CalHFA BOARD OF DIRECTORS

Wednesday, February 6, 2008

Holiday Inn Capitol Plaza
300 J Street
Sacramento, California
(916) 446-0100

10:30 a.m.

1. Roll Call.

2. Board Chairman/Executive Director comments.

3. Educational and development workshop regarding Board governance issues entitled "Boardmanship Basics", presented by John Wagner, Kutak, Rock LLP. (10:30-12:30)..1

4. Presentation on issues and events relating to current subprime lending crisis, presented by Nick Fluehr and Mike Koessel of CitiGroup. (1:00-3:30)..............[handout]

5. Update on CalHFA participation in mortgage foreclosure counseling program.

6. Public testimony: Discussion only of other matters to be brought to the Board's attention.

FUTURE MEETING DATE: Next CalHFA Board of Directors Meeting will be March 19, 2008, at the Clarion Hotel Sacramento, Sacramento, California.

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California Housing Finance Agency

BOARDSMANSHIP BASICS

John J. Wagner, Esq.
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February 6, 2008

Nature of CHFA

- Unique quasi-governmental financial organization
- Legislature specifies purposes and powers
- Self-supporting (but enjoy special tax rules)
- Multiple "overseers"/stakeholders

Role of Board

- Effect of Sarbanes-Oxley (SOX)
- Set policy
- Govern and monitor, but do not micromanage
- Oversee programs
- Plan (long-term and short-term)

Board Works as a Team

- No individual Board member has authority
- Consensus building is key
- Get to know the Board team members
- Executive Director is a key part of the Board team

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Board/Executive Director Relationship

Executive Director:

- Is CEO
- Recommends/Board approves
- Has broad responsibilities
- Provides information Board requests
- Evaluated annually

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Board/Other Staff Relationship

- Chain-of-command structure; Executive Director is at the top
- Board communicates through the Executive Director
- Board-staff “short-circuits” are problematic

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Board/Professional Team Relationships

- Relationships with Board vary
- Professional team and Executive Director
- Periodic reviews/RFPs

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Board Officers

- Chair—key Board officer; sets the tone
- Vice Chair
- Secretary
- Treasurer

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Board Committees

- Full Board creates them
- Used when a full Board meeting is inefficient
- Standing vs. ad hoc committees
- Committee work important

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Board Meetings

- Board member responsibilities
- Business-like, on-time manner
- Follow an agenda
- Review/approval of previous minutes

Board Member's Legal Duties

- Due Care - exercise ordinary and reasonable care
- Loyalty (conflicts)
- Disclosure (federal securities law)

Board Member Liability – Avoiding It

- Know and follow Board policies
- Stay informed
- Use common sense
- Little practical risk of personal liability

NATIONAL CONFERENCE OF STATE HOUSING BOARDS

EDUCATIONAL AND DEVELOPMENT WORKSHOP

BOARDMANSHIP BASICS

August 12, 2007

KUTAK ROCK LLP

Atlanta, Chicago, Denver, Des Moines, Fayetteville,
Irvine, Kansas City, Little Rock, Los Angeles, Oklahoma City,
Omaha, Pasadena, Richmond, Scottsdale, Washington DC, Wichita

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WELCOME TO THE BOARD!

Being a Board member is an honor, but also a responsibility

It is an honor and a privilege to be appointed a member of the board of directors of a housing finance agency (HFA). You will be directing a powerful financial force in the provision of affordable housing in your state.

But it is also a heavy responsibility and requires hard work. You will make decisions that affect the lives of many people now—and many more in the future. You will govern the borrowing and expenditure of millions, if not billions, of dollars.

A major factor that makes the job so tough is that board members rarely come to the job well prepared to do it, in part because the policy and financial aspects of HFA operations are unique and complex.

Although a board member comes to the job with the best of intentions, good intentions are not enough. No one is born with the knowledge and ability to be a good board member. Boardmanship is an acquired skill that must be learned, honed to a sharp edge and regularly updated.

Two major challenges face board members. The first is the task of governing the HFA. The board members will plan, monitor things like finance and programs, interact with politicians and interested public and private sector groups, evaluate the progress of the HFA and a hundred other things to keep the HFA viable and moving.

But the second major task is equally important. The board members must become a part of the board team and keep that team functioning at an optimum level. If board members do not do a good job of building and maintaining skills of teamwork and good boardmanship, the board will not be able to accomplish the first task—governing the organization well.

NATURE OF THE HFA

HFAs are unique financial organizations

An HFA is a unique financial organization. It is not a true political subdivision—its members are not elected by the populace and it has no taxing powers. It is not a private nonprofit corporation, which determines its own purposes and selects its own directors—the legislature has determined the HFA's purposes and powers, and elected state officials (usually the governor) select the board members.

An HFA is a dichotomy—on one hand it is a "municipal corporation," a quasi-governmental entity, established by a specific law with legislatively specified purposes and powers, but on the other hand it is to be operated more like a private nonprofit company, self-supporting and expected to maintain investment-grade ratings on its bonds. Truly a complex challenge for board governance!

The primary mission of an HFA is to provide financing and administer programs for affordable housing. An HFA sometimes undertakes projects and programs that are not strictly economically viable but are important and necessary to those the HFA is directed to serve. The decision to undertake those projects and programs is based on a bottom line of service, not a bottom line of profit.

But an HFA also enjoys important legal and financial benefits. It is exempt from income taxes as well as various state and local taxes. It has the ability to borrow money at tax-exempt interest rates, which are lower than conventional taxable rates. It has special programs under which it receives and uses federal funds or tax credits for its purposes, or receives preferential treatment.

By law, most HFAs are governed by a board of directors. The board must:

- set policies consistent with its purposes
- govern the HFA's resources
- make sure the HFA maintains and develops programs for those it serves

A board member has a fiduciary responsibility to act in good faith and in the best interests of the organization. Each board member has an obligation of loyalty and duty to uphold the integrity of the HFA.

A board member must exercise a high degree of diligence to make sure the HFA is operating in the best interest of those it is designed to serve. Each board member has a duty to be informed about the state of the business and affairs of the organization. A board member has the responsibility to make sure that the HFA is properly managed and that its assets are being appropriately utilized.

A board member must not make decisions based on personal interests or other special interests, but must always make decisions based on what is best for the HFA and its purposes.

In a for-profit corporation, the product has importance only as far as it makes a profit. In an HFA, the product is financing affordable housing—not making a profit per se—and a board member has a moral responsibility to be committed to that mission.

A board member has a responsibility to go beyond any individual interest in solving a problem that affects him personally. A board member must believe strongly in the value of the service the HFA provides—to want to see the organization develop and grow for the good of those it is directed to serve.

Board members will discover that there is never enough money to do all that the HFA could or would like to do. Board members will be faced with hard choices about which program or service to fund. Board members may have to choose between keeping one program over another when the income falls short of the expenses.

Service on an HFA board can be frustrating yet rewarding, frightening yet fun, confusing yet enlightening. It is always challenging and rarely dull. Members will leave the board knowing more about the national capital/debt markets and affordable housing than they ever dreamed possible. If the job of the board members is done as it should be done, the members may work hard and give many hours they probably did not expect to give when they agreed to serve on the board. But the members may also find themselves investing much of themselves and loving every minute of it. That is the nature of an HFA.

THE BOARD WORKS AS A TEAM

Board members are usually community or industry leaders.

There is potential for great strength and power when several influential community and industry leaders come together on the board of directors to govern an HFA. But the beauty of bringing leaders with diverse personalities and perspectives together to govern the HFA also creates real governance challenges.

How is <u>one team</u> with one voice created out of these many diverse voices? It is done by each board member making a special effort to understand and fit into the team effort. No matter what perspective a member brings to the board, the member's first personal goal should be to attempt to fit into the team structure.

Being part of the team does not mean members must give up their personal views and goals, but rather must attempt to find a way to mesh their goals with the goals of the other board members. It may mean forming new team goals to which all board members subscribe.

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The Board must work as a team

In a strict legal sense, the only way individual board members can exercise authority is by making decisions together. Individually, outside the board meeting, a board member has no legal authority to act for the board or HFA or make any decisions for the board. Thus it is essential that individual board members be able to act as a team if any decisions are ever to be made.

In addition, a board member's loyalty can no longer be to special interest groups, or any particular segment of the community, but must now be to the HFA and to the whole community.

A board member may have been selected from a particular geographic area or as a representative of a particular part of the community (nonprofit or for-profit). No matter why a person is appointed to the board, their loyalty must now be to the team effort that serves the best interest of those the HFA serves—not to the special interests of those who helped put the member on the board.

There may even be times when the decisions a board member is asked to make for the organization will come into conflict with decisions the board member has to make as a member of another board. The solution is the same. An HFA board member's loyalty is to the HFA board. If a member cannot accept that principle, the member should seriously consider resigning from the HFA board.

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Executive Director is part of the Board team

There is one nonvoting member of the HFA board team: the executive director.

The relationship between the board and the executive director is not the typical employer/employee relationship, as described in more detail later. The executive director/board member relationship should be one of very high trust and cooperation.

The executive director is such a vital resource to the board's work that the executive director normally sits at the board table and takes part in all deliberations as a team member.

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Upon appointment to the Board

As a new member gains experience on an HFA board, the member will continue to learn facts, financial matters, programs, procedures and a thousand other things. But when first appointed to the board, a member should:

➢Get to know the other people who serve on the board—not just their names, but who they really are.

Where do they live?
What are their occupations?
Do they have families?
What are their real interests and concerns?
What motivates them to serve on the board?

Team building begins by knowing one's teammates. Governance cannot happen without team effort.

➢Get to know the executive director, the other part of the board team. There must be a very high level of trust between those who govern and the person they have chosen to manage. Board members and the executive director form the board team.

➢Learn where to go for answers to your questions. The best defense against being totally lost at the early stage of one's term as a board member is to know the people and resources to quickly obtain answers to the tough questions.

The executive director, a fellow board member or the board chair are the best guides to the ways and means of the organization.

➢Obtain and review basic board materials—the HFA act, the bylaws, all board policies, applicable ethics rules, open meetings rules, the last two years' annual report, the most recent official statement for each of the HFA's major bond programs, and a list of the HFA's professional team. Usually the Executive Director conducts a new member orientation at which these are provided.

➢Learn to learn. Learning the job of boardmanship is a never-ending task.

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Board members must be team builders

A board member should be a team builder. A member should:

➢Listen to fellow board members. Each member has to know where other members are coming from to be able to fit all goals together.

➢Explain his or her position on issues very clearly so fellow board members understand where the member is coming from.

➢Tell fellow board members openly when one agrees with them as well as when one disagrees with them. If a member is vocal only when they disagree it makes them appear to be just a naysayer rather than someone with a legitimate concern about the issue.

➢Not let disagreement on one issue carry over to the next issue on the agenda. Agreement or disagreement should stand on the merits of the issue, not on a clash of personalities.

➢Respect what other board members have to say. Disagree, debate, question, but never ridicule what other board members have to say. Keep in mind that the others around the table have earned their places by also being community or industry leaders. Their opinions carry the weight of experience just as yours do.

➢Avoid forming voting blocks with other board members. Counting votes to simply gather a majority on one issue may pay off this time, but it will be expensive in future deliberations with the board. Advocate strongly for your point of view, but always work for consensus of the full board, not for just a simple majority.

➢Accept the fact that there will be split votes on the board. No matter how hard one works for consensus, there will be issues decided with a majority and a minority vote. If you are on the minority side of the issue and have advocated well for your side, then you should accept the majority decision and support the board's decision. If you are on the majority side of the issue, give due respect to the minority views.

Leave disagreements at the board table. When the meeting is over, the debating is over until the next meeting. After the meeting it is time to rebuild the team spirit.

Ongoing development activities should be part of the plan for every board and every board member. Attend state and national conferences (like NCSHA's and NCSHB's), take part in boardmanship workshops and read pertinent literature.

There is no such thing as knowing all one needs to know about the complex job of governing an organization as complicated as an HFA. It often takes years to appreciate the basic workings of the bond issuance process, let alone the nuances of various programs or applicable laws.

➢Learn that the job deserves one's very best effort. Everyone comes to the board as an amateur, but each member must do the job in the most professional manner possible. Each member has volunteered for the job, and the pay, if any, is minimal.

But the governance of the organization demands the best job each member can do. If a member cannot offer that, they should let someone else have their seat at the board table.

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How not to begin a board career

If you are looking for ways to alienate yourself from the board team, here are a few suggestions that will guarantee it:

- Talk too much and listen too little
- Act as if you have all the answers for every issue
- Refuse to change your mind on any issue, no matter what the evidence
- Refuse to compromise
- Ignore advice from fellow board members
- Leak information from a closed board session
- Fail to prepare for the board meetings
- Publicly criticize a board decision you did not support
- Ridicule board decisions made before you came on the board

THE ROLE OF THE BOARD MEMBER

The job of a member of an HFA board team can be defined very easily in one sentence: ***You and your fellow board members are responsible for the whole organization and all that happens in it.***

That is both a legal and a practical way of looking at your job on the board. Your responsibility encompasses administration, staff, programs, finance, assets, success and failure of the HFA.

Even though the board delegates a major portion of the job to professional staff, the board never gives up bottom-line responsibility for the organization. Any doubt about that was largely erased by the principles inherent in the federal Sarbanes-Oxley Act (often referred to as "SOX").

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The Board sets policy

A board of directors has neither the time nor the ability to handle the daily management of a business as complex as an HFA. Instead, board members handle their responsibility through their governance or policy-making position.

A policy is a direction or course of action that a body will take. The board is a policy-making body that sets the direction and course of action the organization will take within its legislatively specified mission.

The board establishes policies that outline the board's parameters for how the HFA will operate to accomplish its legislatively determined mission. Then the board functions as observer, interpreter and evaluator of those policies. The board also modifies existing policies and creates new policies as it sees the need to keep the organization running well.

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If you know something about the history of your HFA, you probably know that it grew out of a state-wide need—usually a need for the financing of affordable housing for citizens of the state. The solution was to create a quasi-governmental organization that would continue to deal with the problem and fill the need.

The Executive Director is hired to manage

Although the first board of each HFA hired an executive director to manage the HFA in the early stages of the organization's history, those first board members were more actively involved in management because everything was new. But as the HFA matured, the board was able to assume its proper role as governors, not managers. With someone else handling the management, board members have time to be overseers, planners and advocates for the organization.

Even though that all happened long before you came to the board, for those HFAs where the board employs the executive director, the task of selecting/retaining an executive director is still something about which you will be concerned. The board places a tremendous amount of trust and authority with the executive director, and the executive director must continue to prove to the board that he/she is the right person for the job. Board members should adopt a written description of the job of the executive director and on a regular basis formally evaluate the executive director.

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The delicate balance of leading and delegating

Some board responsibilities cannot be delegated to others. However, a great deal of the work of the board must be delegated to a professional manager who has the time, skills and abilities to do the job.

Keeping in mind that the board is responsible for everything in the HFA, and looking at the delegation of daily management by the board in the purest terms, it can be said that:

> ***The executive director's job is to daily do the board members' job for them.***

One of the most difficult things a board member will do is make a sweeping delegation of authority to the executive director to manage the HFA, and then do nothing to interfere with that management except to monitor.

This confusing issue of how much the board does and how much the board delegates to someone else to do is the greatest cause of conflict on any HFA board. The reason for that is the impossibility of clearly defining what the board should do and what it should delegate to the executive director.

<u>There are several ways a board member can deal with this confusion and keep things in perspective:</u>

➢Do not look at this as a turf battle between the board and the executive director. The board and executive director must always function as a team and each team member has assignments. This is an issue of determining who does what best and then allowing that segment of the board team to do the job without interference from the other parts of the board team.

➢The board members' duties can be defined loosely as dealing with issues that affect the whole organization. The board sets parameters of how the system will operate.

The executive director's duties can be defined as developing and carrying out the functions of managing the organization within the parameters set by the board.

➢There are very few activities of the board team in which every segment of the board team is not somehow involved. For example, it is the board's job to establish an annual budget for the organization. However, the budget is most often prepared by the executive director and recommended to the board for approval. So the executive director does have an important role in the budget process even though it is strictly defined as a board responsibility.

➢Communication is the best prevention of confusion and conflict. Board members and the executive director must feel free to discuss any issue. All parts of the board team must feel free to express concern about who does what job.

➢The board never gives up ultimate authority for everything and everyone in the organization.

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Examples of who typically does what on the board team—

➢The board delegates staff management to the executive director, but the board gives final approval of all senior staff contracts.

➢The board hires the auditor to audit the financial records, but the executive director seeks bids for the audit and makes recommendations to the board for their final decision.

➢The board creates policies for management of finances and approves borrowings, but the executive director actually structures and recommends financings, handles bond issuances, invests funds, makes sure the bills are paid and oversees the day-to-day financial situation.

➢The board approves bids for major purchases, but the executive director recommends the bid be accepted and actually makes the purchase.

➢The board is responsible for making a long-term plan for the organization, but the executive director will make recommendations and act as a resource through the planning process.

➢The board approves a budgeted amount for maintenance and staff salaries, but the executive director actually determines the maintenance activities that will be carried out and the allocation of money to line staff.

➢The board approves a budget amount for staffing, but the executive director determines the level of staffing necessary and what the staff will actually do.

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Board planning

By delegating management responsibility to the paid staff, the board leaves itself time for the important task of planning for the future of the organization.

Planning is not a frill, but one of the most important trusts given to the board. If there is one thing boards do not do enough of, it is planning.

Planning, in an age when dramatic change comes almost faster than one can comprehend, seems like an exercise in futility. But the very fact that change is so rapid is even more reason that every organization must have a plan to cope with that rapid change and the effects that change could have on the organization.

Failure to plan is planning to fail. Board members must be the visionaries for the organization. They should plan as far ahead as five years.

The board is generally responsible for long-term planning, and the executive director is responsible for developing a short-term (1-year) plan to carry out the board's long-term goals. But all planning for the HFA is a board team effort.

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Plan for planning

Long-term planning must be much more than an informal discussion about what the organization ought to be doing in the years ahead. Good planning that will set definite goals has to follow a very orderly and formal process.

A board member should expect to be involved in at least one significant long-term planning meeting per year. During this meeting, board members will help write a long-term plan or modify a previously established plan.

Each board member should be ready to merge their personal goals for the organization with the personal goals of the rest of the board team. Each board member should also be ready to work for a consensus with the rest of the planning team about the goals the board will set. An organization must have one set of long-term goals to shoot for.

The annual long-term planning session will probably include the board, executive director, senior staff, professional team and other resource people, and last as long as one or two days.

In that special planning meeting, each board member should be ready to set aside the limitations that they struggle with in monthly board meetings. Board members will be asked to dream about the future of the organization and then plan how to make those dreams reality over the next 5-10 years.

Planning is an exciting and vital board responsibility. Planning makes dreams reality for the HFA.

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It is a common misconception that a long-term plan once written is locked into place and not changed for the life of the plan. Rather, an HFA long-term plan should be a flexible and changeable document. An HFA written plan should be reviewed at least once a year and modified where necessary.

Long-term plan elements

The basic elements of a good long-term plan are:

➢Do-ability—Actions can be taken to accomplish the plan.

➢Flexibility—The plan can be modified over the years.

➢Measurability—There are ways to identify accomplishment of the plan.

➢Accountability—Completion dates and responsible parties are identified as part of the plan.

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Short-term planning

The executive director is generally responsible for writing a short-term plan that explains how the executive director and staff will implement the board's long-term plan for the year. The board also writes a short-term plan that outlines what the board's work will be for the year.

In other words, the board creates an annual calendar of board activities.

The short-term plan is a simple document that will include such things as plans for board meeting times for the whole year, committee activity, the annual meeting, election of officers and board development activities.

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Monitoring and evaluating

A board member is really a "Trustee" of the HFA. The State trusts you to make sure the HFA is operating the way it should—the way they have directed it to be run in the HFA statute. It is a board member's job to keep an eye on the progress of the organization for the State.

Of course, a board member can not watch every detail and every activity that takes place in the organization, because that would be a full-time job. The board member's responsibility is to monitor and evaluate "bottom-line" results.

For example, a board member can not and should not be in the office every day monitoring the work of the staff. But a board member can measure the effectiveness of the staff by looking at the progress made on the long-term plan and the executive director's annual goals. That is bottom-line evidence of the work staff is doing.

A board member will monitor and evaluate many things as a member of the board, but there are a few major ones—finance, executive director effectiveness, progress towards the HFA goals and the long-term plan.

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Finance monitoring

Finance is one of the most difficult items an HFA board member will have to monitor and evaluate, but it does not have to be an overwhelming task. A board member does not have to be an expert in municipal or corporate finance to do a good job—the board hires professional experts for that purpose.

Begin your monitoring with careful attention to the budget. The budget is the board's financial plan for the organization and deserves plenty of each member's attention. The budget will be prepared by the executive director and staff and presented to the board for approval.

When the budget is presented, board members must ask whatever questions are necessary for them to gain a reasonable understanding of this financial plan—basically, where the money is coming from and where the money will be spent.

Monthly or quarterly financial reports to the board are the windows members use to monitor how well the executive director and staff are following the financial plan the board approved when the members voted on the budget. If a board member does not understand the reports, the member should ask the executive director for an explanation.

Board members do not have to know everything about finances, just enough to assure them that the money is coming in and going out according to the budget plan.

Financial reports should cover both the revenue side of the budget and the expense side of the budget.

On the expense side, a board member should understand what was budgeted, what has been expended to date, the variance between the spending plan in the budget and what is actually being spent, and the reasons for the variances.

The same goes for the revenue side. How much money was anticipated at this point in the budget year? What has actually come in? What is the variance? What is the explanation for the variance?

Another step for the board to do a complete job of monitoring the financial status of the organization is an annual audit of the books by an outside auditor. This is a required procedure for most HFAs, but it is much more than just a mandate. It is also one of the board's best protections against financial misconduct or mismanagement—and the key safeguard required by the federal Sarbanes-Oxley Act for all SEC registered companies.

When the auditor completes the annual audit, it will be delivered to the board with the auditor's findings. Board members should feel free and, in fact, obligated to discuss the report with the auditor and get a basic understanding of the strengths and weaknesses of the financial management reported in the audit (usually auditors prepare a separate "management report" for the board to address any issues the auditor uncovers). It is also often helpful to have the auditor explain the balance sheet and income statement line items as some of them are counterintuitive. Accounting standards have become so arcane (and in some cases illogical) that board members should be sure to ask the auditors about accounting rule anomalies and their impact on the HFA's financial results.

Unfortunately, in some cases the accounting rule anomalies result in a distorted view of the actual cash flow position of an HFA, and HFAs may need to maintain a separate set of financial reports to enable the Board to meet its oversight responsibilities.

The final step for the board to do a complete job of monitoring the financial operations of the HFA is to review reports by the national bond rating agencies which concern the HFA. Every time an HFA issues bonds, it obtains a bond rating which is accompanied by a rating report. The rating report provides a summary of the overall credit analysis of the bond issue based on the actual—and expected—cash flow position of the HFA.

In addition, the rating agencies usually produce annual reports about HFAs as a group. Those reports contain many charts which rank HFAs by various financial criteria and can help board members evaluate their HFA in light of its peers.

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Ineffective ways for a board of directors to monitor finances include—

➢Reviewing a list of the bills paid. This is not only unrealistic for the board but fails to look at the big financial picture which is really the board's job.

➢Relying on a finance committee. The full board is responsible for the financial integrity of the organization and a committee should be used only to help the full board understand the financial picture, not do the job for the board.

➢Board members signing checks. Even if this were practical, it is not adequate as a financial monitoring system because it does not provide a view of the big picture of the organization's finances.

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Evaluating the Executive Director

Executive director effectiveness is another important area for board members to monitor and evaluate. Remember, a board member is responsible for everything in the organization and only delegates management to the executive director. A board member does not give up his responsibility when the board delegates, so it is up to the board member to make sure that management is being handled properly.

Board members cannot follow the executive director around all day to see how the job is being done, so the best way to evaluate and monitor executive director effectiveness is through a formal evaluation, preferably annually in conjunction with the executive director's annual compensation review.

The format and procedure for that evaluation must be worked out by each board, but it is important that it be based on the executive director's written job description and that each board member understand what is appropriate and what is inappropriate for the executive director evaluation.

Remember that you are measuring executive director effectiveness on bottom-line results. Is the board getting a good flow of information and recommendations from the executive director? Are the finances of the organization reasonably stable? Are its programs working efficiently? Is the staff knowledgeable and effective? Is political and community support strong? Is the organization making progress towards its long-term goals? Is the executive director working within the job description dictated by the board? Has the board received many complaints from those the HFA serves?

A few good rules for an executive director evaluation . . .

1) Do not ask staff to evaluate the executive director for the board. Line staff usually do not know what the board expects of the executive director. Staff members cannot be unbiased when evaluating their boss.

2) Consider formal evaluation a positive effort to communicate better with the executive director, not a faultfinding mission to document errors. The evaluation gives the board and executive director an institutionalized system to communicate about how to make the organization run better. A board member should search as much for what the executive director does well as for what the executive director is doing wrong.

3) Be ready to reward good performance and demand correction for poor performance.

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Board Members as advocates

Because board members serve as volunteer leaders of an HFA, they qualify as the best advocates for the organization. Paid staff have a built-in self-interest no matter how committed they are to the mission of the organization. But volunteer board members have the purest of motives—service. Board members are also community leaders and hold a good deal of influence in the community, prime qualities for being advocates.

A board member's advocacy for the organization will take several different forms—lobbying lawmakers, communicating with the community and those you serve about the needs and plans of the organization, and carrying out public relations activities for the organization.

A board member's advocacy efforts will generally be part of a planned board effort. Remember, a board member cannot speak for the full board, but can speak about the board's position on issues. A board member can also promote the programs of the organization.

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Special expertise

In addition to community or industry influence, board members often bring special personal expertise to the board.

Keep in mind, however, that a board member is not appointed to be a specialist for the organization, but rather to apply his general experience and leadership to its governance. Exercising one's special skills must be done in a cautious manner.

When a board member offers expertise to the board or to the executive director, he should not be offended if the advice is not accepted. Both the board and the executive director must work in the context of the whole organization, not just one area of need.

When a board member uses his expertise, he must be cautious not to misuse his power as a board member to pressure the executive director or other staff to accept help.

The bottom line—A real expert knows the answers, but also knows when to offer those answers.

BOARD POLICIES

Ask any board member to define the board's job and you'll likely hear, "The board's job is to set policy." Ask for a definition of policy and you'll probably get no more than a confused look.

For board members to do their job well, they must understand policy because that's where they'll be spending their time—making policies, wrestling with policy issues, interpreting policies, monitoring policy effectiveness, enforcing policy, setting direction for the organization through policies, protecting the board and the organization through a good set of policies.

Policy is a written statement of the process and procedure for handling a specifically defined issue.

A good set of written board policies . . .

- informs everyone of board intent, goals and aspirations.
- prevents confusion among board members, staff, the professional team and the public.
- promotes consistency of board action.
- eliminates the need for instant (crisis) policy-making.
- reduces criticism of the board and management.
- improves public relations.
- clarifies board member, executive director, professional team and staff roles.
- gives the executive director a clear direction from the board.
- provides legal protection to the organization.

Just entering a motion into the meeting minutes that says the board will follow a particular direction <u>is not</u> policy. Relying on board tradition to be board policy <u>is not</u> enough. Determination of how the board handled an issue the last three times <u>is not</u> policy. Simply following state law <u>is not</u> policy.

Board policy is a carefully designed, written general statement of direction for the organization, formally adopted by a majority vote of the board at a legally constituted board meeting.

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Board policy is not . . .

An HFA's bylaws are not board policies. Bylaws are a higher and more permanent set of guidelines for how the board will operate. They are usually harder to change than board policies and do not cover the broad scope of how the organization will operate.

Laws are not board policies. There is little need to repeat in board policy those statutes that already have the force of state or federal law unless the board policy spells out some special manner in which the board will implement or comply with a law. For example, if state law prescribes when the HFA's fiscal year will begin, there is no need to repeat that law in a board policy.

A board should "develop" policy and not just "write" policy. Good policy grows out of a lengthy process of studying the issues and needs, gathering facts, deliberating the issues, writing the policy and reviewing the policy annually.

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Policy development follows definite steps.

Developing policy

1) Identify the need. Unfortunately, many board policies are a result of a problem or even a crisis rather than a result of careful planning and foresight.

A good way to identify the need for particular policies is to anticipate problems and write policies before the problems occur. Study the policy manuals of other organizations. Monitor developments in private corporate governance, especially in reaction to the Sarbanes-Oxley Act. Pay attention to what's happening with other HFAs across the nation. If an organization similar to yours ends up in litigation, your HFA should review its own related policies. Learn from the mistakes of others.

2) Gather the facts. Most policies will grow out of recommendations from the executive director. Your executive director is in touch with trends, problems and issues that demand policy statements from the board.

Depending on the nature of the policy, a board member may want to ask for public/member input, seek legal counsel or even hire a consultant to help develop a policy.

3) Deliberate the issue. This is where board members' perspectives as representatives of the community/industry come into play. They know community and industry standards and needs. Careful deliberation of a proposed board policy should include several considerations:

Is the proposed policy . . .

- ➢really necessary?
- ➢consistent with the HFA's purposes?
- ➢within the scope of the authority of the board?
- ➢consistent with local, state and federal law?
- ➢compatible with the HFA's other policies?
- ➢practical?
- ➢broad enough to cover the subject completely?
- ➢enforceable?
- ➢affordable?

4) Write the policy. The actual wording of the policy is best left to the executive director or a task force of board members and executive director rather than the full board struggling with wording. The actual policy may come to the board and back to committee for revision several times before it's finalized. Making good policy takes time.

Final approval of the written policy is a board responsibility and should be done at a formal board meeting.

5) Review your policies periodically. Although a board writes policies to be durable, policies do go out of date, and an out-of-date policy can be as bad as having no policy at all. Periodic (preferably annual) review of board policies can help keep policies current and at the same time keep board members current about board policies.

To make board policies usable, they should be collected and codified in one manual. The manual makes the process of learning board policy simple for new board members and it makes the application and interpretation of policies easier.

A manual also makes the process of review and update of board policies much easier. An all-at-once approach to revision is much too cumbersome for any board. An easier way is to give every policy a date and then make sure the board or a committee of the board examines each policy on or before that date each year. That makes it an ongoing process and much less overwhelming.

All changes in the policy manual should have full board approval.

Examples of Policies

The list below is not intended as a comprehensive checklist of all the policies a board should have. These are simply categories for consideration and a few examples of the types of policies that fall under each category. (Those policies effectively mandated by the federal Sarbanes-Oxley Act are followed by "SOX").

➢**board operations**
-board/executive director relationship
-meeting procedures
-executive session guidelines
-methods of adopting policies
-travel/conference policies
-committees
-board member buying bonds
-expense reimbursement
-ethics/conflicts (SOX)

➢**programs**
-confidentiality
-service goals

➢**finance**
-professional selection
-minimum bond ratings
-investment policies
-swap policies

➢**community/industry relations**
-use of HFA facilities
-public solicitation and advertising
-news media relations

➢**administration**
-authority delegated to the executive director/other staff
-whistle-blower rules and protection (SOX)
-record retention rules (SOX)

➢**business**
-service contracts
-purchasing
-budgeting
-insurance

THE EXECUTIVE DIRECTOR'S ROLE

Just as there is often confusion about the role of a board member of an HFA, there is also often confusion about just what the executive director does in the organization.

The executive director is first an employee of the board (in most states), but the relationship between the board and the executive director is not the typical employer/employee relationship. In most businesses, the employer is the expert in the business and probably knows more about it than the employees. This is not true of HFAs.

The HFA board is selected to make sure the HFA operates well and in the best interest of the State. But board members are not selected for their expertise in managing a housing finance agency. Thus the board must hire a professional administrator—the executive director—to do the board's work.

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Executive Director's job

The role of the executive director can be defined as daily doing the board members' management job for them, a very natural and efficient way for a board to fulfill its mandate.

After the board carefully hires a professional whom they can trust to do their management job, the board should delegate all daily management responsibility to the executive director. The board's job then becomes one of carefully monitoring the executive director's work to make sure that what the board wants to happen is really happening. But it is not the board's job to interfere with daily management.

The board's delegating/monitoring relationship with the executive director is very difficult to master because it is so unusual. But a citizen board governing a professional administrator is a good system. It has the best elements of both worlds—a board of governors who represent the best interests of the state and its constituents, and a professional administrator who can make the organization run efficiently within the parameters set by the board.

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Executive Director is part of the Board team

The executive director is much more than just an employee of the board. The executive director is a valuable resource to the board on all issues and usually the leader and expert on most issues that come before the board. The executive director should be an advisor, consultant and partner to the board at all times.

The executive director should sit at the board table during all board meetings and should be expected to make well-supported recommendations on all issues that come before the board. The executive director should be expected to take part in board deliberations whenever necessary to help the board make the best decisions.

There should rarely be an occasion when the board meets without the executive director as part of the meeting.

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Executive Director handles day-to-day management

The executive director is charged with virtually all of the day-to-day HFA management and must be clearly understood by both staff and board to be the authority in matters of routine management.

The executive director is responsible to:

- Implement the policies of the board.
- Represent the organization in negotiations, public relations and other public events.
- Maintain strong legislative liaisons.
- Hire, direct, supervise, educate, evaluate and discipline staff.
- Prepare the annual budget for approval by the board.
- Handle bond issuances.
- Manage the finances of the organization.
- Oversee the organization’s programs.
- Plan the annual operations of the organization to fit into the long-term plan of the board.
- Keep the board informed of programs.

- Assist the board in the governance of the organization by informing the board of the status of the organization and recommending policy direction for the board.
- Stay abreast of industry developments and keep the board up-to-date.
- Remain current in knowledge of the organization and appropriate methods of operation.
- Prepare an annual report of the progress of the organization and submit that report to the board.
- Monitor compliance with federal, state and local laws and program rules.

When a good executive director does a thorough job of managing the organization, board members may become concerned that they are giving up their job and becoming a "rubber stamp" for the management.

A "rubber stamp" board is one that simply approves—without good discussion and deliberation—all recommendations from the executive director. A "rubber stamp" board does not thoroughly monitor and evaluate the progress of the organization.

A board that does a good job of delegating management takes nothing at face value, but expects the executive director to supply options and alternatives, and expects to have plenty of time for good deliberations on all issues.

A board doing its job right will have good systems of monitoring and evaluating the progress of the organization and demand accountability from those who have been directed to manage it.

When the executive director does a good job of facilitating the board's work, the board has time to concentrate on the big policy and planning issues facing the board.

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Executive Director's reporting responsibility

Although the board delegates to the executive director a great deal of responsibility for management of the organization, the board retains ultimate responsibility for everything that happens in it. Therefore, board members should expect a continuous flow of information from the executive director about what the executive director is doing to operate the organization.

It is the right and responsibility of the board to request from the executive director all information necessary to fulfill the board's governing responsibility. It is the executive director's obligation to report to the board accurately and completely about how the organization is being managed—problems, plans, progress and any other information the board needs to govern.

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Executive Director's boss is the full Board

The executive director is responsible to the whole board, but not responsible to each board member. When delegating to the executive director, the board must speak with one voice. When giving direction to the executive director, the board must speak with one voice. When asking for accountability from the executive director, the board must speak with one voice.

Individual board members have no power to make demands of the executive director and should avoid trying to exercise power they don't have. This, of course, does not rule out individual board members asking the executive director for clarification about issues facing the board or discussing with the executive director concerns that individual board members may have.

But it does rule out individual board members making demands of the executive director or giving orders to the executive director.

The executive director cannot serve many masters and still manage the organization efficiently.

THE BOARD'S RELATION TO STAFF

All HFAs have staff other than the executive director—deputy executive director, finance officer, program (department) heads and line staff. Understanding the relationship of the board to those other staff members is vital to maintenance of a smooth running organization just as it is to any business.

A poor understanding of the board/staff relationship causes confusion and chaos.

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Board has only one employee

Technically, the board approves employment of all staff, makes contracts with staff, and approves pay and major working conditions. But the board/staff relationship cannot be the traditional employer/employee relationship.

In practice, the board has only one employee, the executive director, because that is the most efficient way to run any business. Employees need to clearly understand who gives the orders, who is accountable to whom and who has responsibility for what. So the board creates a chain of command that sets up clear lines of authority and accountability.

The chain of command is designed to make things work, not to hinder communication. It is, in fact, a communications system in itself.

The board hires the executive director to be their expert in management of the organization and that includes managing all other staff. The board delegates the responsibility for managing staff to the executive director. The executive director then hires all other staff, and has complete responsibility for supervising, evaluating, rewarding and disciplining all other employees. The executive director is accountable to the board for the performance of all other staff.

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Management chain of command

Under a chain of command structure, the board has no direct responsibility for day-to-day supervision of staff other than overseeing the executive director. Board members have no authority to issue orders to line staff or make demands of line staff except through the executive director.

Under a chain of command structure, the board has no direct responsibility for assessing staff performance other than that of the executive director. The executive director should be expected to give the board regular reports about staff performance so that the board can be assured that the work of the organization is being done well. But the board does not formally evaluate line staff.

Under a chain of command, the board does not usually act on complaints from the line staff.

Staff members often fail to understand or choose to ignore the chain of command and go around the executive director to take concerns and complaints directly to the board or to individual board members. When such a “short circuit” occurs, it is the board member’s responsibility to remind the staff member about the chain of command and the proper channels for such concerns or complaints.

Problems are always best resolved at the lowest possible level on the chain and should be directed there. Any concerns or complaints that come directly to board members should be reported to the executive director for resolution.

When board members fail to adhere to the chain of command, the result is damage to the efficient operation of the organization. The executive director’s authority to manage staff is severely compromised. The executive director can’t be held accountable for staff performance if the board is going to manage staff. Staff morale will be damaged. Staff will not have a clear understanding of who is in charge and to whom they will be accountable.

Once a short circuit between board and staff is allowed to happen, a precedent is set that will be hard to break. Staff will believe they can come to the board with every issue. The executive director becomes an ineffective figurehead without real authority.

On the other hand, the board must not close its eyes to obvious signs that the Executive Director is doing a poor job of hiring or managing staff. Excess staff turnover or obvious executive director domination/mistreatment of senior staff is a classic indication that there may be problems. Some HFAs have even established an independent system—such as an ombudsman who reports only to the board—to provide employees a confidential method of airing grievances. Such an independent system is clearly the best way of assuring compliance with the "whistle-blower" protection rules of the Sarbanes-Oxley Act.

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Board/Staff relationship

Acceptance of the chain of command does not mean that a wall is placed between the board and line staff. Staff, the executive director and board members must still view themselves as part of one team and that team has one mission to accomplish—the HFA's purposes.

Each part of the organization team has special assignments in the team effort that complement the special assignments of the other members of the team. But the team members do not work in isolation.

Board members may often work with the executive director and staff members in committee settings. Board members, the executive director and staff must all be part of the long-term planning process. Staff members will frequently make reports at the board meeting. Board members, the executive director and senior staff should get together for organization social events, because those events can be powerful team-builders.

A board member should show concern for the well-being of staff. The board should be concerned about retention of good staff by budgeting for good pay and benefits. The board should give recognition of good staff performance and say thanks to staff through board action.

But it is imperative that board members base any relationship with staff on the chain of command. Social occasions cannot be an excuse for discussing complaints about the organization. Staff appearances at board meetings should not be an excuse to appeal to the board for a program that the executive director has already vetoed.

THE BOARD'S RELATION TO ITS PROFESSIONAL TEAM

All HFAs employ third-party professionals to assist the HFA in carrying out complex programs, and accessing the national capital (bond) markets. Understanding the relationship of the board to those professionals is also vital to the maintenance of a smooth running organization.

A poor understanding of the board and professional team relationship not only creates confusion, but it may cost the HFA in its borrowings and even give rise to legal problems.

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Professional team members

Typically, an HFA's professional team includes at least the following:

- General counsel
- Investment bankers
- Bond counsel
- Accounting firm
- Bond trustee

Some HFAs also have a financial advisor, and may have other specialists (*e.g.*, public relations, lobbying, swap advisor).

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Relationship to the board

Board members need to understand the relationship of each professional to the board—and to the executive director.

Unlike line staff, which report only to the executive director, some members of the professional team technically report (and are responsible to) the board. However, the entire professional team must daily work with the executive director.

In addition, the legal relationship of the professional team members differs:

➢General counsel and bond counsel have a confidential client relationship with the HFA itself as a legal entity, and thus the board as its governing body. Technically, they are not counsel to the executive director or any individual board member—but to the organization, whose responsible governing body is the board.

➢The investment bankers have a more complicated relationship with the HFA. Legally, an investment banker generally has no fiduciary or special legal obligation to the HFA. Practically, they structure bond issues to obtain the lowest reasonable bond rates, yet have to resell the bonds so they have an incentive to suggest higher rates. Ideally an investment banker should have a high level of trust with the board and the executive director.

➢The HFA's accounting firm must be "independent"—which means it follows the industry standard accounting rules regardless of the results for the HFA. The Sarbanes-Oxley Act underscores the requirement for independence.

➢The bond trustee is a fiduciary for—and represents—the bondholders, not the HFA. Yet practically it is also the HFA's operational bank for bond programs.

Board members should feel free to consult with the professional team, particularly counsel on legal matters. Yet board members must be careful to recognize—and respect—that the executive director is charged with daily management. Board members' consultations with the professional team should be restricted to board-level policy and program/finance decisions, not day-to-day matters.

Board members must be careful not to abuse their relationship with the professional team, such as asking for free advice on personal matters or soliciting gifts or political or charitable contributions.

Professional Team Selection

There are numerous methods of selecting or electing to continue the professional team, and they differ by team member.

Continuity in the professional team is normally an asset—unless the HFA staff has sufficient expertise to handle the professional matters themselves, in which case the professionals are not used as much for advice as to simply carry out a function.

HFA professional team review practices range from periodically (e.g., every two or three years) going through a formal “request for proposals” for every member of the professional team, to going through such a process only if the HFA becomes dissatisfied with a professional’s performance. The underwriters are most likely to be subject to a periodic selection process; the trustee and general counsel are least likely. With respect to accounting firms, the Sarbanes-Oxley Act principles suggest that, to insure independence, either the accounting firm itself or the partner in charge of the account should be changed periodically (every three to seven years).

In some states the selection process becomes politicized—board members must be careful to make sure that each member of the professional team has the ability to handle its responsibilities for the complex challenges of HFA programs. Less than competent professionals will not only lessen the effectiveness of the HFA but can create liability for the HFA, and possibly even create personal liability for board members.

OFFICERS OF THE BOARD

Any group that expects to accomplish anything must have leaders to keep the group organized, help the group discipline itself, prod the group to move ahead, and facilitate the work of the group to make good decisions. That's the function of all board officers.

HFA boards may have some or all of the officers described below. Boards grow from different traditions and thus have different ideas about the type and number of board officers they need. Often the HFA statute will require certain officers. The job responsibilities of a specific HFA's board officers may vary from those described below.

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Board Chair

Someone has to be the board's leader and that is the board chair or president. The job description for the chair is relatively simple, but the job can be complex.

First of all, the board chair must be understood to have no power beyond that of any other board member unless the full board has granted that power to the chair. For example, the board may delegate specific powers to the board chair, such as managing board meetings, speaking to the public on behalf of the board or signing contracts on behalf of the board.

Any power exercised by the board chair must first be granted by the full board in the bylaws, in a policy or in commonly accepted and understood practice of the board. In other words, the board chair does not speak for the board unless the full board has formally or informally delegated that privilege to the chair. Traditionally, the board chair has several duties:

Planner—The chair works with the executive director to plan the meeting agenda as well as the manner in which the meeting will be conducted. The chair keeps an overall view of the board year and ensures that the board is completing duties mandated by board policy or by law.

Facilitator—The chair's job must be viewed as more of a facilitator than a controller of meetings. The chair begins the meetings on time, directs the board through the agenda and attempts to adjourn the meeting on time.

As facilitator, the chair ensures that all board members have an opportunity for fair participation, attempts to get all sides of an issue fairly exposed and moves the board to action on the issues.

Delegator—The chair traditionally has the power to appoint board members and others to committees with board consent. To do that, the chair must have a clear understanding of each board member's skills, strengths and interests so that appropriate assignments can be made.

It is also the chair's responsibility, as delegator, to make sure that committee assignments are clear and to hold the committees accountable to do the job assigned. The chair is often a member of every committee.

Liaison—The chair must be able to interpret board needs and concerns to the executive director, and executive director needs and concerns to the board. In addition, the chair offers personal support and counsel to the executive director and serves as a sounding board for the executive director.

Team builder—The board must always function as a team, and it is the duty of the chair to foster the team concept among board members. When there is danger of damage to the team structure, the chair must meditate, counsel and discipline fellow board members to keep the team intact.

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Vice-Chair

The vice-chair of the board traditionally serves as the backup for the board chair. However, the vice-chair is usually assigned additional specific duties such as chairing a committee, taking charge of board development activities or preparing the annual membership meeting.

The vice-chair works with the chair to stay current on issues and methods of board operation to be able to assume the chair's duties if the chair can't perform the required function.

The vice-chair is often considered the logical successor to the chair's position at the end of the current chair's term.

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Secretary

In many cases the executive director is also the secretary of the board, often directed by the HFA law.

Although technically the secretary is responsible for taking minutes of board meetings, normally the minutes of meetings should be taken by a staff member and not the board secretary. All members of the board need to be able to participate in board meeting deliberations and contribute their expertise. But the board secretary cannot do that well while taking the minutes of the meeting. The secretary's job is really that of overseer to be sure the job is done correctly and that the minutes of all meetings are safeguarded for the future.

Safe care and maintenance of correspondence and other historical documents of the HFA are also the responsibility of the board secretary.

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Treasurer

The treasurer's job is also one of overseer. Although the chief financial officer usually manages the finances of the organization, the board treasurer is responsible to ensure that adequate financial records are kept, accurate and timely financial reports are delivered to the board and an audit of the organization's finances is completed annually.

The treasurer may also be asked by the executive director to assist in preparation of the budget to be submitted to the full board and to help interpret financial reports to the full board.

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Elections

Actual processes for electing board officers vary widely, but whatever system an HFA's board uses, it must be a serious effort to place the best leaders of the board into the position of leading the board. It cannot be a popularity contest, a struggle between factions for a power position or just a "whoever will say yes."

Not all board members are suited to be or have the skills to be a board officer. Poor selection of the leadership can result in a poorly functioning board.

Board officers, particularly the board chair, must be well respected by the rest of the board, must be willing to give the extra time necessary to carry out the extra duties of the office and must have strong leadership skills. Officers should also be board members with some experience on the board.

If a board member is asked to be a candidate for an office, the member should consider carefully if they have the extra time it will take as well as the leadership skills to lead the board.

BOARD COMMITTEES

The many and complex issues which must be addressed by an HFA board cannot always be handled efficiently by the full board. Many of those issues may be handed to board committees for study and recommendations to the full board.

At some time in service on an HFA board a member will be asked to serve on at least one committee and need to understand the nature and purpose of committees. Committee work is a good place to offer any special expertise a member may have, but service on committees is not limited to experts on the committee subject. Committee service is a good way for a member to learn more about the organization by focusing on special issues.

Sometimes committee members are selected from people outside the board so that additional expertise can be utilized by the board through the committee. Involving nonboard members also opens a new avenue of communication with the community.

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No power of authority per se

Whatever the name or type of committee, the only purpose of that committee is to extend the work of the board. Committees are not autonomous groups with loose connections to the board, but are simply extensions of the board and always responsible to the full board.

Committees have no power or authority beyond what is granted to them by the full board. The only action committees can traditionally take is to study an issue assigned by the full board and make recommendations to the full board about the assigned issues.

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Accountability

If an HFA's committee system is well defined and controlled, and the committees are being held properly accountable, the full board will receive regular reports from each committee. The committee reports will explain what the committee has been doing for the board and make recommendations for board action.

Board members not on the committee should feel free to ask questions and get clarifications from the committee members, but avoid repeating the work the committee has already done. The purpose of the committee is to save time for the full board. If the full board repeats the committee discussions after the committee reports to the board, the board has not saved time but rather doubled the time spent on the issue.

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Types of Committees

Most HFA boards have standing committees or permanent committees that are described in the bylaws of the organization and function year round. As certain important issues arise, the board may also appoint temporary or "ad hoc" committees to study those issues for the board.

Because the primary purpose of an HFA is financial, the audit committee is particularly important. If possible at least one of the board members on the audit committee should be experienced in financial accounting, such as an accountant or banker.

At certain times, the board may meet as a committee of the whole. The difference between a meeting of the board as a committee of the whole and a regular board meeting is that the board is focusing on one subject in the committee mode.

Regular board meetings do not allow time for extensive discussion of one issue, so the board meets as a committee of the whole to give itself that time for in-depth discussion. Formal action on the issue will usually be delayed until the regular board meeting.

Some boards may also have an executive committee which is a committee in a class all its own. The executive committee is usually composed of the officers of the board and the executive director. This committee often has limited powers to act for the board in emergencies, but should have all actions ratified by the board at the next regular meeting.

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Committee member responsibility

A board member should approach committee meetings as seriously as the member approaches the regular board meetings. Prepare for the meetings, attend the meetings and take part in the discussions. If a board member has an assignment from the committee, the member should complete it in a timely manner. Remember, committees are an extension of the board.

When a board member is appointed to a committee, it is the member's responsibility to understand the mission of the committee, when and where the committee meets and the names of other members of the committee. The members should also examine the history of the committee and the minutes of their meetings for at least the past year so that they are up and running with the committee as soon as possible.

A board member should help the committee stay responsible and accountable to the full board. Although committee meetings are usually not as formal as a full board meeting, they should have a distinct structure, agenda and goals. When the committee completes its meeting, there should be a clear result of the meeting that can be reported to the full board. Committees are a valuable extension of the board, but only if they work in an orderly, timely and accountable fashion.

BOARD MEETINGS

Board meetings are the place most of the board's work is done. What is done in an HFA's board meetings reflects the attitude of the board about the organization and shows how well the board team operates.

What board members do in meetings usually makes the difference between an effective or an ineffective organization. Poor meetings can alienate staff, damage the board team, waste the time of the board members, cause turmoil and actually hamper the effective operation of the organization.

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Responsibility for good meetings

A primary function of the board chair is to run the meetings and keep the board moving toward good decisions. However, it is **each board member's responsibility** to:

- attend all meetings.
- prepare well for meetings.
- take part in all discussions.
- do whatever possible to cooperate with fellow board members to make meetings work.
- understand the basics of parliamentary law as well as state open meetings laws if they apply to your organization.
- know traditional meeting practices of the board and follow them.
- learn the art of compromise with other members of the team.
- learn the art of listening and merging your comments with those of the other board members.
- work towards team consensus on issues before the board.
- focus all deliberations on the ultimate purposes of the organization and the best interests of those you serve.

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Meeting preparation

Each board member has a strong obligation to prepare well before any meeting. If each board member prepares well ahead of time, board meetings will be shorter and almost always more productive.

The board meeting agenda packet should be sent to each board member several days—preferably a week—before the meeting. Each board member should carefully read the agenda and all agenda-related materials. Ideally the agenda will indicate items requiring a vote. If a member has questions, the member should call the executive director for answers prior to the board meeting. Holding questions until the meeting will delay the progress of the meeting.

Each board member should also understand what is expected of them at the meeting and prepare to meet those expectations. Which agenda items will require a vote? Which ones will require discussion and input from all board members even though a vote is not taken?

To make good decisions about some issues, a board member will often need to seek input from some of the member's constituents or others in the community or an industry.

It is rarely safe for board members to assume they know the community or industry attitude about an important issue. Board members are the connection between the community or industry and the organization and are appointed to govern the organization for the community. They need to seek community or industry views regularly.

Even though board members should research issues and prepare to discuss those issues, it is inappropriate for them to decide how they will vote on any issue before the board meeting or to promise constituents they will vote either for or against an issue before they get to the meeting.

A board member's decision should be made only after deliberation in the meeting with other members of the board team when all sides of the issue have been explored.

Carefully scheduling one's own calendar so that board meetings are a high priority and planning carefully to get to board meetings on time is also very important. When the team is short one or more board members, there is danger that all sides of the issues will not be explored and all interests will not be represented. The board's effectiveness and productivity suffer.

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Meeting rules

Board meetings are much more than a gathering of the board team to chat about the organization. Board meetings require careful planning and will be conducted according to the plan outlined on the prepared agenda.

The meeting will be conducted according to established parliamentary rules that should be respected by all board members. Whether the HFA's bylaws specify that the meeting will be run by Robert's Rules of Order or some other parliamentary procedure guide, that set of rules is intended to set a tone that is businesslike and courteous, allows for ample discussion of the issues, but does not allow the discussion to get out of control.

When there is a disagreement among board members about the way to proceed, they should consult the parliamentary guide specified by the HFA's bylaws. A board member should have a basic understanding of parliamentary rules so they can be a part of the process of moving efficiently through a good meeting agenda.

However—parliamentary rules are not intended to impede the meeting process, but simply to ensure that the rights of all board members are protected and meetings move towards action. An HFA's parliamentary procedures guide is simply a resource to consult when the meeting gets stalled. Using parliamentary rules for the sole tactical purpose of impeding the meeting process or cutting off reasonable discussions is unethical and detrimental to the team atmosphere.

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The meeting begins

Board members should do their part to make sure that board meetings begin on time. A meeting that begins on time sets a businesslike tone for the meeting. A meeting that begins late sets a tone of sloppiness that will likely be carried through the remainder of the meeting.

If too many board members are late or absent, a quorum may not be present and the board cannot conduct business. A quorum is the number of board members—usually one over half of the elected board members—that must be present to conduct official business of the board. Any action taken by a board that does not have a quorum present is usually legally invalid and certainly not in the best interest of the organization.

Arriving on time for meetings also demonstrates respect for fellow board members who have made the effort to get to the meeting on time.

Most board members like to socialize with fellow board members. That's one reason board members take the job in the first place: to be able to socialize with other community and industry leaders. That socialization helps to build the team spirit.

But the socialization needs to be done before and after the meeting and kept to a minimum during the meeting. The meeting should have a friendly businesslike tone always focused on the agenda item at hand.

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Board agenda

The board meeting will run according to an agenda plan prepared by the executive director and the board chair. The purpose of the agenda is to specify a clear direction for the meeting, and the board chair will ask the board to formally vote to approve the plan at the beginning of the meeting.

When the board approves a written meeting agenda, board members are agreeing to discuss only those issues on the approved agenda.

Even though the board chair and the executive director prepare the agenda, the agenda is the board's plan and all board members have a right to place issues onto the agenda by bringing those issues to the attention of the executive director or the board chair.

However, anything a board member wants on the agenda should be requested well in advance of the board meeting. Placing issues on the agenda at the last minute is not appropriate because the rest of the board team has not had time to consider the issue and will not be ready to discuss it in an informed manner.

Many issues that get on the agenda at the last minute are issues that could be handled outside the meeting more efficiently. There are certainly issues that come up at the last minute that need to go on the agenda for discussion, but they should be very rare.

Often routine reports and matters which are included in the board meeting agenda packet will be separately identified in a "consent agenda" and handled as a single non-controversial item at the meeting.

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Board minutes

At each meeting the board members will be asked to approve the minutes of the previous meeting. This is a portion of the meeting a board member will not want to take lightly.

The meeting minutes, when approved by a formal vote or by consensus of the board, are the official legal record of what happened at the board meeting. New board members should examine the minutes of the board meetings for at least the past year. That will give them a good perspective on the issues the board has faced and how the board handled these issues.

Every board member has a right to ask the board to correct errors in the minutes before the board accepts the minutes as the true record of the previous meeting. The board chair will ask if there are any corrections to the minutes before the board votes approval.

Individual board members do not have a right to demand that their reasons for voting a certain way or their detailed views about an issue be recorded in the minutes. Every board member should have full opportunity to express a viewpoint prior to the vote on any issue, so there's no good reason to extend the debate into the voting process. A board member's "yes" or "no" vote will represent his views on the issue.

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Board reports

During the meeting, board members will likely hear reports from committees, the executive director and staff. The reports will provide the background and information the board needs to deal with the issues on the agenda for the rest of the meeting.

Often the reports will conclude with a recommendation for board action. If those reports were in written form and sent to the board members prior to the meeting, board members should be prepared to take action on those reports without having them read during the meeting. Those making the reports during the meeting will simply highlight information, clarify issues, and answer questions.

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Making motions

Any board member can bring business before the board by making a motion. A motion is a formal request or proposal for the board to take action.

To make a motion, the board member simply addresses the chair and states “I move that . . .” and state the action the member wishes the board to take. Most motions require that another board member support the request for action by seconding the motion.

Once the motion is seconded and restated by the chair, the board begins discussion of the motion. Some motions do not require discussion.

By requiring a motion on an issue prior to discussion, the board discusses only those items on the agenda and stays focused and on track. When the discussion is preceded by a motion, the chair can insist that board members limit discussion to the motion on the table.

Motions usually come from two major sources, committee reports and executive director recommendations, but board members may make motions at any time in accordance with the HFA’s parliamentary guide.

After a motion is made and seconded, there should be plenty of time to discuss the pros and cons. But when discussion jumps from subject to subject and fails to focus on the issue at hand, the result will be disappointing to everyone.

The board chair should make sure that all the issues that need to be discussed get on the agenda and board members should take all the time they need to discuss those issues. But the chair and all board members must work to kept the discussion moving towards a decision—that’s the reason the issue is on the agenda.

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Voting

Once the motion has been discussed thoroughly, the chair will call for board members to vote on the motion. A board member may be asked to vote by saying “aye” (yes) or “nay” (no) in a voice vote, by show of hands or in a role call vote. Each member’s yes or no vote will be recorded in the meeting minutes.

Abstaining rather than voting “yes” or “no” on a motion before the board should be very rare and is usually appropriate only when a board member has a conflict of interest in the issue before the board.

Board members are elected to express an opinion on the issues, and abstaining expresses no opinion.

Once the vote is taken, the chair will declare that the motion passes or fails and will move on to the next item on the agenda.

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Meeting blockers

Board meetings *do not need* these kinds of board members:

- ➢ The micro-managing board member who continually questions the executive director's day-to-day management decisions.
- ➢ The grandstanding board member who uses the board meeting as a soapbox to advance a personal or political agenda or gain personal recognition.
- ➢ The silent board member who fails to represent anybody or anything by his/her silence.
- ➢ The NO!!! board member who is against anything any other board member is for.
- ➢ The purse-watching board member whose only concern is that the board spend less money, regardless of the effect on those who are served.
- ➢ The single-minded board member who came to the board with one issue to fight for and continues to burden the board with that issue at every meeting.

MANAGING CONFLICT ON THE BOARD TEAM

There is great power in bringing together a diverse group of community and industry leaders to be the governors of an organization such as an HFA. But with that power also comes all the elements of potential conflict among members of the board team. Conflict that amounts to healthy debate of the pros and cons on issues brought before the board is good. Conflict that results in alienation of one or more of the board members is not healthy and needs to be avoided.

Conflict on the board might occur for a variety of reasons. Here are just a few examples:

➢Board members have value differences, such as conservatives versus liberals or those who wish to maintain the traditional ways versus those who like to explore the nontraditional.

➢Board members experience role pressures, such as board members trying to do the executive director's job or the executive director not allowing board members to do their part of the team effort.

➢Board members have differences in position or status, such as new versus veteran members of the board, male versus female, quiet versus vocal.

➢Board members have different goals, such as wanting the organization to serve different segments of the population or team members favoring one program or another.

➢Board members have differences in perception, such as those who see the organization as a business versus those who view it as a charity.

➢Board members have different political positions or parties, and are immediately distrustful of anything suggested by the "other side."

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Dealing with conflict

Accept that members of the board will disagree. Failure to agree is not a disaster. It may be more of a problem when board members seem to agree on everything because the board may not be considering all sides of the issues. Work for consensus, but feel free to disagree and voice the minority opinion. When the vote is taken, move on to the next issue with an open mind whether you were in the majority or minority.

Leave conflict in the context in which it begins. Board members may disagree on one issue, but it should not carry to the next issue, nor should it carry from one meeting to the next. Once the board has made a group decision, each board member should feel obligated to support that decision whether or not he voted for it. After the vote, the decision becomes team property, and each board member is part of the team.

Let the board deal with its own conflicts. Board members should not take the issue out of the boardroom and look for support of their beliefs among nonboard members when they can't get the board to support them. Trying to get outsiders to pressure fellow board members on any issue is unethical and damaging to your team.

Future teamwork is more important than any single issue. Conflict on any issue must be settled so the board can move on to the many important future issues. A board member's goal should not be just getting a simple majority vote on every issue, but rather seeking consensus on issues.

Compromise is not defeat. It should be accepted as one of the most significant elements in making the board work right. When a board member compromises on one issue, that member will have a better chance to get team members to accept the member's views on future issues. Look for ways to compromise.

Each board member should remember that the member's goal is to get board members to accept his point of view, not just to make a lot of noise. Carrying conflict on and on even when one knows the issue is lost will result in board teammates being very reluctant to work with you on any issue. Such a board member will, in effect, be neutralized and simply making a lot of noise—a completely ineffective board member.

LEGAL DUTIES OF A BOARD MEMBER

Board member is a "fiduciary"

All board members of HFAs are "fiduciaries" for the HFA and its purposes. That means that a board member has a duty to act for the benefit of the HFA and its purposes and must subordinate the board member's own personal interests to those of the HFA. A fiduciary duty is the *highest standard of duty* imposed by law, the same as that of a trustee or guardian.

The duties of an HFA's board members must be understood in light of its purposes which are statutorily specified, generally to finance decent, safe and sanitary housing for lower-income persons and families.

State laws impose two primary duties on board members—a duty of ***DUE CARE*** and a duty of ***LOYALTY***. These duties have been reinforced and emphasized by the principles underlying the Sarbanes-Oxley Act. In addition, because an HFA issues bonds, the federal securities laws impose a third major duty on board members—a duty of ***DISCLOSURE***.

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Duty of Due Care

The duty of ***DUE CARE*** is a very broad duty which requires that a board member exercise ordinary and reasonable care in the performance of the board member's office. This requires that a board member act in good faith, prudently and honestly.

In particular, the duty of ***DUE CARE*** requires that a board member:

➢Be sure all *specific obligations* listed in the HFA's enabling legislation are carried out, such as keeping minutes of board meetings, electing officers, meeting periodically, filing reports, adopting rules and regulations for programs, and so on. These are often called "ministerial obligations," and courts are pretty rigid about making sure the board complies with these. The "whistle-blower" and record retention provisions of the Sarbanes-Oxley Act also fall into this category.

➢Adopt *appropriate programmatic policies* to be sure that the HFA purposes are carried out. These are often referred to as "discretionary duties," and courts will give board members substantial latitude in the type of policies adopted and their content.

➢Employ competent *staff*.

➢Generally *supervise and monitor* HFA operations.

➢Adopt *reasonable and clear management policies*.

➢*Be informed* and *exercise independent judgment*. This means that a board member should read and be familiar with board materials, including the HFA's act and its rules and regulations and written policies. Board members should attend meetings and participate in board discussions and decisions. (As one court said, a board member cannot protect himself behind a paper shield bearing the motto "dummy director.") However, in the ordinary course of business, a board member may act in reliance on information and reports received from regular sources that the board member reasonably regards as trustworthy, such as staff and retained professionals.

➢Protect any *confidential information* obtained as a board member.

In other words, a board member should follow prudent business practices, recognizing that the HFA business is financial in nature and its purpose is to finance *affordable housing*.

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Duty of Loyalty

The second major state law duty is a duty of ***LOYALTY*** to the organization. This means a board member has a duty to avoid conflicts of interests and provide undivided allegiance to the HFA's purposes, even though by statute a board member may be a representative of a particular group (such as lenders or builders) or even an ex officio elected official.

In particular, the duty of ***LOYALTY*** provides that a board member should:

➢**NOT** participate in making a decision if the board member has a conflict of interest. *Conflicts are not illegal—but how a board member handles them may be. This is underscored by the principles of the Sarbanes-Oxley Act.*

➢**NOT** create situations that unnecessarily give rise to, or indirectly provide support to, litigation against the HFA. Litigation, or threatened litigation, can and should be freely and openly discussed in executive session, but generally not in open public session—and in particular board members should not make public statements adverse to the interests of the HFA about matters in litigation.

➢**NOT** take personal advantage of opportunities available to the HFA. This means avoiding not only personal advantage, but also avoiding providing advantages to another organization, even if it is another municipal corporation or a nonprofit organization. (Board members who, by statute, are to be members of or "represent" particular industry groups are expected to be knowledgeable about issues particular to their industry groups and inform other board members of the issues, but still should vote only with the purposes and interests of the HFA in mind.) This is the root of all the recent focus on ethics. Most states now have ethics laws, and many HFAs have adopted ethics rules (which have substantial preemptive and prophylactic value). And, of course, the federal government enacted the Sarbanes-Oxley Act, which effectively forces SEC-registered corporations to adopt ethics rules.

Three practical rules an HFA board member should follow when duty of ***LOYALTY*** questions arise: (1) use common sense, (2) if in doubt, ask the HFA staff for guidance, and (3) think about the slant the press could put on a proposed action.

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Duty of Disclosure

The third major duty, imposed by federal securities laws because an HFA issues bonds, is the duty of ***DISCLOSURE***.

When an HFA issues bonds, the federal securities laws require the HFA to disclose to potential investors any "material" information—*i.e.*, information that a reasonable investor would consider important in deciding whether to invest in the bonds. That is the reason for the HFA's official statement—it is the written means by which the HFA satisfies this "disclosure" requirement.

The SEC officially takes the position that *individual* board members of an HFA also have a *personal* disclosure duty under the federal securities laws. When authorizing the issuance of bonds, any board member with *personal knowledge* of information that is material must take reasonable steps to be sure such information is adequately addressed in disclosure documents. Reasonable steps include telling the staff and retained professionals. This rule applies to information that any board member *actually knew* or *should have known* if the board member had carried out his duties.

For example, if a board member personally knows that the developer of a multifamily project to be financed with bonds has severe financial problems but the board member does not take steps to ensure that the information is properly considered in the disclosure process, the board member may be personally liable if the market value of the related bonds drops when the undisclosed information finally becomes public. If the board member did not actually know that particular developer was involved in the project because the board member did not read the board materials distributed about the project, the board member may still be liable for recklessly disregarding his duty of due care to be informed.

A similar situation could occur if a board member personally knows—or should have known—of a troubled originator/servicer in a single-family program.

The duty of ***DISCLOSURE*** also provides that if a board member wants to buy or sell bonds issued by the HFA, in the purchase or sale the board member must not take advantage of any nonpublic information available to the board member. For example, a board member should not ask the finance officer whether a particular bond will be called—and then buy or sell the bond in advance of the call based on that information.

BOARD MEMBER LIABILITY

This is an age of increasing litigation. People are quick to take each other to court for the smallest of reasons. When a person accepts a board position and takes on the responsibility of governing an HFA, that person naturally get the liability of that task as part of the baggage. The season is always open on public figures—or those responsible for allocating scarce but valuable resources such as federal tax credits.

The liability risk should not be an overwhelming factor in service to an HFA. Many states have adopted laws that limit the liability of board members. It is extremely rare that an HFA board member is successfully sued for actions as a board member, and to date only for clear criminal activity. But it's just good business to assess the risk and understand the extent of your liability.

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Practical rules to manage liability

1) **Pay attention**. A board member's greatest liability risk comes from negligence in doing the job as it should be done. When a member misses meetings, votes on issues without adequate preparation or study, fails to evaluate the financial status of the organization or just doesn't take the time to do the job right, that member is walking on dangerous ground.

Each member was appointed to pay attention and keep things running right. By taking a seat at the board table, each member accepts that responsibility. If a member then fails to actually take due care in governance of this organization, that member is negligent and may be liable for that negligence.

Pay attention to financial reports and the annual audit. Read the minutes of the meetings for accuracy. Make sure you have adequate and correct information and understand the issues before making decisions. Evaluate the progress of the organization annually. Make sure your staff treats all program applicants the same—and fairly. Make sure you have a competent and experienced professional team.

2) **Know the HFA's board policies well and follow them**. Failure to have a policy when the board should have one or failure to abide by the policies it has approved is often a source of litigation against boards.

3) **Use common sense in taking action as a board member**. No one has to tell a board member that actions such as employment discrimination, sexual harassment, falsifying expense reimbursements or manipulating funds are dangerous and could land you in court.

4) **Seek legal counsel when a question of legality arises**. Also, take preventative measures and request that the organization's legal counsel discuss liability risks with the full board.

5) **Know what protection is afforded you under state and federal laws**.

6) **Check your board's Directors and Officers (Errors and Omissions) insurance policy to know what it covers and what it does not cover**. Most homeowner liability policies do not cover liability as a board member, so a member should have additional coverage through the organization's insurance package. D&O insurance costs have risen dramatically in the last few years, and coverage has shrunk, all to the point where D&O insurance is of limited value.

7) **Check your board's indemnification policy**. HFAs should have an indemnification policy by which the HFA assumes any board member's defense—and defense costs—unless the member has violated their duties as a board member. Most HFAs have sufficient financial strength that an indemnification policy is more valuable than D&O insurance. Moreover, costs of defense are the real financial exposure for board members.