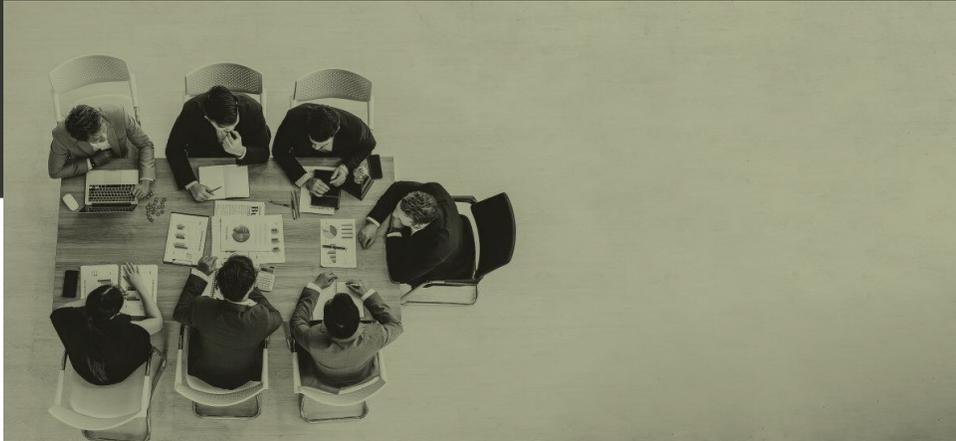


The Importance of Executive Sessions for Nonprofit Boards

02.28.20 | Linda J. Rosenthal, JD



[BoardSource](#) is a leader in inspiring and supporting “excellence in nonprofit governance and board and staff leadership.” Among its “best practices” advice for 501(c)(3) boards is holding “[regularly scheduled executive sessions](#).” See [Executive Sessions: Why, Who, What, & How](#).

What, Exactly, Are Executive Sessions?

“Executive sessions are a [special meeting-within-a-meeting](#).” Attendees are generally the key leadership of the organization but, in any event, a much smaller group than the entire board. “Most often,” according to the BoardSource experts, “executive sessions are private meetings for certain board members only with no staff present.”

When appropriate and helpful, the group *may* invite and include a few other individuals; for instance, the executive director with or without other top executive staff. Counsel may and should be included in certain circumstances. These non-board invitees may be asked to join all of only part of a session; the “[purpose of the meeting](#) determines who should be present or excluded.”

There are [three important purposes](#) and benefits:

- The chair and top leaders can meet privately to handle sensitive information and issues with an assurance of confidentiality.
- Key individuals can conduct oversight through “robust discourse.”
- Board members can establish good working relationships and trust.

Issues for Executive Sessions

Some topics and situations in the nonprofit-organization setting are “[best handled in executive sessions](#)” with no non-board invitees because of the need for “more candid, confidential conversations.” Examples include:

- Meeting with an auditor on sensitive financial issues
- Handling top-level personnel matters including the CEO's compensation and performance review
- Planning for an important transaction like a real estate deal or a merger
- Considering matters where "personal or organizational confidentiality is requested or prudent"
- Dealing in a preliminary way (including investigation) with crisis situations or with allegations of improper conduct by the CEO or a board member – before disclosure to staff or others who ordinarily attend full board meetings.

Sometimes, though, the presence of the chief executive is particularly helpful; for instance: litigation, crisis-management planning, and off-the-record discussions about what 'keeps the president awake at night."

Executive-Session Guidelines

"BoardSource recommends that every board should have regularly scheduled executive sessions before, during, or at the end of regular board meetings." In that way, there is no need for extra logistical planning or inconvenience or cost to attendees.

In any event, the board should draft and adopt a formal policy explaining how to call executive sessions. It should include guidelines for when executive sessions can or should be routinely held and which issues are acceptable and appropriate only for these closed meetings. The document should also detail how the executive sessions should proceed; each should be limited to its "determined purpose" only. "After that purpose has been met, the session should end."

There should be a written record of the session. "While detailed minutes are often not necessary, the record should include the date, time, and place of the meeting, names of those people present, any actions taken, and any abstentions from voting if voting took place." Of course, these minutes are confidential, limited to viewing only by those present at the session.

If the chief executive is not invited, the board chair should inform him or her "soon after of any specific conclusions or recommendations...."

Conclusion

Under California nonprofit corporation law and in many other states, executive sessions are permitted except in the case of certain organizations that are subject to "sunshine" – that is, open meeting – laws.

These smaller, closed sessions are particularly helpful and important for organizations with large (and unwieldy) boards, some members of which are there mostly for the prestige and are what we in the field refer to – (behind their backs, of course) – as "potted plants" or "bobble-heads." That's another issue entirely; one which we've discussed before and will likely revisit again.