



Board Governance in the Time of COVID-19

Good board governance is important for all nonprofit organizations, but for land trusts it carries particular weight. While nonprofit organizations by and large expect to stay in operation indefinitely, land trusts need to think in unusually long-range terms and plan for organizational permanence. By definition, boards of directors are governing bodies. In that role, they establish plans and policies and guide their implementation. The job of governing is fundamental to an organization's health and survival, even more so during the unique circumstances of the COVID-19 pandemic. Here are some related questions and answers, some of which is adapted from [BoardSource](#), to help guide your land trust through this difficult time.

With stay-at-home orders and required social distancing, we are having trouble getting our board together; can we conduct our meetings virtually? Is it acceptable to have our board vote via email?

Today's challenges certainly make it more difficult to get a board of directors together to discuss issues and make decisions. Many nonprofits are turning to [Zoom](#) or [Skype](#) to hold virtual meetings or they are conducting them on the phone. Some are voting by email.

The first consideration is state law; next take a look at your bylaws (which should be consistent with state law but may provide more specific direction). In many states, virtual alternatives to in-person meetings, including teleconference calls and videoconferences, are allowed if all participants can contemporaneously hear and be heard.

For action to be taken outside of (without) a meeting (for example, via email), many states require that *all* members of the board must cast a unanimous vote in writing. This is sometimes referred to as "unanimous written consent." The organization may have to retain the individual written votes to comply with state law and/or its bylaws.

There are advantages and disadvantages to each alternative to an in-person board meeting. The goal is to have an engaged board of directors, fully informed and deliberate in its decision making, especially in a time of crisis. For any meetings held by phone or using video conferencing, make special effort to ensure that all board members receive any supplemental documentation and have time to read it prior to discussion and decision making. Follow your regular meeting practice by sending an agenda and meeting materials in advance and ensuring minutes of the meeting sufficiently reflect discussion and decisions. During video or phone conferencing meetings, take the opportunity to invite discussion and input prior to calling a vote. Make reference to supplemental documentation during the meeting to orient participants and consider sharing screens showing this documentation during video-conference meetings. Assure that voting adequately allows time to cast both yea and nay votes, as well as abstentions. Consider saving a digital recording to accompany regular minutes. And always consider any security risks when using new internet software.

Actions by email work best to handle noncontroversial or routine items of business, such as the approval of a bank authorization form or the extension of a lease. They are also useful if something is needed in a hurry and there's no time to hold a meeting.

See Practices [3C2](#) and [3C3](#) for more information.

Our bylaws say we should follow Robert's Rules, but some of the meeting requirements seem very difficult to accomplish in virtual meetings. How do we follow our bylaws right now?

Unless you have a very particular type of organizational procedure or mandate, you don't have to follow [Robert's Rules of Order](#), even though they have been updated for virtual meeting needs. For most 501(c)(3) organizations, there is no state law or statute that demands it, and most organizations adopted Robert's Rules out of a historical belief that it's what they "should" be using. While Robert's Rules can give you a roadmap to running a meeting and provide an easy way to memorialize conversations and decision making, they're also cumbersome and complicated, particularly for smaller organizations. For more information about operating in accordance with established bylaws, see [Practice 2B2](#) of *Land Trust Standards and Practices*.

Bylaws can be changed. In fact, [Practice 2B3](#) of the Standards requires land trusts to review their bylaws at least once every five years to ensure consistency with current operations, the articles of incorporation and state law. Your current bylaws should have a provision for amending them. If for some reason they don't, make sure you follow any state provisions that may govern these rules. Then make the changes you need. During this process, you want to make sure you note things like:

- How many votes you need to pass an amendment. For many organizations that number is two-thirds of the board.
- Ensuring you comply with all applicable laws to make all board members and any other necessary group aware of a meeting to discuss bylaw changes.
- The differences between voting directors and voting members, if your organization has members.

Once you have made any necessary changes, create a plan for the future. This may include a plan to have a task force or legal counsel review the bylaws periodically (at least once every five years). In addition, the bylaws should be reviewed whenever any governance problems arise that are not adequately covered by the existing provisions of the bylaws. Once you have made a change, ensure that all board members have a chance to review the new version. Any bylaw change should be reviewed in advance by land trust legal counsel, even during these unprecedented times.

Given the quickly evolving COVID-19 situation, I'm wondering, as board chair, if our executive committee should be meeting more often so we can make decisions faster since it's difficult to get the board together.

In these times of uncertainty, it can be tempting to try to make big decisions in a smaller group like the executive committee for the sake of efficiency. In this current crisis, an executive committee could help the board stay abreast of the ever-evolving situation more efficiently. However, it is important to ensure

that the executive committee understands its role and limitations and doesn't supplant the rest of the board.

Check that both the executive committee's authority and limitations are outlined in your bylaws (see [Practice 3C6](#) for more information). To avoid delegating essential powers away from the full board, your executive committee should not amend bylaws, elect or remove board members, hire or fire the chief executive, approve or change the budget or make major structural decisions (for example, add or eliminate programs, approve mergers, dissolve the corporation). For accreditation, if decision-making authority is delegated for approving conservation projects, a delegation policy or the bylaws provision should define the limits given to the delegated authority (such as requiring full board approval if a conflicted party is involved, requiring committee review before a decision is made).

You may want to utilize the executive committee to act as a link between the board and the chief executive to facilitate communication and planning between board meetings or to make authorized, time-sensitive decisions not otherwise delegated to officers and staff. It is good practice for the executive committee to notify the board of its actions in a timely manner; this is often required by organizational bylaws. For accreditation, the board *must* be informed about approval of land and conservation easement transactions. The full board should ratify, at its next meeting, any actions taken by the executive committee. See [Practice 3D1](#) for more information.

Never let your executive committee replace the board. While it may seem easier or more convenient to leave a decision in the hands of the executive committee, that does not mean it is appropriate. The board is responsible for the organization, including during these difficult times, so all board members need to understand what is happening. All board members' leadership and experience can help support your chief executive, the organization and your land trust's core purpose. See [Practice 3A1](#) for more information on understanding board members' roles and responsibilities.

Other Resources

- [Bylaws: Dos & Don'ts](#), BoardSource
- [Executive Committee](#), BoardSource
- [How Nonprofits and Board Members Can Respond to COVID-19](#), BoardSource
- [How to Facilitate Effective Virtual Meetings](#), by Beth Kanter
- [Virtual Board Meetings](#), BoardSource
- [What Nonprofit Board Members Should Be Doing Right Now to Address the COVID-19 Situation](#), BoardSource

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