑ Copies of publications the land trust has produced;
 - ❑ Information about land trusts generally;
 - ❑ Information about land protection, including any landowner fact sheets the trust uses, sample easement document the trust uses, glossary of terms, etc.; and
 - ❑ LTA's *Land Trust Standards and Practices*.

Useful materials for board members available from LTA include the *Land Trust Standards and Practices* and *Starting a Land Trust*.

- **Orient new members.** The land trust should provide an orientation for new board members. The content of the orientation varies depending on the size and activities of the land trust.
- **Provide additional materials and information.** The land trust should help keep board members informed by providing access to or purchasing publications and materials on relevant topics. The land trust should consider obtaining for each of its board members a subscription to LTA's professional journal, *Exchange*, and the periodic *LTA Landscape* newsletter. The land trust should make sure board members are aware of other LTA publications and information services. The land trust may also seek resources from two excellent organizations, [BoardSource](#) and [Independent Sector](#).
- **Training opportunities.** The land trust should encourage attendance (and consider covering the costs of attendance) at key meetings and training opportunities, such as LTA's National Rally, statewide or local land trust conferences, workshops on land

protection or nonprofit management, etc. See practice 7D for further discussion of training and education opportunities.

- **Evaluate board members.** The board should institute a program of regularly evaluating its members against the expectations for board service.
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Effective Board Operating Structure

The structure of the board and board members' terms can have an impact on the participation of the board members. The following steps may help ensure active, effective board members:

- **Limit the board to an effective size.** Trying to make decisions in a large group may be difficult and frustrating. A meeting with a board of 30 members may not promote full discussion or allow each member to express his or her views fully. On the other hand, if all-important decision-making is relegated to an executive committee, other board members may feel uninvolved. Too small a board, however, may fail to represent diversity or key constituencies from the community or may lack certain skills or qualities the land trust needs. The land trust needs to try to find the appropriate balance in the size of the board. (See practice 3B for further discussion of appropriate board size.)
 - **Stagger terms.** This prevents the land trust from having a board composed completely of new board members who lack experience in operating a land trust.
 - **Limit the number of consecutive terms a board member may serve.** Land trusts overwhelmingly recommend limited terms. It prevents the domination of the land trust by any group of board members or a single strong leader. Bringing in new board members increases the chance the board will remain dynamic and creative, and builds leadership for the future.
-

Board Meetings

Board meetings are a forum for exchanging information and ideas, setting policies, and taking actions. The board must meet often enough so that board members are sufficiently informed and involved in decisions to meet their legal duty of care.

As a practical matter, boards need to meet to involve all board members, make wise decisions and prevent domination of the organization by a single person or small group. Although most organizations depend on a few board members (often the executive committee) to do much of the board's work, these individuals must have the backing and assistance of the rest of the board.

The Treasury Department recommends, in its voluntary best practices for tax-exempt

organizations, that organizations meet at least three times per year. See U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: [Voluntary Best Practices for U.S.-Based Charities](#).

Board Meeting Attendance

The most basic responsibility of serving on a board is to attend its meetings, and board members should understand this when they agree to serve. Board members should attend nearly all meetings of the full board and of the committees to which they are appointed. A board member who cannot attend a meeting should take the following steps to stay informed. These are steps that all board members should take, but they are especially critical for a board member who did not participate in the meeting.

- **Review minutes.** If a board member cannot attend a meeting, he or she should obtain and review the minutes. (Board members who attended a meeting should also review the minutes for accuracy.)
- **Read and review materials.** Board members who cannot attend a meeting should review distributed materials in advance if possible, and convey their views to the board chairman or other appropriate person. Even if they cannot comment in advance, board members should read all the meeting materials to understand the decisions made and stay up-to-date on the trust's progress. (All board members, of course, should read materials in advance of the meeting so they can make efficient and informed decisions.)
- **Make inquiries.** If a board member questions the direction the board is moving on any topic or feels information is incomplete or inaccurate, he or she should bring those concerns to the attention of the other board members. If the board member was not at the meeting where the issue was discussed, he or she should follow up with the board chair or appropriate committee.
- **File objections.** If the board member objects to any action taken by the board at a meeting at which the board member was absent, he or she should file these concerns in writing with the land trust secretary.

Reviewing materials and minutes and filing comments is minimal, not necessarily sufficient, participation for a land trust board member over time. If a board member cannot attend a majority of meetings, the land trust should consider removing the board member from the board. The land trust may want to include a provision in its bylaws for removing board members if they miss a specified number of meetings over a period of time (such as three consecutive meetings, or 25 percent of meetings over a 12-month period).

There may be rare circumstances where an exception may be merited—where a board member is unable to attend meetings but can continue meaningful participation through

involvement in committees, providing a certain kind of expertise, etc. If the land trust chooses to consider such an exception, it needs to keep in mind that the legal standard of duty of care leaves no room for nominal board members.

Making It Easy to Participate

The land trust can make it more convenient and appealing for board members to participate by scheduling meetings well in advance and scheduling them at times and in locations that are convenient; holding well-planned and well-run meetings; and delegating complex or time-consuming responsibilities to committees.

Frequency of Meetings

This practice specifies that the board should meet “regularly enough” to conduct its business and fulfill its duties. The U.S. Treasury Department recommends meeting a minimum of three times per year, and *Land Trust Standards and Practices* follows suit. But this is rarely enough to conduct properly all the business of the land trust. The number of meetings necessary depends on factors such as the following:

- **The age of the land trust.** The board of a new land trust needs to deal with many organizational details. It may need to meet more frequently than an older land trust with an established program of activities and procedures for governing the organization.
 - **Level of activity.** A land trust that has largely completed its acquisition agenda in the community and does not have substantial stewardship difficulties needs to meet much less frequently than a land trust that completes ten transactions a year, or operates a nature center or system of properties open to intensive public access.
 - **Level of delegation of authority.** If significant decision-making authority has been delegated to committees or staff, the full board needs to meet less frequently than if all members are actively participating in most of the land trust’s management decisions.
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Keeping Minutes

The actions and major deliberations at board meetings need to be recorded. Moreover, good records are good business practice. A member of the board, usually the secretary or clerk, should perform the following duties:

- **Take minutes** of each full board meeting and major committee meetings held. Include a description of what was discussed and the result of any votes taken.

- **Type and distribute minutes** to all board members in a timely manner after a meeting so that corrections and additions can be made.
 - **Make all land trust records available** to board members for review.
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Other Helpful LTA Publications

- [*Starting a Land Trust*](#) – a source of useful information for board members.

Links to Helpful Resources and Publications

- [BoardSource](#) – formerly the National Center for Nonprofit Boards. BoardSource is the premier resource for practical information, tools and best practices, training, and leadership development for board members of nonprofit organizations worldwide.
- [Independent Sector](#) – committed to strengthening, empowering and partnering with nonprofit and philanthropic organizations in their work on behalf of the public good.
- [Voluntary Anti-Terrorist Financing Best Practices for U.S.-Based Charities](#), U.S. Department of the Treasury (no date).

Sample Land Trust Materials

- Anonymous – [Annual Board Self-Assessment](#)
- Barrington Hills Conservation Trust (IL)
[Board Member Responsibilities](#)
[Commitment to Accept Board Member Responsibilities](#)
- Connemara Conservancy (TX)
[Board of Trustees Self-Assessment](#)
[Desired Qualifications of Trustees](#)
- Land Trust of Napa County (CA) – [Policy Manual for Board and Staff Members](#)
- Marin Agricultural Land Trust (CA) – [Job Description for MALT Board Members](#)
- Minnesota Land Trust – [Board of Directors Handbook \(table of contents\)](#)
- Orient Land Trust (CO) – [Position Description: Board of Directors](#)
- The Nature Conservancy – [Statement Of Roles And Responsibilities Of The Conservancy's Volunteer Leadership And Boards](#)
- Upper Valley Land Trust (NH) – [Standards and Practices \(board manual table of contents\)](#)
- Vermont Land Trust
[Governance Process](#)
[Policy Governance Overview](#)

To Fully Implement this Practice, LTA Recommends...

- ❑ A board manual or other material is distributed to board members explaining the expectations for board service and the role of the board.
- ❑ Board trainings are conducted to educate new board members as to their responsibilities.
- ❑ The land trust holds at least three board meetings each year.
- ❑ Information (such as board agendas, resolutions, bylaws, and other important information) is distributed in a timely manner prior to board or committee meetings and as necessary to inform the board of the land trust's activities.
- ❑ Individual board members attend the majority of meetings.

Practice 3D: Preventing Minority Rule

- The land trust's governing documents contain policies and procedures (such as provisions for a quorum and adequate meeting notices) that prevent a minority of board members from acting for the organization without proper delegation of authority.
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A land trust needs to have controls in place to prevent rule by the minority in order to ensure that the public interest is served. Decisions made by the board should reflect the opinion of a majority of the board and the constituencies that majority represents. Safeguards to prevent minority action can also prevent the takeover of a land trust by a small group of board members who are disgruntled or want to take the land trust in a different direction than that stated by the mission or by the rest of the board. Safeguards can include requiring quorums of greater than 50 percent, advance notice of board meetings and agenda items requiring board action, providing adequate information in advance of board meetings, and parliamentary meeting procedures.

Quorum

One way to help avoid minority rule is to have the bylaws require a quorum of greater than 50 percent. Here are some examples from land trust bylaws. These are examples only, and the actual bylaws of these organizations may have been amended.

From the Orange County Land Trust in New York:

3.14 Quorum for Meetings. If the Board contains 18 or more members a quorum shall consist of 10 of the members, or if the Board consists of fewer than 18 members then a quorum shall be a majority of the members of the Board. Except as otherwise provided under the Articles of Incorporation, these Bylaws, or provision of law, no business shall be considered by the Board at any meeting at which the required quorum is not present, and the only motion which the Chair shall entertain at such a meeting is a motion to adjourn.

From the Land Trust Alliance:

5.12 Quorum. At any meeting of the directors a majority of the directors then in office shall constitute a quorum. Any meeting may be adjourned by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.

Meeting Notices

Providing adequate notice of meetings can help prevent minority rule by ensuring that all board members are informed about the meetings. The following are some bylaw examples that address meeting notice. Again, these are examples, and the actual bylaws may have been revised since this writing.

From the Orange County Land Trust:

3.13 Notice of Meetings. Unless otherwise provided by the Articles of Incorporation, these Bylaws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board:

- a.) Regular Meetings. Notice of all meeting shall be in writing and shall state the time and place of the meeting and shall be served either personally or by mail upon each Director not less than 10 days before the meeting. Notice of a meeting of the Board need not state the purposes thereof, except as otherwise provided by law or in these Bylaws;
- b.) Special Meetings. At least one week prior notice shall be given by the Secretary of the Corporation to each Director of each special meeting of the Board...

From the Maine Coast Heritage Trust:

Section 6. Notice of Meetings. Notice of each annual or special meeting of the Voting members or Directors shall be in writing and signed by the President or Vice President or the Clerk or an Assistant Clerk, and if a special meeting, or if otherwise required by law, shall state the purpose or purposes for which the meeting is called and the time when and the place where it is to be held. A copy thereof shall be either served personally upon or mailed to each Voting Member or Director not less than five nor more than thirty days before the meeting. If mailed, it shall be directed to the Voting Member or Director at his address as it appears on the books of the Corporation, unless he shall have filed with the Clerk a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to such other address.

Holding Effective Meetings

Attendance at board meetings is often a function of the productivity of past meetings. Don't make meetings endurance tests. Meetings must be well run to be productive. Some steps that help ensure constructive meetings include the following:

- **Choose a chairperson** familiar with and adept at running meetings.

- **Notify board members of the meetings as far in advance as possible**, followed with reminders. Some land trusts schedule meetings for the same time and day every month.
 - **Send material on action items in advance** so that board members can read about and prepare for any votes or actions that might be taken at the meeting.
 - **Set an agenda.** Put it in writing and distribute it in advance of the meeting. The agenda should contain issues to be discussed, actions that need to be taken, and estimates of the time needed for each.
 - **Start on time.**
 - **Set discussion procedures.** When making decisions, be sure that everyone is heard. A decision of the board should be made by a formal vote. Many groups use a modified version of *Robert's Rules of Order* to set procedural ground rules. (See *Robert's Rules of Order*, 10th edition, 2000, available from Perseus Publishing.)
 - **Minimize oral reports.** Send background details in advance and operate on the assumption that board members have read the materials.
 - **Evaluate the meeting** briefly at the close and adjust future meetings accordingly.
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Helpful Publications

- [*Robert's Rules of Order*, by Henry M. Robert III, William J. Evans, Daniel H. Honemann, and Thomas J. Balch \(editor\), 10th edition, 2000. Published by Perseus Publishing.](#)

Practice 3E: Delegation of Decision-Making Authority

- The board may delegate decision-making and management functions to committees, provided that committees have clearly defined roles and report to the board or staff. If the land trust has staff, the board defines the job of, oversees and periodically evaluates the executive director (or chief staff person). (See 3F and 7E.)

The land trust board is responsible for setting the policies of the land trust and ensuring that the organization is properly managed. This does not mean that all board members have to do all the work themselves. Most states allow the board to set policy and then delegate implementation authority to officers, committees, staff, or other professionals. When delegating, it should be clear what authority is being delegated, to whom and what reporting procedures back to the board and/or staff are expected. It is the board's responsibility to determine the job description of any executive director or chief staff officer and to hire and evaluate the person in this position. The board should not direct other staff (see 7E).

Delegation to Officers

One of the most common methods of delegating authority is through the selection of officers. The officers of land trusts are usually board members, although this is not always the case. Officers usually include the president, secretary or clerk and treasurer. A vice-president may be selected to fulfill duties that the other officers are unable to fulfill.

The authorized activities and responsibilities of the officers should be clearly outlined and documented to prevent confusion and usurpation of power. This documentation can be incorporated in the bylaws or exist as separate documents adopted by the board. Since states vary as to what can be adopted in a land trust's bylaws, the land trust should consult its attorney before adopting its bylaws.

Delegation to Committees and Executive Committee

A well-organized committee structure can be the key to a board's effective performance. Committees can devote more time to specific issues. They help the board remain well informed on all necessary topics and thus make better decisions. The use of committees allows for a more intense and sustained scrutiny of particular issues and for better use of specialized knowledge possessed by individual board members. The use of committees also facilitates the flow of information to the full board.

In most states, committees of board members may act with the power and authority of the full board, unless they are limited in the bylaws or by board resolution. Some state statutes prohibit the delegation of decision-making authority on some issues. A land trust should consult state statutes to determine its state rules.

Because committees have such broad powers, the land trust must clearly define the role and responsibilities of committees. This definition can be contained in the bylaws of the land trust and may be supplemented by other documents such as board handbooks. The number and types of committees will vary with the size, age and activity level of a land trust. Committees should report to the full board or to staff.

Some land trusts delegate functions to individual board members or officers on the board rather than to committees. This can be an effective way to get work done on a small board, with board members who are willing to commit substantial time and assume significant “work” of the organization. The responsibilities of these pseudo-staff positions tend to be defined in detail. At one time, the Little Traverse Conservancy in Michigan had an interesting structure in which these board members, called vice-presidents, report to and work with the staff, but also oversee volunteer committees.

If a land trust board delegates substantial work to an executive committee, it is especially important to describe the committee’s authority in some detail. An executive committee can easily drift into conducting business that should be the work of the full board. Areas of authority that should be addressed include the level of spending the executive committee is authorized to approve, its role in approving land transactions, and its authority, if any, in hiring or overseeing the chief staff officer. Executive committee minutes should be circulated quickly to all board members, and each board meeting should include a report of executive committee actions.

Delegation to Staff

If the land trust has a staff, substantial decision-making power is (and should be) delegated to it. Defining the role of the staff in relationship to the role of the board is an ongoing process; roles usually shift as the organization evolves and as new people are involved. The ways these roles may be defined are discussed in practice 7F.

Major authorities delegated to staff should be clear and may include spending authority, authority to proceed on land transactions, authority to sign contracts, etc. The staff’s authority may in part be spelled out in the chief staff officer’s job description and in specific board policies; it may be made clear by the authorities spelled out for various board committees and executive committees. All authorities delegated to the staff should be delegated to the chief staff officer, who has the responsibility for determining how those authorities and responsibilities are distributed within the staff.

Oversight of Delegated Activities

Board members must comply with the same standard of care in selecting and overseeing those to whom they have delegated authority. Actions that a land trust can take to monitor delegates and prevent abuses include the following:

- **Clearly state in writing the roles, responsibilities and authorities** given to board members, officers, committees, staff, and other professionals. This can be in the bylaws or other board-approved documents.
- **Generate a list of individuals with the authority to make expenditures and sign binding documents and checks.** This can be done either in the bylaws or other board-approved documents.
- **Define and maintain a reporting system** to assure regular flow of information from delegates to the full board. This reporting system must be adequate to ensure that the full board is capable of fulfilling its management responsibilities in a fully informed and competent manner. For example, the land trust could create a checklist identifying delegated activities, who they are delegated to, and when the full board receives reports. Land trusts should update the information yearly. Another useful tool is an organizational chart.
- **Ask for references before employing professionals (including staff) and check them.** If the profession is regulated, the land trust should get the professional's license number and call the state licensing agency to see if any complaints have been filed.
- **Ask questions.** Before relying on a report from a professional or staff, question the qualifications of the person making the report, the research method employed, and the possibility of conflicting data and opinions.

The Board and the Executive Director

If the land trust has staff, it is the board's role to define the job of the executive director or chief staff officer. The board oversees the work of and evaluates the executive director. The board chair generally has the direct supervisory responsibility of the executive director. In practice, the board chair and the executive director often work in partnership to manage the organization.

Helpful Publications

- [*How to Form a Nonprofit Corporation*](#), by Anthony Mancuso, Diana Fitzpatrick and Mari Stein, 6th edition, 2004. This publication provides a state-by-state summary of

bylaw requirements, including permitted delegation authority. It also provides sample bylaw provisions on officers' duties.

Examples from Land Trusts

- [Barrington Hills Conservation Trust \(IL\) – Board Committee Duties and Responsibilities](#)
- [Society for the Protection of New Hampshire Forests – committee descriptions \(excerpt from bylaws\)](#)
- [Sudbury Valley Trustees \(MA\) – Executive Committee Mission Statement](#)
- Vermont Land Trust
 - [Board-Staff Relationship: Delegation to the President](#)
 - [Executive Limitations: General Executive Constraint](#)
 - [Governance Process: Board Committee Principles](#)
 - [Policy Governance Overview](#)

Practice 3F: Board Approval of Land Transactions

- The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.
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The public commonly associates a land trust with its most visible representatives—the board chair or president, the chief staff officer, the project manager, or the head of the lands committee. This public image, however, does not reflect who has legal responsibility for how the land trust actually operates. Only the board of the land trust, acting as a whole or through powers delegated to board committees or staff, has the authority to set policy, enter into contracts and undertake land transactions.

Virtually all land trusts are “incorporated” as nonprofit corporations or organizations in the state in which they operate. Consequently, each board member of the land trust—as a “nonprofit corporate board director”—holds the legal responsibility to oversee and direct the land trust’s overall business, including its land transactions. Each board member owes a legal duty of care to the land trust, essentially to act in good faith and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

To meet the legal standards established for nonprofit corporation board members, if the full board of the land trust is not going to review and approve of each and every land transaction undertaken by the trust, it needs at a minimum to set forth how land transactions will be approved and by whom. If approval authority is delegated, in whole or in part, it must be clear under what circumstances and within what limits that authority may be exercised. (See practice 3A for further discussion of board accountability and legal duties.)

For most land trusts, this standard requires that the board not only approve a process for transaction decisions, but also actually *makes decisions* on each transaction. In most instances, land transactions are too important to the land trust’s mission and goals to be relegated to a small group of decision makers. The entire board must take responsibility for ensuring that transactions are carried out within legal constraints, are soundly structured, make good use of the land trust’s resources, avoid undue risk, and further the organization’s mission.

Failure to adequately monitor and participate in transaction decisions may result in a variety of problems. For example:

- The land trust may buy a property at an excessive price, raising questions as to whether the land trust has violated U.S. Internal Revenue Code regulations prohibiting land trusts that hold Section 501(c)(3) tax exempt status—and virtually all land trusts do—from acting in ways that create “private benefits” for the seller rather than acting for the public benefit.
- Laxness or haste in undertaking a land transaction may cause the land trust to skip performing a preliminary environmental assessment of the property. Should hazardous waste exist on the property, under current federal and state hazardous waste laws, the land trust could acquire a substantial financial obligation to clean up the contaminated property.
- The types of properties being protected may serve the personal agenda of one or a few of the staff or board members, veering away from the mission or strategic plan adopted by the entire board and staff.
- Board members who are not involved in decisions on land transactions, the heart of every land trust’s work, may become uninterested, passive board members.
- The appearance that the land trust makes decisions on an ad hoc basis, or that a transaction can be pursued by influencing one key person in the land trust, may damage the land trust’s credibility in the community and raise questions about whether it is serving the community interest.
- The land trust may take on projects with stewardship obligations that exceed the organization’s capacity or financial resources, jeopardizing the financial stability of the organization.

Full board participation in transactional decision-making helps avoid such problems and serves the critical role of furthering the entire board’s understanding of and commitment to the organization’s work, minimizing the risk of bad decisions due to haste, personal preference, mistakes, or abuse.

A land trust also needs to understand that its board is responsible for other types of decisions affecting its real property holdings, including amendments to conservation easements and the transfer, sale or exchange of property held by the land trust. Board action is almost always required. (See practice 6H for a discussion of policies on transfer of real property and other assets, and 9K and 9L for sale or transfer of conservation lands.)

The discussion that follows focuses on acquisitions of land and conservation easements, the most frequent transactions in which land trusts are involved.

The Approval Process

For most land trusts, although decisions on transactions ultimately rest on a final up or down vote by the board, transactions often occur in a lengthy process that requires different levels of decisions at different stages. A project that meets the land trust's criteria at inception may be so revised in negotiations as to no longer be acceptable. Or the land may be highly desirable, but the terms of the transaction that emerge may not best serve the public interest. Legal or title problems may surface that present insurmountable obstacles.

Thus, a land trust makes different levels of decisions at different points in its project selection process. Early on, it makes a preliminary decision, formally or informally, to engage in negotiations. As the transaction proceeds, decision makers must review and evaluate an array of information about potential costs, benefits and risks. Decisions are made throughout to continue or withdraw from the transaction. Eventually, a final, formal action is taken to approve or disapprove the transaction.

Land trusts vary considerably in how they approach these various decision points. Small, unstaffed land trusts typically delegate some decisions in the project selection process to their executive or lands committees, and in some cases that committee may administer the project from start to finish, relying on professional advisors as appropriate. As land trusts get larger, their boards tend to delegate more decisions to staff, consultants and committees. *In most cases, however, the final decision to approve or disapprove a transaction should be made by the full board, or by a duly empowered board committee or staff, followed by board ratification.*

Some ways that land trusts handle decision-making at the beginning, middle and end of a transaction are discussed below.

Preliminary approval

Some land trusts involve the full board at the beginning of the transaction by requiring its preliminary approval to proceed. The board's decision should be based on a determination that the project meets the first two tests in the land trust's selection criteria—that the project is consistent with the land trust's mission and goals, and that the property has significant resource and public benefit values (see practice 8B). Having the board grant preliminary, conditional approval helps the transaction process in several ways.

- It signals to the parties involved that the land trust is serious about the transaction.
- It clearly authorizes the staff or volunteers to proceed with research and engage in negotiations, and avoids wasting time on inappropriate or unpopular transactions.
- When the transaction comes up for final action, the board will already be familiar with the project, and most, if not, all of the board's questions and concerns will have been addressed earlier in the process. This increases the certainty of the outcome.

Some land trusts delegate the preliminary decision to enter into negotiations to a committee or to staff. This method can work well if the types of projects the land trust is interested in are clearly described in criteria and annual or strategic plans, or if the land trust is working within one particular project area (along a greenway, for example) or has identified a particular corridor or regional area in which it will consider all projects. In general, if the full board does not make the decision to proceed, it should at least be informed about the project.

Approval as the transaction proceeds

As the transaction progresses through design and negotiation, the land trust needs to determine if it can manage, defend and protect the property at reasonable cost. It needs to weigh the risks or costs and benefits of the project. And it must re-evaluate whether the transaction meets its criteria and serves the public benefit. Where possible, board review of the project midway in the selection process provides an update on the status of the transaction and gives the board the opportunity to confirm its intent to proceed or to suggest adjustments that would bring the project into compliance with land trust criteria. These decisions may also be left to staff or a committee.

Final approval

At this point, the land trust has determined the transaction meets its selection criteria, and all of the steps in the land trust's selection process have been completed (see standard 8 for a discussion of the selection process and criteria). Agreements and legal documents have been developed and reviewed by representatives and legal counsel of the land trust and the landowner. For most land trusts, the project is ready for final action by the full board. The basic steps for presenting, discussing and approving the project include the following:

- 1. Send advance notice and information.** Before the board meeting, board members should receive an agenda listing all projects to be discussed. The agenda should include a brief description of each transaction and recommend action or options for the board to discuss. This allows the board members to ask for more information or reflect upon the transaction ahead of time.
- 2. Provide visual depictions.** Maps and photos that adequately depict the land should be available at the meeting. In some cases an advance site visit by one or more board members is useful.
- 3. Provide a fact sheet.** A standard fact sheet or report should be completed for each property, with pertinent information about ownership goals, natural resource value, monitoring and management needs, costs, etc. The fact sheet should also include a summary of the results of the environmental assessment, a layperson's description of any title issues that exist and other issues that have come up during the process of bringing the land transaction to fruition.
- 4. Present the issues.** The committee or project manager should present key issues that need to be considered.

5. **Conduct a thorough discussion.** The board should thoroughly discuss the proposal focusing on key issues, and board members should request additional information or ask questions if needed. The decision should not be rushed.
6. **Take a recorded vote.** The board secretary should ensure that minutes reflect the final vote and the names of any dissenter(s).

A copy of the minutes approving the project or the approved resolution should be kept in the project file.

The Importance of Accurate, Sufficient Information

To make informed and responsible decisions, the board must be knowledgeable about important features of the land and the transaction. Lack of accurate, sufficient information can cause a number of problems for the land trust.

- **Decision-making can become unpredictable, tedious and frustrating.** This can lead to strained relations among board, staff and committees. It may also result in the denial of projects that should be approved or approval of projects that should be denied.
 - **Politics and personalities may rule over sound practices.** There is more room to persuade through emotion or bullying if the facts are not available.
 - **The board may fail to fulfill its legal duty of care** to conduct reasonable inquiry and make prudent decisions that further the organization's mission and the public benefit.
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Informing the Board Throughout the Transaction

To pave the way for informed decisions, and to have a smooth, predictable selection and approval process, the majority of land trust boards should be kept informed of a project's status. This allows the board to identify and address issues, concerns and disagreements as they arise and either resolve them or terminate the project. Land trusts should consider informing and involving the board in the following ways:

- **Provide the board with initial notification.** All board members should be notified when the staff or lands committee starts to pursue a project. Not only is this the first logical step in keeping board members informed, it may lead to useful information, allow important issues to be raised early on or head off unpleasant surprises. For example, a board member may object to the land trust dealing with a particular person, have an interest in a property that is under consideration by the land trust, or

have information about the property or landowner that could be useful in the transaction.

- **Have the board visit the site.** Depending on the size of the land trust, its decision-making process and the particular project, it may be wise for some or all of the board members to visit the site of a project proposed for approval. In larger, staffed land trusts, the board may not play such a hands-on role.
- **Keep the board informed through regular status reports.** For most land trusts, the board should receive regular reports from the project manager or lands committee. These should be provided to the board before or at regular meetings so that they may be discussed if the board members desire. This helps keep the board informed of issues as they arise.

Some land trusts keep the board informed of the status of projects with a project tracking form, which provides a quick overview of all active projects. It should be sent with the monthly or quarterly board reports.

Information for Final Action

The board needs two kinds of information to make a final decision on a project: it needs to know whether all necessary steps have been completed; and it needs relevant information about the project's benefits, risks, terms, etc. Land trusts generally use one of the following two types of forms to provide this information:

- **Project checklist.** This is an outline of the required steps in the land trust's project selection process. When completed, it shows the board that all necessary steps have been taken—survey, title report, preliminary evaluation for hazardous wastes, appraisal, etc. The project manager can also use the checklist to keep track of the progress of the project.
- **Project fact sheet.** This provides the board appropriate information on the property's conservation values, legal status, protection plans, management implications, cost, etc. Land trusts use some type of project fact sheet to display this information—either a form that can be filled out by hand, or a narrative report that can be completed on a word processor. Either way, the land trust should establish standard categories of information to be completed and provided to the board.

The type and amount of information needed varies with the project. Keep in mind that particularly controversial or complex elements of projects should be investigated in more detail, and the board should be provided thorough information on items that require serious deliberation.

At a minimum, the board should have sufficient information to address the following questions:

- Does the property meet the organization's selection criteria and mission and provide significant public benefit?
- Can the land trust devote or reasonably expect to acquire the necessary resources (human and financial) to carry out the project?
- Is the land trust aware of the risks entailed in the project, and can it handle them if they become actualities?
- Can the land trust responsibly manage and maintain the land?
- What commitments or understandings does the land trust have with the donor or seller and can these be lived up to?
- Is the project a wise use of the land trust's resources?

Having this level of information ultimately allows the board to fulfill its legal responsibilities to the nonprofit corporation it governs: the land trust.

The Role of Committees in Project Approval

In the majority of land trusts, project approval decisions are made by the full board. In some cases, however, a land trust may decide that its special circumstances make approval by the full board overly burdensome or impractical and may delegate some or all approvals to a committee or staff. This may occur, for example, in mature organizations with large boards and complex transactions, where many board members are on the board primarily to help with finances and long-range policy; in organizations that are primarily educational groups and operate a land trust arm; or in organizations that operate regionally or statewide and whose boards meet only quarterly due to distance of travel.

Most land trusts delegate at least some of the work of a transaction, and certain levels of decision-making, to one of the following types of committees:

- **Lands committee.** Many land trusts have a committee—called a lands committee, or project or acquisition committee—that, either operating alone or in tandem with an executive committee, recommends action to be taken by the board. Such a committee can allow the land trust to involve people with special expertise who are not on the board.
- **Executive committee.** Some land trusts do not have a separate lands committee, but instead assign these functions to an executive committee, in addition to its other duties.

If a land trust has significant activities other than land transactions, a separate lands committee that can give projects thorough scrutiny is a good idea. This separation of responsibilities may also be a good idea if the executive committee has special authority to approve projects in emergencies or other circumstances. Be aware, however, that an overly powerful committee making decisions about the land trust's land acquisitions can weaken the commitment and involvement of the rest of the board. Also take care to ensure that compliance with quorum and voting requirements established in the land trust's bylaws are met when a committee, rather than the full board, is acting on a land transaction. (Quorum and voting requirements of course also apply to actions by the full board.)

The board must establish lands and/or executive committees, and their powers should be defined in the bylaws or by board resolution. These provisions should delineate whether, when and under what circumstances the committee may move forward on a project, make recommendations to the board, advise the board or, in the case of the executive committee, act for the full board. State law may set limitations on the creation, composition, operation, and authority of committees that act for the board. The board should make sure any such delegation meets state law.

To be effective, committees should heed the following advice:

- Committees should avoid operating as or being perceived as an “in” group that shuts out other board members from the core work of the land trust.
- Committees must not just report to the board, but need to evaluate options and make specific recommendations to the board.
- Committees need to back up their recommendations with sufficient facts and information and to convey the work, research and deliberations behind the recommendations.
- Committees should report in detail on controversial topics and be brief on routine matters.
- Committees need to give the full board the opportunity to discuss the proposed decision in detail. Board approval should not be a mere rubber-stamping of the committee's decision.

The Role of Staff and the Policy Governance Model

For those land trusts with a large professional staff and a heavy volume of annual land transactions, staff is often delegated the authority to make certain decisions on land transactions. This generally happens in one

of two ways:

- Through the **chief staff officer**, either acting through the policy governance model or through specific authority granted by the board; or
- By **land protection project staff** authorized to make decisions on specific types of transactions or those located within a defined geographical area.

Both of these approaches require careful consideration and monitoring by the board. While they change the nature of the board's participation, neither diminish the board's ultimate fiduciary responsibility for the organization, and hence, its responsibility for each individual land transaction.

Policy governance and the Carver model

An alternative form of board governance is a model developed by John Carver called "policy governance". Under policy governance, the board moves from reviewing and approving staff work to informing and "bounding" staff work through policy. Using this model, boards develop "end policies" that define specific outcomes or the difference that the organization exists to produce, and "means policies"—policies to govern how staff actually structure those projects it selects, particularly those policies that create the parameters of staff activity ("executive limitations"). The ends policies offer a structure that supports the board in charting the future strategy of the organization, and the means policies support the board's work in managing the current operations.

For a land trust, both sets of policies are vital in selecting, managing and evaluating its conservation project activity. Ends policies create the opportunity for a board to examine closely the cumulative effect of its conservation undertakings and allow the organization to articulate its conservation agenda. Staff can advance board policy in its project selection, and has a much better idea of what projects to say "no" to and why.

Executive limitations define the parameters under which the staff operates—what shall not occur or what the board has declared as unacceptable—thereby clarifying what staff can and cannot do in the design of its projects. These statements include topics ranging from financial and legal risk to community and landowner relationships. For example, the Vermont Land Trust is a large, statewide land trust and an advocate of the policy governance model. Its executive limitations include statements about private benefit, assessment of hazardous materials, compliance with regulatory and permitting issues, and evaluation of retained landowner rights. The policies are organized by legal type and cover easement and fee donations, easement and fee purchases, disposition or transfer of fee interests, plus a general policy governing all transactions.

Evaluation, with such carefully stated expectations, is nothing more than seeking an answer to the question, "Have our expectations been met?" The board, having clarified its expectations, can assess performance in that light.

The overall result of the policy governance model is a board that spends very little time on operational and project detail, and much more time on larger policy issues. For those

land trusts with an extremely high volume of projects and a large, professional staff, this approach is a valuable way of engaging the board and using its time most effectively.

More information about policy governance is available at www.carvergovernance.com. Various books, plus a pamphlet series, video, audiotape, and newsletter, are published by Jossey-Bass and are available at www.josseybass.com. Also available from Jossey-Bass is *The Policy Governance Fieldbook: Practical Lessons, Tips and Tools from the Experience of Real-World Boards*, Caroline Oliver and other policy governance practitioners, 1999.

Preauthorized project criteria

In some circumstances, land trusts may find it more expedient to authorize staff to make decisions on specific types of land transactions that meet certain board-specified criteria. For example, individual projects within a defined geographical area (e.g., a scenic highway corridor, a large wetlands complex, a localized farming community) or those that meet other criteria established by the board can be “preauthorized,” allowing staff automatically to proceed through certain predetermined levels of the transaction process without additional board involvement or approvals. Potential projects that deviate from the set of preauthorized criteria would then require further board deliberation and individual action. A number of national conservation organizations, like The Nature Conservancy and the American Farmland Trust, use such an approach on a larger scale.

Emergency Approval Procedures

Sometimes land trusts come under pressure to act on a project quickly. A landowner may wish to complete a transaction before year-end for financial reasons, the land trust may be trying to preempt the opportunity of another potential buyer or the landowner may be terminally ill. In such emergencies, there is often an impetus for the project manager, chief staff officer or board chair to commit the land trust to the transaction without the necessary board approval. Convening the entire board in time to make a decision may seem, or be, impossible.

Even in such emergencies, the board should retain ultimate approval authority. Many land trust boards do this by authorizing the executive committee to make emergency approvals of transactions. It is rare that a majority of an executive committee cannot be reached within 24 hours by phone. In fact, it is wise to look for executive committee members who can be found and be available on short notice. The land trust may put constraints on the executive committee’s approval authority—such as limiting the dollar amount to which the committee may commit the land trust and requiring completion of a preliminary evaluation for hazardous wastes. Emergency approvals by the executive committee should be reviewed and ratified by the full board at its next meeting.

Emergency procedures for approval should be reserved for true emergencies. It is exactly in such emergency situations, where information is frequently missing and deliberations are cut short, that a bad project is likely to be approved. Frequently what seems like the

crisis of the year can somehow await resolution in a month. A land trust should plan to have board meetings frequently enough that the need for emergency action is rare.

Ratification as an Alternative to Full Board Action

Where project approval is delegated to a committee or staff, the Land Trust Alliance believes the full board should review and ratify those decisions as part of its consent agenda. By the time the board can ratify a decision, the land trust may, in fact, already be contractually committed to a project. While the full board may not be able to turn the decision around, the ratification process nevertheless helps ensure that the board stays abreast of the actions of the committee or staff and takes on the responsibility to review and revise as necessary the selection criteria, selection process or executive limitations the committee or staff uses for approving projects. This review serves as an important monitoring function for the organization. Full board action or ratification is also a legal requirement for nonprofit corporate action in many states. At the very least, all board members should receive prompt notification of each transaction completed without full board approval.

Examples of Land Trust Approval Procedures

The following excerpts describe the various approval procedures used by land trusts, each tailored to their own needs and circumstances. These are for illustration purposes only; the actual practices of these organizations may have changed.

The Conservancy for Charles County is an all-volunteer land trust in Maryland. It has a lands committee that does most of the work.

The recommendation comes through the preservation program committee to the board. The full board votes on the land protection project.

The San Juan Preservation Trust, a land trust serving the San Juan Islands of Washington State, has a staff of four employees. The board is involved throughout the transaction process, and does not delegate its approval authority to committees.

We use a “gradual” approval process: (1) The board is informed of the potential transaction. (2) The board is kept informed through ongoing updates of the status of the transaction. (3) The board gives preliminary approval to proceed based on available information. (4) The board gives final approval of the conservation easement gift. (5) A board representative signs the acceptance before recording.

The Maine Coast Heritage Trust is a statewide land trust with over 30 professional staff and three offices. The staff and the lands committee do most of the work, and know the type of projects the full board supports and encourages.

Staff presents proposed land transactions to our board's lands committee, which meets every two months. Projects are reviewed and recommendations are made, including whether or not the committee recommends approval by the full board. For emergency projects that arise quickly, staff obtains approval from our executive committee. The full board approves (or, in the case of executive committee approval, ratifies) acceptance of land or interests in land.

The Society for the Protection of New Hampshire Forests, another large, staffed organization, uses a process similar to that of the Maine Coast Heritage Trust.

The staff prepares a short project description (typically one to two pages of text plus a map) for each land protection project. Each project is presented to the lands committee at its bimonthly meeting (alternating months with full board meetings). The lands committee votes on the project and makes its recommendation to the full board. The full board votes to accept or reject the recommendation of the lands committee.

The New Jersey Natural Lands Trust, a statewide governmental land trust with three professional staff, describes how the board may direct modifications throughout the approval process.

Prior to the board meeting, the board members are mailed a land offering form for a parcel, which gives a physical description of the land offer and tells who the donors are and what land restrictions exist, if any. At the board meeting, the real estate coordinator presents the potential donation to the board and answers questions. A quorum must be present to accept the land. If the land is unacceptable according to our criteria, the board may ask the coordinator to go back to the donor and request a change or possibly ask for a monetary donation to offset management costs—particularly if the land has the possibility of a great deal of use. The donation is brought up again at the next meeting after the coordinator has negotiated further with the donor. If the land does not have the potential to meet our criteria, the board refuses the offer.

The Vermont Land Trust, another large statewide land trust, has adopted the Carver model of policy governance and describes its ratification process as follows:

Our current practice is to give the board a list and brief description of each project completed since its last meeting that comply with the executive limitations. The board ratifies this list as part of its consent agenda. Project opportunities that will likely violate a policy or push the implied boundaries of a policy are brought before the board in the early stage of the project's development. Staff presents information about the project, which of the executive limitations the project might jeopardize, and how that risk might be managed.

Links to Helpful Resources

- [Policy Governance](#) – the authoritative website for the Carver policy governance model. Policy governance is a complete theoretical foundation for the board’s governance role in business, nonprofit and government organizations.

Helpful Publications

- *The Policy Governance Fieldbook*, by Caroline Oliver (editor), Mike Conduff, Susan Edsall, Carol Gabanna, Randee Loucks, Denise Paszkiewicz, Catherine Raso, and Linda Stier, 1999. Published by Jossey-Bass, Inc. Publishers.

Examples from Land Trusts

- [Land Trust of Napa County \(CA\) – Project Summary](#)
- [Minnesota Land Trust – Preliminary Project Summary](#)
- [Society for the Protection of New Hampshire Forests – Project Description for Committee and Board Approval](#)
- Vermont Land Trust
 - [Executive Limitations \(Lands #1\): General Policy on the Acquisition and Disposition of Property Interests](#)
 - [Executive Limitations \(Lands #2\): Acquisition and Disposition of Property Interests – Easement Donations](#)
 - [Executive Limitations \(Lands #6\): Acquisition and Disposition of Property Interests – Gifts of Land](#)

^o This material is designed to provide accurate, authoritative information in regard to the subject matter covered. It is provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting, or other professional counsel. If legal advice or other expert assistance is required, the services of competent professionals should be sought.