

Fiducient Advisors, Nonprofit Investment Stewards Podcast
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Nonprofit Governance: How to Effectively Build Committees, Craft Policies, and Fill Gaps with Julia Boisvert

[00:00:00] Welcome to Nonprofit Investment Stewards with Bob DiMeo and Devon Francis from Fiducient Advisors. Bob and Devon are passionate about helping nonprofit organizations prosper. Whether you oversee endowment, foundation, or retirement plan investments, this podcast exists to help stewards improve performance, reduce costs, and discover strategies that enable your charitable organization to prosper and advance its mission.

[00:00:26] Now onto the show. Hello, and welcome back to the Nonprofit Investment Stewards podcast. I'm Bob DiMeo, as always joined by co-host Devon Francis. Today, we speak with a very bright attorney who focuses on the nonprofit sector. She's an expert on a topic that all non-profit organizations are, or at least they should be, focused on.

[00:00:48] And that's good governance. We're excited to tap into her expertise, but first, Devon, always great to be with you. How are you feeling about today's show? Great. I think [00:01:00] governance is such an important topic and I'm so thrilled that we're joined by Julia Boisvert, who is not only a crackerjack attorney, but she's also a friend of mine.

[00:01:08] Julia is counsel with Murtha Cullina and she's a member of the firm's Health Care and Tax-Exempt Organizations Practice Groups. She counsels her clients on a wide variety of regulatory, corporate and business issues. She's a graduate of Cornell and she received her J.D. magna cum laude from the American University Washington College of Law.

[00:01:31] She's also earned several rising star and new leader awards within the legal landscape. And she serves as vice president and treasurer of the board of directors for the Connecticut Family Support Network. So Julia, we are so thrilled to have you with us. Welcome to the show. Hi, Bob. Hi Devon. Thanks for having me.

[00:01:50] I'm really happy to be here and speak with you. Julia, so good to have you on this show and we're going to get into really a number of the areas and governance that I [00:02:00] know are important to our listeners. But first, can you share your story, how you decided to pursue non-profit law and how you got to where you are today?

[00:02:10] Yeah, absolutely. So, when I first started my legal career, I was really interested in working with a sector that gives back to the community. So, my goal as an attorney is really to help my clients navigate the complicated regulatory world that they face so that they're able to pursue their mission and really help the community they serve.

[00:02:30] I ended up at Murtha because I believe Murtha allows me to really work with a wide range of clients. We have an extraordinary group of attorneys and really, I think it's the best platform for me in providing services to the clients. Connecticut is my home now, and I'm happy to be here. I was in DC prior to this, and Connecticut is really a place that allows me to be closer to my family and friends.

[00:02:54] So it's a great spot for me to be. Great. So, Julia, when it comes [00:03:00] to legal problems, in your experience, what are some of the most common mistakes that nonprofit organizations make? Yeah, that's a great question, Devon. So, I think that the, one of the fundamental problems or, or issues that nonprofits face is thinking that they can't earn a profit or develop an investment reserve as a nonprofit organization.

[00:03:25] So non-profit is really a misnomer. And it's, it's not my favorite term that's used in the field. I think it can sometimes limit the creativity of, of our clients. So, really a nonprofit organization's focus is on using its funds for charitable purposes and to fulfill whatever tax-exempt mission that it faces.

[00:03:47] It's all right to earn a profit. It's alright to have an investment reserve, and this can really allow you to better fulfill your mission going forward and serving your clients. So really these organizations should be [00:04:00] thinking and operating like a business. One area of creativity we've seen for some of our clients in thinking about how to build up their investment reserves, how to earn more funds for their organization, is developing social enterprises.

[00:04:18] So this is kind of a hot topic right now in the field. So, a social enterprise, it's a broad reaching term, but it's really kind of thinking creatively about developing new approaches for earning funds and creating ventures for your nonprofit organization. So, I'll give you a couple of examples.

[00:04:39] So joint ventures are a really interesting thing we're seeing in the field right now. So, a joint venture is generally some sort of collaboration between a nonprofit organization and a for-profit partner. This commonly occurs in the healthcare space. So, you know, you might have a tax [00:05:00] exempt hospital that partners with a for-profit physician practice group.

[00:05:05] This might be in the field of radiology. You could have potentially a, uh, big ambulatory surgery center, which we've seen a lot of recently. And this allows the tax-exempt organization, uh, a new revenue stream to, to broaden its uh, the scope of its services and also bring in additional funds that will then help the nonprofit to pursue its charitable purposes.

[00:05:27] So another area we're seeing a lot of these social enterprises is for organizations who provide services for individuals with disabilities. So, an example of the social enterprises that these organizations might create are, uh, we've seen sandwich shops, we've seen bookshops, we have seen art studios.

[00:05:50] We've seen bakeries, I've even seen an organization that provides dog biscuits. And so, what these social enterprises are, are an [00:06:00] opportunity for the individuals that the developmental disability service providers work with to be gainfully employed and utilize their skills in a setting that best suits their needs.

[00:06:13] And so, again, this is an opportunity for the nonprofit organization to earn additional revenue while still fulfilling their mission and providing additional opportunities for their clients. So, there's lots of different ways that organizations can get creative in, in thinking and developing profit generating opportunities that can, you know, service the organization now or potentially in the future.

[00:06:39] The key is really thinking about approach. So, you want to make sure that any of these social enterprises you're entering into are done thoughtfully and are planned out with your advisors, whether that be internal advisors, outside advisors, legal counsel, CPAs, um, and with your board of directors.

[00:06:59] So, I [00:07:00] think making sure you're not limiting your creativity and thinking broadly is something that organizations make sure they're keeping on their radar. Thanks, Julia. I'm curious, you've mentioned non-profit is not your favorite term. Do you like charitable organization? Or do you have a preferred term?

[00:07:19] So non-profit is the easiest term. It's what most people are familiar with. The technical term, if I'm going to get lawyerly on you, is tax-exempt organization. So that really does encompass the wide variety of organizations that we're talking about, and it really defines that what we're talking about is a business that is particular because of its tax-exempt status.

[00:07:38] So I think that's a, that's a good way to think about it. Yeah. And I like your idea, your point about, uh, it's not that we're not seeking to be successful or even have a surplus and such and advance the mission more.

[00:07:57] So, perhaps you can share any suggestions [00:08:00] or thoughts on governance or best practices for tax-exempt or nonprofit organizations? Yeah, absolutely. So, one thing we've been seeing a lot of recently, um, are questions regarding the use of committees and especially non-directors serving on those committees. So again, it's these organizations that are really thinking creatively about what they're doing and how they can best fulfill their missions.

[00:08:30] So why, why non directors? Why are some of these organizations thinking about having non directors serving on these committees? So, for the first point, these non directors offer a certain expertise. So, if you are talking about your finance committee, you might have investment advisors, you might have CPAs.

[00:08:52] Other people who have experience in the field that might not necessarily have the time commitment to serve on your board of [00:09:00] directors. They're also broadening your base of support. A lot of these organizations will use committees as a way to that potential board members for the future. And also, we'll bring on individuals who have more time to serve the organization so that the board of directors isn't necessarily spread as thin as they might otherwise be if it was just the board that was servicing the organization.

[00:09:23] And these committees can really provide an additional opportunity for people to get involved and support the organization, further the base of potential charitable support, further your recognition in the community. So that's why these organizations are thinking about their committees.

[00:09:49] So, the big question of using these committees for your governance purposes are, will the committee have the authority to [00:10:00] act on behalf of the board? So this is, this is where things get complicated and, and, and interesting for the organization to think about. So, committees can have different purposes.

[00:10:11] There can be a board committee, which is essentially a committee that's created exclusively of directors and can function and perform the functions of the board. You can also have advisory committees. So these committees are the committees that people I think most commonly think about where you have non directors serving on the committee and these committees don't necessarily perform the functions of the board.

[00:10:37] So I'll give you an example of something we've been dealing with just in recent weeks. We have a organization that has a large charitable endowment that they man. They are thinking about their finance committee and how to set up that committee so they can make sure they're taking advantage of expertise of investment advisors, [00:11:00] CPAs, others that are interested in assisting the organization, but aren't necessarily serving on the board.

[00:11:05] They came to us with a question about how do you set up this committee so that these individuals can participate, they can feel valued, they can provide their expertise and advice and assistance, but that you're still operating so that ultimately the board of directors is responsible for the direction of the organization?

[00:11:29] What we've done and what we've advised them to do is to think about how to create a role for these directors where they can provide their advice, but the ultimate final decisions are left to the directors on the committee. So, this can be done in a number of different ways. And this is where you can get creative in setting up your bylaws and your committee charters.

[00:11:53] You can require only the directors to have voting rights on the committee, [00:12:00] you can set it up so that both directors and non directors have voting rights on the committee, but that you

need a majority of the directors in order for any action to pass. Lots of different ways. You can, you can think about this and set it up to move forward.

[00:12:15] So that's one area of thought for how to set up these committees and to structure them in accordance with your bylaws and also in a way that allows the organization to meet its needs. So, Julia, any examples of mistakes or oversights on the governance front, let's call them perhaps governance gaps?

[00:12:38] Yeah, that's a good question too. So, I think the, the biggest mistake we see, or not even a mistake, just maybe oversight, is organizations that don't regularly go back and take a look at their governance documents, so over time, obviously an organization can change. Individuals who serve on the [00:13:00] board. Your, your goals and your practices change, and you don't necessarily ensure that you're continuing to comply with the underlying bylaws or policies that you have in place.

[00:13:12] So having a plan to regularly look at these documents and make sure that they are in line with your current practices and that your practices are in line with the documents is, is generally a good approach to take. Organizations should remember that these are, your bylaws and policies, they're living documents.

[00:13:33] So once they're created, they don't need to be set in stone and never touched again. If an organization changes and grows and adapts and develops new best practices, it's okay to amend these documents. Just making sure that you're on top of it so you don't run into an issue where you have an important meeting or vote coming up and, and there's an issue with compliance.

[00:13:56] That's, that's an important thing to consider. [00:14:00] So Julia, while we're on the topic of documentation, we often tell our clients that the investment policy statement is the blueprint for a successful investment program. What are some of the criteria that you look for in a well-constructed IPS or some considerations that folks should keep in mind as they're drawing up their investment policy statement?

[00:14:21] Yeah, absolutely. Your investment policy is one of your most important policies for the organization. It's really key in defining the non-profit's objectives for investing, and then also identifying the organization's risk tolerance. One of the keys for a good investment policy is really having a clear delegation of responsibilities for managing and overseeing these.

[00:14:45] And so these are delegations of responsibilities for your, your board of directors, for your executive team. If you're going to have committees like we've discussed, the finance committee, anything like that, you want to have that [00:15:00] clearly outlined in the policy and establish what their duties are going to be.

[00:15:05] Also your investment manager, obviously your investment manager is, is a key component of your investment plan for the organization. So, identifying, you know, qualities or responsibilities for that investment manager can all go in the policy. Your investment policy will also have guidelines for how you're investing in different asset classes, you know, any particular allocations that are important, any prohibited investments.

[00:15:33] That's an important one for some organizations. Obviously, if you're a religious organization, you might need to religiously screen your investments. So, another policy you might have in place in connection with the investment policy is your spending policy. This can be part of the investment policy, or it could be a separate standalone policy.

[00:15:58] But the spending policy is where you will create a plan [00:16:00] for how you might draw down on your investments. That is really about balancing your current and future needs. And for both of these policies, investment and spending, one of the keys in developing these policies, in addition to just sitting and thinking about what is best for your organization and working with the board and your

executive team, is also working with your investment advisor, who can offer advice on your potential investments and your particular situation.

[00:16:26] Obviously, your investment advisor is well versed in these policies, so they can really kind of be a key component in your process for developing the policy. So, while we're on the topic of investments, let's shift a little bit towards gifts or donations.

[00:16:47] And one of the really hot topics in the investment industry right now is cryptocurrency. So how do you feel from a legal perspective about a nonprofit or a tax-exempt [00:17:00] organization accepting or receiving, um, somewhat controversial donations? So, for example, an anonymous donation of cryptocurrency or cannabis stocks, things that are kind of, uh, somewhere, uh, in, in the shade of gray in terms of ethics.

[00:17:19] Sure. Yeah. So, I think the key for these types of donations is don't be afraid, but be thoughtful in any decision to accept these types of donations. So, before you embark on a potentially, uh, controversial or ethically ambiguous donation, you want to get advice from your legal team, your accounting team, and your investment advisors.

[00:17:45] If you have a donor acceptance policy, you're also going to want to consult that policy. You might have already thought through these issues and made a decision that these types of donations are not something you [00:18:00] want to deal with for your particular organization. But if these come up and you haven't thought through these issues yet, again, make sense to consult with your team.

[00:18:10] So we've, we've actually seen donations of, of cryptocurrency in the nonprofit field. This is, you know, something that's kind of gaining more and more steam as cryptocurrency has come more into the mainstream. You know, the potential risks, if you don't know where it's coming from and not knowing the potential value of these, these cryptocurrencies on a day-to-day basis, it can cause some hesitation.

[00:18:38] One thing we've advised recently for cryptocurrency donations is you want to think about your potential risk, uh, tolerance for these donations. So, cryptocurrency, I'm sure you've seen has been up and down and up and down in price and value in recent months. It's, it's gone through the roof. It's dropped through the [00:19:00] floor.

[00:19:01] And so an organization has to decide whether they want to hold on to these donations and be where it'll go in terms of value or immediately cash out and convert the cryptocurrency to, to dollars that they can then put in store in their bank account and their investment accounts and have in a more traditional method.

[00:19:23] So that's really a question of risk tolerance for the organization. Generally, our advice is to, to cash it out when you know what the value is. You know, another type of donation we've seen for a lot of organizations is, uh, land. So, sometimes there's very well-meaning donors who want to, uh, leave a piece of land to some charitable organization, um, maybe in their will, maybe while they're living.

[00:19:49] If you're not a land conservation organization, you need to be thinking very carefully about whether or not it makes sense for your organizations to accept the piece [00:20:00] of land. So, for example, we had a client who's a grantmaking organization who was gifted a piece of land through a, a donor's will.

[00:20:09] And while it is a great asset to have a piece of property, it has monetary value. There are definitely steps you have to go through and then converting that land into a liquid asset that the organization can use. So again, nothing wrong with these types of gifts and donations necessarily, but you want to think through all the different components before accepting the donation.

[00:20:40] That makes great sense, Julia, you're, you're actually prompting a thought here. And Devon had mentioned cannabis stock and sometimes, uh, finding a bank or custodian that will actually receive proceeds from a cannabis stock sale can be a challenge. So, your, your point about really being thoughtful in advance makes a [00:21:00] lot of sense.

[00:21:00] We're curious, if a donor wants to make a gift that might fly in the face of an organization's value set or create some significant operational burden like the land or otherwise, but more along the lines of just as a conflict from a values perspective. Do you have any recommendations on dealing with that for the tax-exempt or nonprofit organization?

[00:21:27] Yeah, so I, I think that the key point for the organization to remember is, you know, it, it is okay not to accept a gift or a donation. And if you have to fight against your instincts to a certain extent, because obviously the more money and value that comes into the organization, the better, but a gift that has potentially sticky ties to it may not be worth the hoops you have to go through, or the, um, the discomfort you feel in accepting it. [00:22:00]

[00:22:01] If you have a specific policy in place, a donation acceptance policy, gift acceptance policy, that is helpful to be able to fall back on for the, um, when speaking to the individual and explaining why you can't accept a particular gift. Think at the end of the day, ultimately your fiduciary duties as a director on the board of directors of the organization, or as an executive officer of the organization, those really govern and should lead you as to whether or not it makes sense to, to accept a potential gift.

[00:22:40] That's great. So, Julia, you've covered so much today and we've talked about a wide variety of topics. Is there anything that we didn't ask that you'd like to share with nonprofit leaders before we wrap up?

[00:22:55] Yeah. So, you know, governance is a tricky topic and it's something that all [00:23:00] organizations want to do well. And, you know, have to, have to kind of think about, uh, as they go about their, their day-to-day business. So, it is something to keep in the forefront of your mind. Organizations think about policies when you think about governance, which is obviously a great thing to think about.

[00:23:19] One note on policies is we always say only adopt policies that you're going to follow. So, it doesn't make sense to adopt a bunch of policies, stick them in a closet, and then not follow them for your particular organization. So again, I think, you know, kind of the key of, of this conversation has been, be thoughtful in your approach.

[00:23:41] Um, be strategic, be thoughtful, and make sure you're working with your inside and outside team to develop good governance practices and, and the best approach, and the best approach for your organization. Yeah. That's great advice. Thanks, Julia. So [00:24:00] before we close things out, uh, we always like to throw in a little personal question so we can get to know our guests.

[00:24:07] So could you share with us what your all time favorite book or movie is, or maybe even both? Sure. So, I always have a hard time with the favorites question because it always varies with whatever I am currently reading or watching. Um, but right now I'm reading a book called Circe. It's by Madeline Miller.

[00:24:27] Um, it's, it's kind of a modern take on the Greek myths, uh, and it's focusing on, in particular, the goddess Circe. So far, halfway through it and really enjoying it and would recommend. Excellent. It happens to be on my nightstand and I've been ignoring it for six months. So, I'll open it up. Well, thank you so much.

[00:24:49] You've shared so much insight and expertise with us and with our listeners. We're really appreciative. If folks want to learn more, are there any resources you might recommend or is there a

way for [00:25:00] them to get in touch with you? Yeah, absolutely. People can reach out to me directly. I'm happy to speak with anybody about questions.

[00:25:08] You can reach me through my, uh, our website I think is the best way to do it. So, Murthalaw.com, M U R T H A L A W.com. And I am listed on the website. Well, Julia, thanks so much. It's been wonderful hearing your insights and really appreciate having you on the show today. Thanks. It was great being here.

[00:25:33] Great. And if you've been paying attention at all to the markets, you're aware that there's been a lot of volatility so far in 2022. Unfortunately, market conditions are out of our control, but one thing that is within our control is good governance. Having a solid governance process in place is key to controlling risk and ensuring that you're doing everything you can to fulfill your duties as a fiduciary.

[00:25:56] And of course, it includes the best practices that Julia discussed, [00:26:00] as well as working with an investment partner that focuses on governance. At Fiducient, we provide nonprofit clients with our fiduciary governance calendar, and this builds a disciplined framework around governance. So that over the course of an entire calendar year, committees, board members, staff, they can make sure that they're addressing the important obligations as fiduciaries.

[00:26:24] So, if you want to learn more about this, please feel free to reach out to me or Devon via email or LinkedIn. And you can find all that information in the show notes. So, to all you good stewards, thanks for investing time to help your nonprofits prosper. We'll connect with you soon on the next episode.

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