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THE

Board Chair Forum

NEWSLETTER

Opening the door to new ideas

Gerrish Smith Tuck, Consultants and Attorneys

August 2026

In this month's edition of The Board Chair Forum Newsletter, we focus a bit on process, procedures and protocol. It seems over the last month or so we have had quite a few instances of different boards of directors being confronted with different types of issues, all seemingly related to how the Board or the organization or its committees conduct their business. The result has often led to some arguments and disagreements in boards simply because procedures were not clear or there was actual conflict among various corporate documents, leaving the Board not knowing exactly how to proceed.

You may also recall in a previous edition we specifically dealt with some issues involving the appropriate use of executive sessions as distinct from an executive committee. As a result, we received some feedback from a few readers who did not necessarily agree 100% with everything that we advocated for in terms of how to handle those sessions. We directly address that in this month's edition as well.

So, we will kick off with a little bit of a history lesson on processes and procedures that we hope you find interesting and helpful to your financial institution.

Happy Reading!

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Board Chair's Summary

- ***Are You Sure We Can't Vote in Executive Session?***
- ***What Should We Put in the Minutes?***
- ***Who Has the Authority?***

Are You Sure We Can't Vote in Executive Session?

In a previous edition of *The Board Chair Forum Newsletter*, we made a couple of specific points about our view of the proper use of a board-level executive session (and distinguished an executive session from the use of an executive committee). In particular, there were two key points we made. The first was that the executive session is for the purpose of outside (non-management) directors having an opportunity to discuss things outside the purview of management initially. However, we commented that any Board vote on items should be held in a full board session where all members of the Board (including those who are members of management) have the ability to be heard on a matter to voice their concerns and to cast their vote. Secondly, we made the point that an executive session is really not a secret session, it is just an opportunity for the outside board members to meet without management and typically following any executive session the Board Chair (if not a member of management) should then report the discussions to the executive management.

We had an astute reader point out to us that Robert's Rules of Order specifically provides that votes can be taken in an executive session and that they are, in fact, secret sessions. So, we decided to do a little research to find out exactly who Robert is and to explain why he clearly is wrong, at least for today's modern financial institution! Let's dig into the history a bit. You may find it interesting.

Robert's Rules of Order was authored by Henry Martyn Robert and published in 1876. The Rules were inspired by a chaotic church meeting Mr. Robert led. As a result, he created the rules system based on United States House of Representatives procedures to bring order to assemblies. Interestingly though, both the House and Senate follow their own specific rules as well as something known as Jefferson's Manuals. State legislatures in the United States have also mostly adopted alternatives such as Mason's Manual of Legislative Procedure. Robert's Rules of Order only governs four of the ninety-nine state legislative chambers. This is largely due to the fact that Robert's Rules are more generally applicable to private organizations that do not meet in daily public sessions.

So, given that there are a number of different "playbooks" for procedures and governance, (along with well-respected newsletters!), how much weight or authority does each carry and should your organization automatically be using Robert's Rules of Order, or is it required that you do so?

It is important to understand that any type of Parliamentary authority based on any published information such as Robert's Rules of Order is clearly superseded by an organization's bylaws, articles of incorporation, charter, constitution, or similar document, as well as being superseded by state and federal law, as you might expect. Those types of manuals and "rules" are really meant as a guide to provide some basis for procedural order, but they are only suggestions and carry no actual legal "weight." However, they provide guidance when state or federal statutes are silent, the bylaws or articles of incorporation do not offer guidance, and when there is no well-established corporate practice. If any of those higher authorities contradict Robert's Rules or other parliamentary authority, then the statutes, bylaws, or articles of incorporation would control. The bylaws of an organization can proactively select what parliamentary authority to follow; however, we rarely see that and we think it is probably better not to do so.

In short, the Board is not required to follow Robert's Rules of Order and it is not legally binding on an organization, but merely offers guidance if the customs or practices of the organization are called into question and there is no other binding authority, such as statutes or the bylaws, that specify how to proceed. Therefore, specifically relating to the question about how to use executive sessions, we believe a more modern approach toward executive sessions is appropriate, where all directors who are duly elected by the shareholders are entitled to vote on any and all matters that do not present a conflict of interest, even where there is a desire or necessity to have an initial discussion of those items in an executive session without the management director being present. Likewise, we continue to believe it is a best practice not to view these sessions as secretive and be willing to discuss in a transparent manner with the management director who is not present, the topics covered in the executive session.

What Should We Put in the Minutes?

We have long suggested that the keeping of appropriate bank and bank holding company minutes is a bit more art than it is science, and it is a lost art form. We have seen the taking of minutes evolve from the President's Secretary taking shorthand at the meetings and then preparing comprehensive minutes from those, to what we suspect is the current procedure being used by some of you of using an AI based recording device which then also produces a complete set of board minutes without any human intervention. If you are using AI to assist with the minutes, we hope you are having someone actually read them and then delete parts that are not needed and correct things that were misunderstood.

So, what actually needs to be in the minutes? This came up in one unique way recently with a bank where a director made some specific motions for the organization to do certain things. We won't reveal specifically what the factual situation was, but pretend for a minute that the board member made a formal motion during the meeting that the organization should donate $50,000 to the local high school to improve the athletic facilities. It was acknowledged during the meeting that the director made the motion, but no other board member thought it was a good idea, and the motion never got a “second.” Assume the director makes a new motion that the organization or the President should fire the bank’s Marketing Officer. Again, that motion does not get a “second” so neither motion has any discussion and nothing else happens. The question is, should the minutes reflect that the motions were even made, since nothing happened? We believe the correct answer is yes, if the motions were properly made during a regularly or special called meeting, even though they never received a “second,” it should be noted that the director made the motion and that it failed for a lack of a “second.” But, assume that led to some further discussions at the meeting and complaints both about what the director was doing and complaints by the director that the Board was not taking enough action on things, etc. We do not think the minutes necessarily need to include all of the “dirty laundry” of the discussions that happened afterwards. Alternatively, if your organization feels it is important to have some record of that, then certainly the minutes could include items in a formal and professional manner to say something like “The Board engaged in discussion regarding philanthropic giving in the community and various ideas and suggestions were raised by board members. Director Smith specifically made a motion to donate $50,000 to the local high school, but the motion died for lack of a second. Ultimately, the Board decided to pursue other initiatives.”

We hope this makes the point and is a good scenario to demonstrate that sometimes less is more, but if directors are acting in good faith and make motions, those should be recorded even if there is no second. Similarly, we often see boards which are hesitant to include dissenting votes in board materials, but we think it is important for the individual director to be specifically noted as disagreeing with something and casting a vote against it so that that director’s independent judgment is reflected.

Keep in mind, in an extreme example, if your bank made a lot of loans that went bad and that caused the bank to fail, and the FDIC ultimately sued the Board for making some dumb decisions by approving loans that were not repaid, if you are a director who voted “no” on a particular loan and it is reflected in the board minutes, you would not be on the hook for liability related to that loan specifically. So document motions and dissents for the protection of both the individual director and the organization, but avoid including every detail of the often frank discussion around those subjects. That is another reason why you might not want the meetings recorded word-for-word, even through the use of AI.

Who Has the Authority?

We have run into a number of circumstances recently that might best be described as the organization, and in particular, the Board Chair, trying to determine who is really in charge or what set of people have the authority to act on a particular matter. In particular, we have seen this arise in two different circumstances, as described below.

The first situation involves the growing trend where the bank holding company board is not necessarily identical to the bank board. As a side comment, we think that can be a very good tool in succession planning or freeing up spots at the bank board level for individuals to be added with certain functional expertise, and the like. But if the holding company board is different than the bank board, then what decisions fall within the purview of each separate board?

Things like loan review would clearly seem to fall to the bank board, but if a loan is so large that it is systemically important, should the bank holding company board be involved? Not necessarily, but it might be appropriate for some organizations. What about the decision on paying shareholder dividends? Clearly, that is a decision for the holding company board, since it is the holding company that makes the direct distributions to the stockholders. However, in order to have the cash to pay the distribution, there often has to be a dividend from the bank to the holding company, and that could impact bank capital levels, so shouldn't the bank board be involved as well? Likely, although each board is acting independently, they share this common goal and direction so there should be some coordination. That can often be accomplished fairly easily because rarely do we see the bank holding company board being entirely different than the bank board. Most of the time, there is some commonality of members.

The key point is that it may be necessary to actually spell out and put in writing the duties and obligations of each board, and therefore clarify what decisions should come to each. Technically speaking, there may not be a right or wrong answer for every circumstance and it may be a matter of what works best for your organization. So don't hesitate to take the time to think through the various decisions that might have to be made and appropriately clarify which board is responsible.

The second circumstance relates to committees. For the most part, we generally do not have committees of the bank holding company board, but most of the committees are at the bank board level. However, that does not have to be the case where, for example, there might be a special committee created to consider an acquisition that might be more appropriately handled as a committee of the bank holding company board members.

If you are trying to decide whether something should be handled by the full board of directors or by a committee of the board, the simple answer is that committees are created by authority of the Board Chair or by a vote of the total board, and the members of the committee are often appointed by the Board Chair. As a result, committees have whatever powers are assigned to them by the Board Chair or by the board as a whole. This often points out the reason why committees function better with a formal written committee charter outlining the committee's duties and responsibilities. In essence, committees have all of the powers assigned to them and none of the powers that are not, so absent specific authority granted, power would still reside within the full board of directors. Keep these simple structures clarified in your board meetings and you will find your policies, procedures and operations run a lot more smoothly.

Meeting Adjourned

You would think that processes and procedures would come naturally, but we are often finding that many of our clients' corporate documents may discuss one type of procedure, state law may suggest a different kind of procedure, and then the practice of the organization may actually be different as well. So take the time to focus on good corporate governance by ensuring that you know what your corporate documents say and you know what your best practices are, and if there is something that you handle in a way that might not necessarily follow Robert's Rules of Order, then create your own written procedure and policy on that, which would thereby clearly supersede Robert's Rules of Order.

We also want to highlight an upcoming conference we are hosting in Nashville, Tennessee in conjunction with the Independent Community Bankers of America (ICBA). This *Enhancing Organizational Value Conference* will cover a wide range of topics and might be just what your Board or executive management team need to help propel you to the next level. For more information, please click here: Enhancing Organizational Value Conference.

Until next time,

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