


NONPROFIT ORGANIZATIONS INSTITUTE


## What is an “Effective” Private Foundation in 2023?

Part 1 & 2


The University of Texas at Austin School of Law UT LAW CLE




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## INTRODUCTION

- *With the backdrop of the COVID-19 pandemic, the national reckoning with systemic racial injustice, extreme climate events and other developments since 2020, how do we assess private foundation effectiveness?*
- *Gain insight into the important role of legal counsel in assisting private foundations in implementing policies and procedures to promote resilience and nimbleness while maintaining compliance.*
- *We will explore risk-based approaches to governance, grantmaking, advocacy and relationships with other philanthropic structures.*
- *We will also consider planning for transitions in mission objectives, leadership successions and terminations.*

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## GOVERNANCE

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- **Brief legal overview of governance structures**
  - What are the components of “good governance” and how are they reported/publicized and evaluated? (Post-SOX, Form 990 updates, IRS focus, state regulators, etc.)
- **Private Foundation (“PF”) Governance**
  - Do/should/can the PF’s governance better reflect mission/theory of change? Are all appropriate voices represented?
  - Non-governance structures to support responsiveness and participation (e.g., advisory boards, funder collectives, transparency)
  - Development/assessment of mission priorities
  - What are the considerations in board size?
  - What are the essential policies a board should adopt?

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## GOVERNANCE (*cont.*)

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- **Grantee Governance**
  - Should/how should the PF evaluate grantee governance?
  - Should/how should the PF promote grantee good governance?
  - How should governance be addressed with respect to fiscally sponsored projects?

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## GOVERNANCE HYPOTHETICALS

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- **HYPOTHESIS 1:** An employee of a grantee working on racial discrimination in the justice system reaches out to let the Foundation know that organization's Executive Director has taken a prolonged paid leave of absence and the Board has been unresponsive to the staff's concerns about continued leadership at the organization. Prior to the Executive Director's leave, staff had raised concerns about his behavior towards staff members of color. Projects are stalled due to these issues. Some key partners have terminated relationships due to reputational concerns, given the allegations against the Executive Director. The organization's staff are considering a mass resignation. Your grant includes a large field convening that is scheduled in three weeks? How should your organization respond?

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## GOVERNANCE HYPOTHETICALS

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- **HYPOTHESIS 2:** A prospective PF founder approaches you for guidance on establishing a new PF. She is a highly-successful founder of a closely-held health tech company with a small board. What are your top two or three governance recommendations? What would you flag as governance pitfalls to avoid?

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First appeared as part of the conference materials for the  
40<sup>th</sup> Annual Nonprofit Organizations Institute session  
"What is an “Effective” Private Foundation in 2023? PART 1"