

Role of the Board

September 10, 2021

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Agenda

8:30

Welcome

Small Group Breakouts, led by panelists (Mary, Margaret, Dana)

The Role of the Board: An Overview

Elizabeth Voudouris, President and CEO, BVU

Legal Responsibilities of Nonprofit Boards of Directors

Dana Rose, ESQ., Partner, Weston Hurd LLP

Panel: The Role of the Board

Margaret Bernstein, Director of Advocacy and Community Initiatives, WKYC

Dana Rose, ESQ., Partner, Weston Hurd LLP

Mary Wheelock, Executive Director, The ALS Association, Northern Ohio Chapter

11:00

Adjourn



1



HOW BVU WORKS



How BVU Engages Professionals

Board Connect

- ▶ Recommends and prepares candidates for board positions
- ▶ Based on needs expressed by nonprofit organizations, and interests and abilities of individual candidates

Skill Connect

- ▶ Engage skilled professionals to help nonprofit organizations address specific operational or functional issues
- ▶ Greatest demand from nonprofits in the areas of human resources, marketing, finance, legal, IT, business planning, facility management and process improvement
- ▶ Get involved either on an individual basis or with a group to tackle a larger and/or multifaceted project

Volunteer Connect

- ▶ HandsOn Team Volunteer Projects

How BVU Serves Nonprofits

CONNECT

- ▶ BVU is committed to strengthening diversity, equity and inclusion on nonprofit boards.
- ▶ BVU refers business professionals to serve on nonprofit boards, committees, and young professional groups through the Board Matching and Linking New Leaders programs.

CONSULT

- ▶ Nonprofit Consulting Center - BVU staff provides: Governance consulting; Leadership Succession and Executive Transition consulting; Strategic Planning consulting; and merger feasibility consulting.
- ▶ Customized Board Trainings to address particular and timely issues.
- ▶ Skills-Based Volunteering connects business professionals to nonprofits where they use their professional expertise to deliver on high-priority projects.

EDUCATE

- ▶ Over 40 trainings and networking events that address nonprofit governance and management topics.
- ▶ Resources on the nonprofit sector, volunteerism, and corporate community involvement.

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Sector Trends



1

Proliferation of Nonprofit Organizations

Over 1.3 million active nonprofit organizations

- Provide 11.4 million jobs
- 5.4% of GDP (\$887 billion to US economy)

Nonprofits in Ohio: 40,521

- 3rd largest industry employer in the state

Nonprofits by county:

Cuyahoga	15,599
Summit	4,640
Lorain	2,037
Lake	1,591

State of the Sector in Ohio

Ohio's Attorney General and Philanthropy Ohio conducted a 2nd statewide survey in August 2020

Ohio NPO COVID-19 Survey STATS:

- ▶ 61% operate at moderately or severely reduced capacity
- ▶ 2/3 deliver services differently
- ▶ 14% cut or furloughed staff
- ▶ 86% saw decrease in earned revenue
- ▶ 50% saw decrease in donated revenues
- ▶ 15% of board seats filled with people of color

BVU conducted a 3rd survey of nonprofits in NEO in January 2021

BVU NONPROFIT STABILITY INDEX:

- ▶ 58% will make long-term changes to how they deliver services
- ▶ 89% are able to deliver services through virtual platforms
- ▶ 54% cut or furloughed staff (July survey)
- ▶ 92% reported that COVID has had a negative impact on revenue streams
- ▶ 71% saw decline in earned revenue
- ▶ 84% saw decline in event revenue
- ▶ 71% are dissatisfied with the diversity of their Board of Directors

3

Strategic and Financial Pressures

- Increasing demand
 - Shrinking resources
 - Reduction in government funding
 - 501-C3 “nonprofit” is tax status, not business model
-

Financial Models

FOR PROFIT:

- Customer buys product
- Price includes cost of doing business
- Overhead and profits seen as necessary
- On average, successful for-profit companies allocate 25% of budget to overhead.*
- **Success=financial results**

NONPROFIT:

- Client pays partial or nothing
- Rely on 3rd party to cover cost (donors and funders)
- Overhead and profits seen as unrelated to achieving mission
- **Success=mission impact**

4

Strategic Alliances

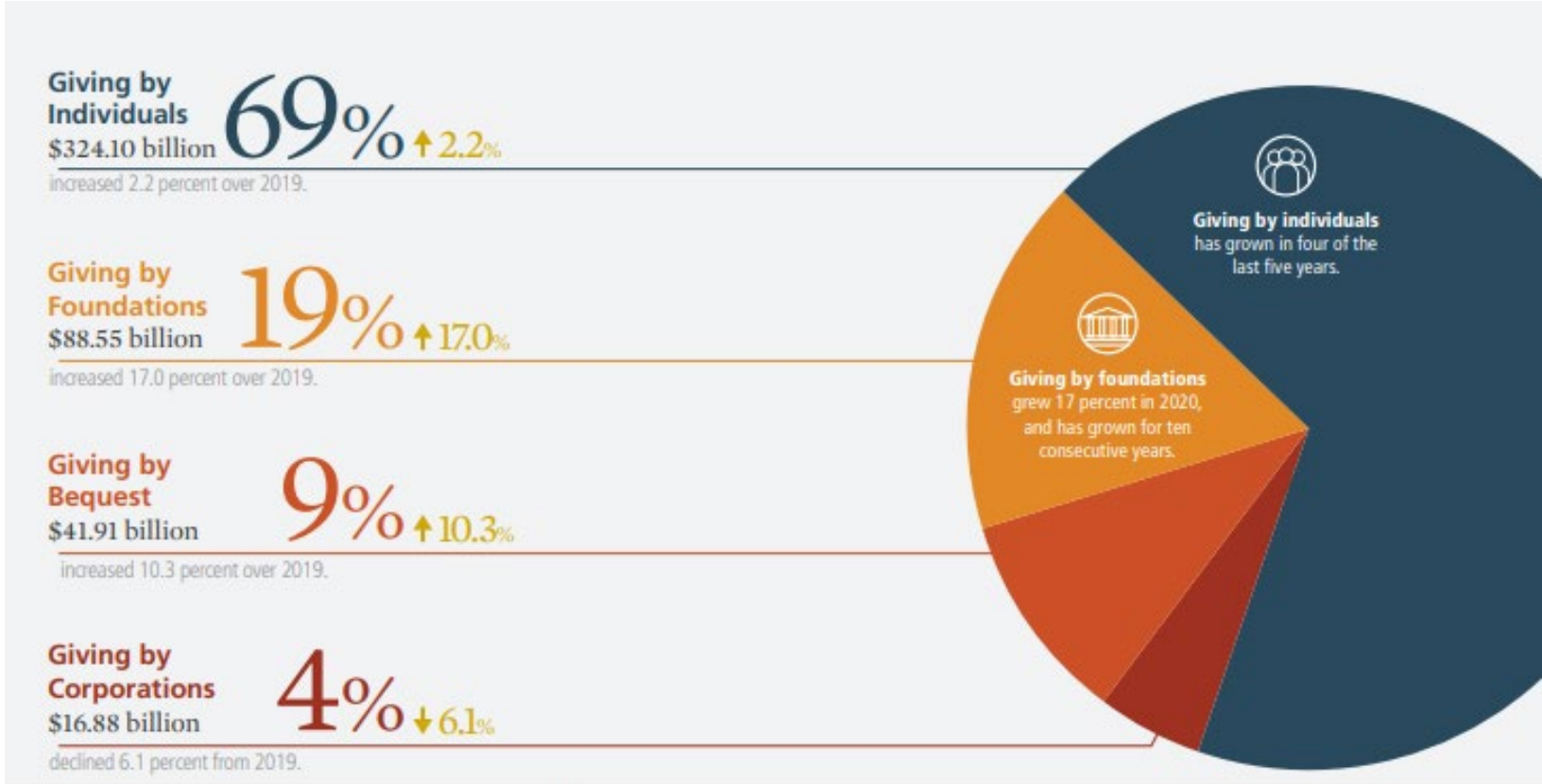
- Economies of scale
- Avoid duplication
- Sustainability
- **68%** collaborate to provide programs

5

Increased Scrutiny and Transparency

- Outcome metrics
- 990
- Executive Compensation

Funding Trends - Charitable contributions are significant source of revenue



*All figures on this infographic are reported in current dollars unless otherwise noted.

\$471.44 billion

In 2020, Americans gave \$471.44 billion to charity, a 5.1% increase over 2019.

SOURCE: Giving USA 2021

Funding Trends - Charitable contributions are significant source of revenue



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2020 contributions by destination (by percentage of the total)

SOURCE: Giving USA 2021

3

The Role of the Board of Directors



Authority

The board of directors bears the primary responsibility for ensuring that a charitable organization fulfills its obligations to the law, its donors, its staff and volunteers, its clients, and the public at large.

Basic authority (§1702.30(A), O.R.C.):

“all of the authority of a corporation shall be exercised by or under the direction of its directors.”



The Board Functions as a Team

The role of the board refers to the board as a whole, a unit, a team. Individual board members do not have authority or individual rights

Accountability and responsibility rests with the full board...

Not the Chair

Not the CEO

Not individual board members



1

Determine mission, vision and strategic direction

- Scan internal and external environment
- Ensure effective planning - review & modify strategic plan
- Monitor performance based on key milestones and success factors

2

Establish and strengthen community relations

- Enhance the public standing of your organization
- Ambassadors
- Talking points
- Crisis/transition communications strategy

3

Select and support the chief executive

- Partnership
- CEO performance evaluation and process to set compensation (990 requirement)
- Succession plan
- Open doors

4

Develop funding resources

- Ensure adequate resources
- Individual, annual, financial contribution
- Donor identification
- Donor cultivation

5 Provide financial oversight

- Adequate accounting skills
- Annual budget
- Regular financial statements and cash flow reports
- Annual audit
- Investment policies

6 Ensure legal and ethical integrity

- Duties of care, loyalty and obedience
- Board has the authority as a group, not as individual members
- 96% of nonprofits carry Directors and Officers Liability Insurance for their boards

7

Develop the board

- Ensure a competent board
- Governance Committee
- Adopt best practices
- Review and update bylaws periodically

There Is a Great Difference

Between **Sitting** on a Board
and **Serving** on a Board.



4

Best Practices of Governance



1 Define the unique “work” of your board

- Lifecycle of nonprofit

2 Strengthen board member engagement

- Clarify expectations and accountability (81% have written job descriptions for board members; 52% conduct annual assessment)*
- Orientation
- Engage new board members on at least one committee right away
- Buddy system

*excerpt from BoardSource’s Leading with Intent.

3 Build constructive partnership with the CEO

- Annual compensation and evaluation process – 80%
- Open and honest communication
- Annual one-on-one meeting

4 Structure effective meetings

- Set dates early; begin and end ON TIME
- Engaged board members do their HOMEWORK BEFORE board meetings
- Board portal
- Consent agenda – 57%
- Dashboard report – 44%
- Executive Session – 61%

5 Ensure relevant board and committee structure

- Average number of committees – 4.8
- Average number of board meetings – 6
- Executive Committee – 78%
- Average board tenure – 6 years (2 three-year terms)

6 Seek competent and diverse board composition

- Average board size – 15 members
- Race/ethnicity – 84% Caucasian
- Age – 17% under 40 years old

Why is Diversity Important in the Nonprofit Board Room?



Better
decision-
making

Diverse perspectives are better qualified to identify the full range of risk and opportunity



More
responsive

Diverse boards reflect the communities they serve, which improves the ability to comprehend and respond to environmental and external changes and trends



Stronger
access

To resources that are important to achieving the mission diverse connections with policy makers, donors and collaborative partners



Better
pipeline

Boards that are not diverse risk becoming stagnant



Mission
alignmen
t

Diversity is part of the organization's mission and essential to develop and deliver programs that support the mission

*excerpt from BoardSource's Board Governance Index: Is Your Board "Normal"?,
(by Ruth McCambridge, January 2015)

7

Effective communication and deliberation

- Create culture of trust, transparency and inquiry
- Ensure that board functions in all three modes:
 - **Fiduciary:** Legal responsibility for oversight and stewardship
 - **Strategic:** Ensure a winning strategy; decisions about resources and programs
 - **Generative:** Serve as source of leadership & deeper inquiry; explore root causes, values, optional courses and new ideas

8

Succession plan for the chief executive and the board chair

- 34% have a written CEO Succession Plan
- Qualities to seek in a board chair:
 - Ability to build constructive partnership with CEO
 - Fosters trust
 - Resolves conflicts, builds consensus
 - Frames and discusses strategic questions
 - Establishes clear expectations for board members



“ Board members should not feel like
“docile mushrooms
(warm and in the dark).” ”

McFarlan and Epstein
Nonprofit Boards: A Guide, 2009

Resources for Board Members

**Business
Volunteers
Unlimited (BVU)**

www.bvuvolunteers.org

BoardSource

www.boardsource.org

**Independent
Sector**

www.independentsector.org

**Nonprofit Finance
Fund**

nonprofitfinancefund.org

Board Service Readiness? YES/NO

1. I am interested in advancing a cause that I feel excited about.
2. I am curious to learn about issues facing our community.
3. I am interested in learning about leadership in a new environment.
4. I am interested in meeting people outside my usual professional and social circle.
5. I am comfortable making a personal contribution to a nonprofit organization.
6. I can imagine asking others to contribute financially to a cause that I am passionate about.
7. I have enough autonomy in my schedule to accommodate board and committee meetings.
8. I am patient and collegial when working as part of a team.
9. I can commit the time necessary to be an exceptional board member.

*excerpt from BoardSource

Sample Question to Explore Board Opportunity

Meeting with the chief executive and board chair to discuss:

- ✓ Mission and scope of programs
- ✓ Revenue structure and key funding sources
- ✓ Key challenges facing the organization in next 3 years
- ✓ Key opportunities for organization growth
- ✓ Strategic plan
- ✓ Relationship between chief executive and board
- ✓ Role of the board
- ✓ Expectations of individual board members (\$, time, events)
- ✓ D&O insurance
- ✓ Tour of facilities



Legal Responsibilities of Nonprofit Boards of Directors

Business Volunteers Unlimited

The Role of the Board



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“It’s an amazing coincidence, isn’t it, that we all served on the same board of directors?”

THE NEW YORKER, JANUARY 31, 2000



“It’s an amazing coincidence, isn’t it, that we all served on the same board of directors?”

“The Buck Stops Here”

- Harry S. Truman

- “...all the authority of a corporation shall be exercised by or under the direction of its directors...” 1702.30 (A) Ohio Revised Code
 - The same for ultimate responsibility. Board service is not merely an “honorary” position.

The Business Judgment Rule

- ▶ Setting the standard for and limiting potential liability of officers and directors of nonprofit organizations
- ▶ Courts tend not to second guess decisions by officers and directors that are based on legitimate business judgment
- ▶ Law is not looking to quickly penalize board service

The Responsibilities of Directors of a Non-Profit Corporation in Ohio

- ▶ Fiduciary Duty: Duty of Care
 - Duty directly to the corporation
 - Director must act on an informed basis in good faith with the care an ordinary prudent person would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation.
 - Business Judgment Rule

The Responsibilities of Directors of a Non-Profit Corporation in Ohio

▶ Fiduciary Duty: Duty of Loyalty

- Conflicts of interest
- Self-dealing
- Section 1702.301
- IRC Section 4941
- IRC Section 501(c) (3)
 - Prohibits any private inurement, which means that the charity's assets may not be used to benefit anyone's private interest. Salaries, benefits and fees may be paid, but if the total compensation is unreasonable and excessive, the Internal Revenue Service may revoke the tax status of the organization.

The Responsibilities of Directors of a Non-Profit Corporation in Ohio

- ▶ **Fiduciary Duty: Duty of Compliance (obedience)**
 - Duty to fulfill the purposes for which the organization was formed
 - Articles of Incorporation
 - Follow Regulations (called bylaws in some states)
 - Purpose or mission of an organization (pursue it)
 - Compliance with stated objectives

The Responsibilities of Directors of a Non-Profit Corporation in Ohio

CHECKLIST

- ▶ Prepare for meetings
- ▶ Attend board and committee meetings regularly
- ▶ Follow Regulations (votes, notice timelines, etc.)
- ▶ Advance notice of critical items (agenda)
- ▶ Provision of meaningful, written materials
- ▶ Read financial statements, committee reports, etc.

The Responsibilities of Directors of a Non-Profit Corporation in Ohio

- ▶ Question inconsistencies
- ▶ Investigate and rectify problems
- ▶ Utilize expert advice for complex matters
- ▶ Accurate, thorough minutes of meetings and decisions
- ▶ Conflict of interest policy in place and followed
- ▶ Purpose of organization is clear and is followed

Conflict of Interest Policy

- ▶ Annual review and disclosure by all board members
- ▶ At any time a conflict of interest is identified, it should be placed on the agenda
- ▶ The meeting notice should include a description
- ▶ Sufficient information should be shared prior to meeting
- ▶ All parties to conflict should attend
- ▶ If a quorum is present, sufficient discussion should take place
- ▶ Board of Directors must decide course of action
- ▶ All interested parties should abstain from voting
- ▶ Written account of all that transpired at the meeting
- ▶ Periodic review necessary if conflict continues

“There must be some mistake, I gave to every charitable organization that called.”



Sarbanes–Oxley Act

- ▶ July 30, 2002 – the American Competitiveness and Corporate Accountability Act of 2002 (better known as the “Sarbanes–Oxley Act” or “SOX”)
- ▶ Accountability as we knew it was changed forever
- ▶ Primarily applicable to publicly traded companies; however its concepts have crept into the world of 501(c)(3) not-for-profit organizations
- ▶ Whistleblower, document/records retention and federal investigations

Sarbanes–Oxley Act

Various Industry Recommendations

▶ Audit Committee

- The board of directors should have an audit committee or its equivalent
- The audit committee should exercise direct control over the external auditors
- Members of the audit committee must be independent and management should not be voting members of the audit committee
- The audit committee should have a charter that includes role and authority language
- At least one financial expert should be included on the audit committee

Directors' and Officers' Liability Insurance

*Understanding the Responsibilities of a Member of the Board of
Directors of a Non-Profit Corporation in Ohio*

- ▶ Legal actions – infrequent, but can happen and can be very expensive to defend
 - Insurer duty to defend broader than duty to indemnify
- ▶ Importance of Directors' and Officers' Liability Insurance
 - What does your organization do? High risk?
- ▶ Personal injury and property damage
 - “Commercial General Liability” insurance
 - Extremely rare to be found personally liable for such injury
- ▶ Other Coverages

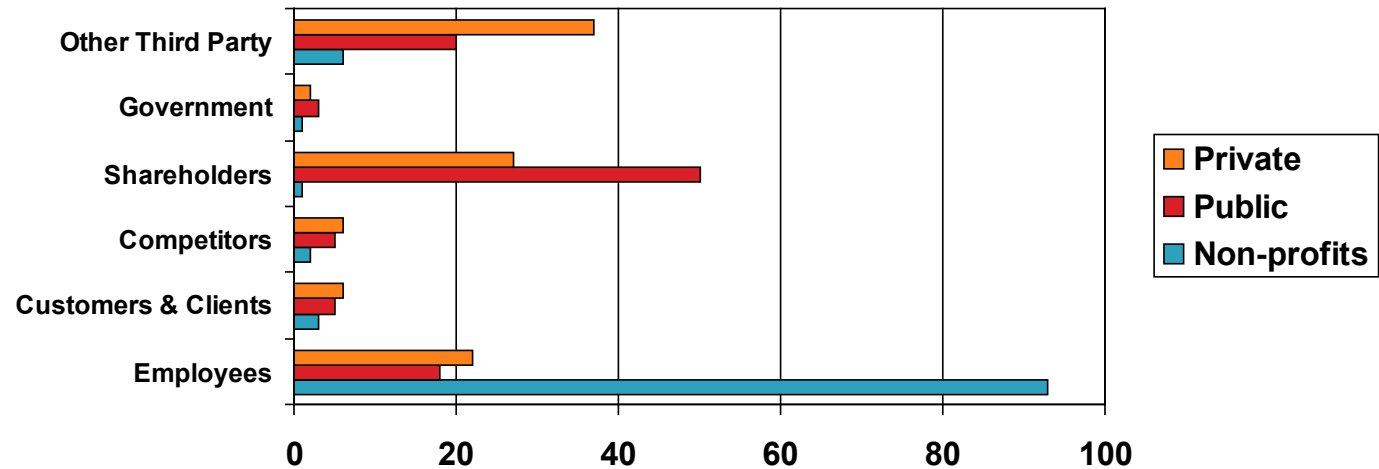
Directors' and Officers' Liability Insurance

▶ Tips

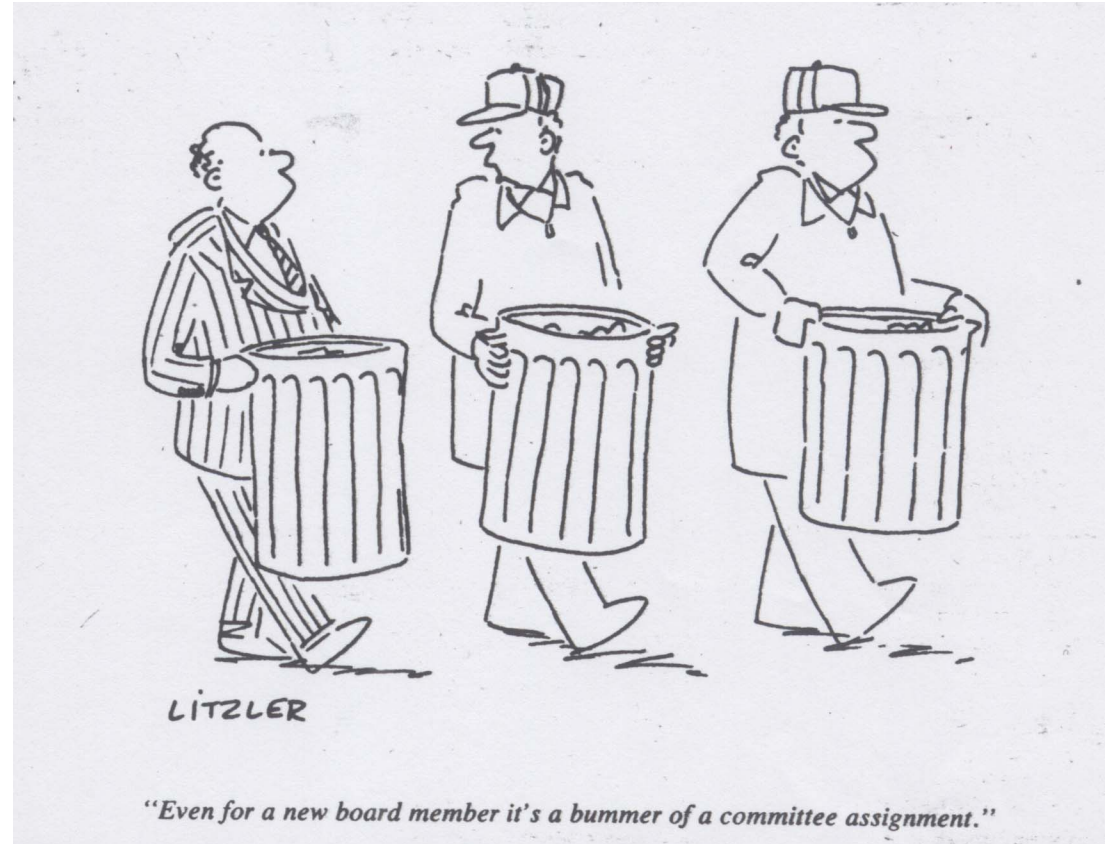
- What are the coverages organization should have
- Review policies with your broker or attorney to understand your coverage
- Understand your risks
- Know the market
- Choose your insurers wisely

Directors' and Officers' Liability Insurance

Listed below were the leading sources of D&O claims in the US during 2010



“Even for a new board member it’s a bummer of a committee assignment.”



Basic Practices for Directors

- ▶ Attend board meetings
- ▶ Delegate, do not abdicate, responsibility
- ▶ Participate at board meetings and in committees
- ▶ Understand the finances
- ▶ Conflicts of interest should be addressed
- ▶ Conduct a legal assessment or audit
- ▶ Protect the tax-exempt status

The background is a blurred image. On the right side, there is a profile of a person's face, possibly a woman, looking towards the right. On the left side, there is a large, stylized logo that appears to be a circular emblem with some internal details, though it is out of focus. The overall color palette is warm, with browns, oranges, and yellows, and a blue gradient on the right side.

BVU'S NONPROFIT LEADERSHIP SUMMIT

THRIVING, INCLUSIVE, DIVERSE BOARDS

Virtual Upcoming Events

Nonprofit Leadership Summit

Date & Time: Thursdays in October, 11:00 AM – 12:30 PM

Nonprofit Leadership Summit focusing on building thriving, diverse, and inclusive boards is coming in October!

Virtual session include:

- Integrating diversity, equity, and inclusion into board culture
- Being a brand ambassador and advocate for your nonprofit and its mission
- Implementing leading practices for board recruitment and engagement
- Choreographing effective and impactful meetings

Linking New Leaders

Date & Time: November 16, 4:00 – 6:00pm

Linking New Leaders is a fun, fast paced “speed dating” style event that brings together community-minded young professionals with local nonprofit organizations. The goal is to connect up-and-coming professionals who want to contribute their time and expertise to a variety of engagement opportunities including positions on boards, committees, and “friends” groups.

Ask the Expert

Date & Time: October 4-7, various times

BVU connects our nonprofit partners with skills-based volunteers to work together on projects in various areas. These 60-minute one-on-one meetings provide an opportunity for the nonprofit and the skills-based volunteer to work on a small project or the skills-based volunteer can answer questions or provide practical suggestions. The goal of Ask the Expert session is for the nonprofit to leave the meeting

Thank you

BVU connects businesses and nonprofits, creating connections to better our community.



@bvuvolunteers



[linkedin.com/company/bvu](https://www.linkedin.com/company/bvu)



[facebook.com/bvuvolunteer
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BUSINESS ENGAGEMENT
NONPROFIT EXCELLENCE