



Field Guide to Board Discipline

By Thane Joyal

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In order to be effective in leading a retail food cooperative, a board must protect the integrity of its process. Two keys to sound board process are the ability to speak with one voice and the ability to protect confidential information. Most often these objectives are achieved with a shared understanding of the board's roles and responsibilities, by establishing a set of clearly articulated expectations for board conduct. While a carefully drafted code of conduct is an essential tool for every board, unless the board takes ownership of it and ensures that all board members live up to the code of conduct, the group's shared expectations for conduct becomes no more than a piece of paper or a blank pdf file.

Have Expectations

- Why have expectations? Because in its role as the co-op's fiduciary, the board has a trust responsibility to the cooperative to protect its owners' assets.
- Where are these expectations found? Check your articles of incorporation, bylaws and applicable state law for code of conduct requirements. Use these as your baseline, minimum requirements.
- Determine your additional conduct requirements. Look to the CBLD Policy template for an example of a good code of conduct drawn from policies by many different cooperatives over the years.
- Communicate code of conduct requirements to aspiring board candidates well in advance of the election.
- Review the code of conduct as a group at least twice a year: once when the new board is seated and once to check on the board's compliance.
- Remember: the board can review any policy at any time by any means. This includes the code of conduct.

Write Your Expectations Down

- Approve your code of conduct policy and create a form including the code of conduct for your co-op's board (see sample below).
- Have a formal review of the policy when the new board is seated.
- Ask all board members to annually sign a copy of the code of conduct and to provide information about any possible conflicts of interest (actual or perceived).
- Be sure board members keep their conflict disclosure statements up to date. (Use a reminder on the calendar, for example, and check when you monitor the policy)
- Be sure to document any deviations from the code of conduct by individual board members in writing. This means writing letters and memos and even saving and printing emails.

- Know the process for removing an individual director who does not follow the code of conduct--this should be specified in the code of conduct policy.
- If state law allows, include in the bylaws the ability of the board to remove a director for violations of the code of conduct. (See Fresh Start bylaws for sample language).
- Provide language in your Code of Conduct stating that a director agrees to resign, and not cause further disruption, if the majority (or 2/3 majority) of remaining directors request resignation because of violations of the Code of Conduct.

Be Kind to the Co-op First

- The board cannot uphold its fiduciary responsibility without upholding its code of conduct.
- Do not let personal loyalties or sympathy towards individuals interfere with the board's fulfillment of its fiduciary role.
- High performing groups hold individuals to high standards.
- Accept that board service is not for everyone: do not nominate or seat board members who cannot reasonably be expected to uphold the code of conduct, and do not delay in removing board members who fall short.

Questions for Discussion

Why does the cooperative have a board of directors?

What can we do to protect ourselves against situations where the code of conduct might be violated?

Who on the board is responsible for speaking up when a breach of the code of conduct arises?

What is the difference between adhering to a code of conduct agreement and a squelching of dissenting views?

What should an individual director do when removed from the board, or asked by vote to resign from the board?

Resources:

CBLD Online Recorded Workshop: Board Self Evaluation

<http://cdsconsulting.centraldesktop.com/cdsvideo/doc/5564651/w-BoardSelfevaluation>

CBLD Online Recorded Workshop: Roles and Responsibilities of the Board

<http://cdsconsulting.centraldesktop.com/cdsvideo/doc/5564651/w-BoardSelfevaluation>

CBLD Field Guides: Building a Positive Board Performance Culture I and II

<https://cdsconsulting.centraldesktop.com/cbld/doc/10955074/>

<https://cdsconsulting.centraldesktop.com/cbld/doc/14044558/w-BuildingAPositiveBoardPerformanceCultureI>

Precautions and Protections: Summarizing legal responsibilities of cooperative boards. By David Swanson and Thane Joyal in Cooperative Grocer Magazine #153 March-April 2011

<http://www.cooperativegrocer.coop/articles/2011-03-17/precautions-and-protections>

Governing with Discipline and Awareness, by Thane Joyal in Cooperative Grocer Magazine #166 May-June 2013

Sample Bylaw Language from CBLD Fresh Start Template

<https://cdsconsulting.centraldesktop.com/cbld/file/12694422/>

Any director who does not follow the code of conduct policy can be removed from the Board by a 2/3 majority vote of the remaining Board.

Example of Code of Conduct Agreement Form For Board of Directors
(Tailor to reflect applicable bylaws and board policies)

Note: This form is to be completed by all directors at least annually, preferably within one month following board elections and shall be updated as circumstances require. I agree to abide by Board Policy XX Code of Conduct and any subsequent changes the board makes to that policy. I agree that if, in the opinion of the majority of co-op directors, I have violated the letter or spirit of this agreement, I shall resign my position on the board immediately and shall not seek to cause continued disruption to the co-op and the co-op board for that action.

According to Article XX of the Cooperative Bylaws, I have an affirmative duty to disclose my actual and potential conflicts of interests. These are listed below. I understand that I have a duty to disclose any additional conflicts that may arise and to abide by board policy regarding participation in matters under consideration by the board.

Signature of Director

Date