

Boardroom Bearings

Navigating to Board Excellence

January 11, 2016



Reduce Executive Session Anxiety

This month's newsletter presents an in-depth article on executive sessions - a type of board meeting that is often misunderstood and generally under-used.

Excellent resources for further learning are at the end of the article.



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An Executive Session Story

An organization I worked with several years ago recently asked me to facilitate an executive session -- a board meeting from which the executive director was excluded. The subject of the meeting was a particular case involving the executive director that resulted in a board member calling for his immediate resignation.

The executive director learned that the board was going to meet without him when he was told not to attend the already-scheduled board meeting -- that "something had come up." He felt angry, demoralized, and distrusted, especially in light of the widely applauded turn-around policies he and the board had instituted since he took the reins of the organization a few years earlier.

Executive sessions had not been the practice in this organization; the executive director and most of the board members were not familiar with them and were not sure how to proceed.

The experience made me realize that readers of *Boardroom Bearings* may not be familiar with executive sessions and that the topic merits more attention than the brief treatment it received in the September 2015 Question of the Month column.

What is an Executive Session?

First, to be clear, an executive session is not the same thing as a meeting of the executive committee. An executive session is a special type of board meeting that is private.

According to "Executive Sessions: How to Use Them Regularly and Wisely" (a BoardSource publication), "An executive session - sometimes called a closed meeting or an *in*

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camera session - is a useful tool for protecting and advancing the best interests of an organization.

"Executive sessions provide a venue for handling issues that are best discussed in private, for fostering robust discourse, and for strengthening trust and communication. Distinguished by their purpose and participants, executive sessions serve three core functions: (1) they assure confidentiality, (2) they create a mechanism for board independence and oversight, and (3) they enhance relationships among board members and with the chief executive."

In her article "Should the Board Hold Executive Sessions?," Jan Masaoka described the value of this type of meeting when she wrote, "An executive session is an important way in which a board develops a sense of itself as a body, rather than the more common feeling of being a group of individuals who listen to and advise the executive director. This 'sense of self' is an intangible yet critical underpinning for board leadership."

What is Discussed in an Executive Session?

Here are a few of the kinds of topics handled in executive sessions:

- Investigation into alleged improper conduct by a board member or chief executive
- Discussing financial issues with the auditor
- Planning for major endeavors such as mergers or real estate transactions
- Legal issues or matters related to civil or criminal proceedings
- Handling personnel matters such as compensation, performance evaluation, and disciplinary issues
- Crisis management
- Union negotiation strategies.



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See "[Executive Sessions: How to Use them Regularly and Wisely](#)" for a chart that shows topics that are usually discussed with and without the chief executive.

Who Attends an Executive Session?

Executive sessions are, by definition, exclusive to board members. Who attends an executive session depends on the issue being discussed.



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If the board needs to discuss the audit or anything related to the chief executive (salary, performance, conduct, etc.), the chief executive and other staff who usually attend board meetings are excused. Or the board may want to have a meeting without the chief executive to encourage more open discussion or talk about issues related to board practices, behavior, and performance.

In addition to excluding certain individuals, the board may invite people who don't normally attend, such as a lawyer or auditor. Also, individuals can be asked to join for a portion of the discussion and then be excused at the appropriate time.

Rationale For and Against Executive Sessions

FOR:

- Board members need to be able to speak freely and privately with each other. It's better to discuss sensitive issues confidentially as a full board than to have cliques of board members discussing them in the parking lot after the meeting.
- The board is the organization's governing body and needs to exercise its independence from the chief executive.
- The board has a responsibility to maintain confidentiality to protect the organization. There are some issues that need to be discussed and actions determined before being made public.

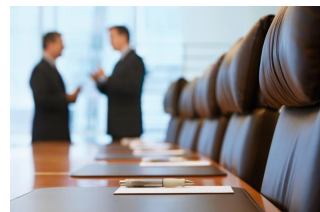
AGAINST:

- Executive sessions indicate that the chief executive and board are not on the same team.
- Boards may have limited information about the issue being discussed; when they exclude the chief executive the discussion can devolve into unproductive speculation and wheel-spinning.
- Private meetings can become forums to spread gossip.

Emotional Issues: How to Reduce the Turmoil

It is human nature that executive sessions usually cause a great deal of anxiety for the people who are excused from attending. Anyone being excluded from a meeting that he/she normally attends often feels that the executive session signals a lack of trust or confidence, bad news is on the way, or something fishy is going on. The tension is amplified when the executive session is a surprise to those who are excluded.

After an executive session without the chief executive, the chair should summarize the substance of the meeting and communicate it to the chief executive right away. This immediate follow-up is of paramount importance to maintaining a good relationship.



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Here are some things to do before an emotionally-charged issue arises – as it did with my former client:

- Have a thorough discussion of executive sessions when the waters are calm. Consider using this article and the resources listed below to inform the conversation.
- Develop a policy for executive sessions. Include information about how to call and conduct an executive session, how to document the meeting, and how decisions will be communicated after the meeting.
- Consider holding executive sessions routinely so that people become accustomed to them. Some organizations schedule an executive session on every agenda - sometimes they are held and sometimes not. Other organizations schedule an executive session quarterly.

One of the chief executives quoted in the ASAE article linked below said, "I have two-part executive sessions at each of my board meetings. In the first part, I dismiss the staff and remind the directors that this is the part of the executive session where they can tell me anything they would be uncomfortable saying in front of the staff. In the second part, I leave the room and remind them that this is the part of the meeting in which they can talk about me."

In summary



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Many governance experts regard executive sessions as best practice. 74% of boards surveyed in the BoardSource's biennial research (Nonprofit Governance Index) reported meeting in executive session during the past 12 months.

As stated above, I recommend that your board learn about, discuss, and practice executive sessions when the waters are calm. I also recommend that you develop a policy to guide

executive sessions.

Here are four valuable resources that provide more detailed information

[Executive Sessions: How to Use them Regularly and Wisely](#). This 9-page article from BoardSource includes information on legal boundaries, minutes, attendance, how to avoid misusing executive sessions and much more.

[Should the Board Hold Executive Sessions?](#) This short, easy-to-read article explains why executive sessions should be a regular governance practice.

[The Who, When, and Why of Board Executive Sessions](#). This article from the American Society of Association Executives (ASAE) reports on interviews of executives, attorneys, accountants, and consultants regarding executive sessions. Readers who are executive directors may want to start here.

[Executive Session Tips from the Nonprofit Law Blog](#). This short item presents factors a board should consider when using an executive session: confidentiality, transparency, and process. It would be useful in crafting your policy on executive sessions.

Happy New Year!

2016: time to get organized with this free resource!

In their role as fiduciaries for their organization, board members have responsibilities for financial and legal oversight -- making sure that numerous activities are performed regularly or on schedule.

Download BoardSource's **free Board Action Calendar** [here](#).



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Question of the Month

Q: Our board does not have term limits. Should we?

A: Term limit" is the number of consecutive terms a person can serve - often three (3) two-year terms or two (2) three-year terms.

Some organizations do not have term limits - board members can serve many, many years until they step down due to poor health, move to a different part of the country, or are otherwise unable to continue performing their board duties.

Organizations that do not have term limits say:

- They don't want to lose the know-how and connections that long-term board service creates

- The coherence of the board team is important and shouldn't be compromised by a shake-up every couple of years
- A higher level of giving comes from longer board service
- Institutional memory is lost with turnover of board members
- They don't want to lose the passion and interest of board members.

On the other hand, most governance experts recommend term limits and most nonprofits have them. They say that term limits:

- Provide for cycling members off the board, making space for increased diversity, new ideas, and expanded organizational connections
- Open the exit door for members who would like to leave
- Provide a structure for saying farewell to nonperforming board members without a confrontation
- Grow the base of board alumni and groom new organizational advocates
- Enable the organization to attract active and involved people who would not be able to make an open-ended commitment to serve.

BoardSource's biennial research on nonprofit boards shows that boards with term limits are rated by chief executives as more effective than those without term limits. This finding could be due to the fact that there is no perpetual concentration of power within a small group. The group dynamic constantly changes as new people and ideas are introduced - preventing stagnation resulting from a lack of board turnover.

For further reading and information from a legal perspective, see [Board Term Limits - Pro and Con](#). The author is a Chicago attorney specializing in nonprofit law

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Please remember: You are invited to submit questions by emailing them to kdw@centerpointinstitute.com. And if you have a troubling governance issue and need someone to talk with, confidentially, at no charge, call 815-545-1300 or send an email.

Boardroom Bearings...

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