FOUNDATION**SOURCE**

WEBINAR

People, Policies & Practice:

GOVERNANCE GUARDRAILS FOR PRIVATE FOUNDATIONS

Q&A

For private foundations, governance is often treated as back-office box-checking—until the moment it becomes the only thing that matters. A leadership transition, a sudden influx of assets, a family disagreement over strategy: these are the moments when strong governance either steadies a foundation or exposes how little structure was ever in place.

Foundation Source's **National Philanthropy Executive Gillian Howell** and **Vice President of Philanthropic Advisory Services Miki Akimoto** recently explored what it takes to build durable governance—covering the legal framework foundations operate within, the self-dealing rules that trip families up, the written policies every foundation should have, and how to bring new and next-generation members onto a board the right way.

GILLIAN HOWELL
National Philanthropy Executive, Foundation Source

MIKI AKIMOTO
VP of Philanthropic Advisory Services, Foundation Source

The following are highlights of their conversation.

Why does governance matter so much for private foundations?

Miki Akimoto: Governance can feel like it's sitting in the background, not really mattering—until it's the only thing that matters. I was once brought in to help a family foundation that had operated for more than 40 years and was suddenly in turmoil. The patriarch had brought all seven grandchildren onto the board at once, and friction was everywhere. When I looked at their governing documents, the bylaws said they could have only four trustees—and there were 13 people in the room. I had to ask, "Which nine of you are unofficial trustees?" They looked at me and said, "We have bylaws?"

Good governance won't function as family therapy, and it won't cure dysfunction. But it brings everyone onto the same page and gets people to recognize that a foundation is an entity with rules of the road. When everyone agrees on how to move forward, a lot of the friction falls away. If you pay attention to governance, it's there for you in the moments when you need to make a transition, navigate a change, or start something new.

Gillian Howell: Done properly, governance is far more than oversight. It's a combination of people, policies, and practices that provide the underpinning for successful ongoing operations—and the guardrails and guidance you need in moments of transition or even crisis.

What are the core fiduciary duties board members need to understand?

Howell: There are three, and they apply to all nonprofits, foundations included. The duty of care comes down to devoting the time, attention, and resources needed to understand and prudently oversee the foundation's work. The duty of loyalty requires trustees and directors to put the foundation's interests above their own or a third party's, which means avoiding conflicts of interest and disclosing any potential ones. And the duty of obedience means complying with all applicable state and federal laws and your own governing documents and staying true to the foundation's mission. Those three duties should be the throughline for everything a board does.

When a board is ready to strengthen its governance, where should it begin?

Akimoto: I think about three pillars: people, policies, and practices—with culture underneath all of it. Regarding people, have you assessed the skills your foundation actually needs? Most foundations need someone who understands finance, someone who knows the areas you're granting in, and ideally someone who knows the community you serve. For policies, do you have the ones you need—and a discipline for reviewing them regularly so they stay current? And on practices, are you actually following your policies? That last piece is part of the duty of obedience: if a potential conflict surfaces around a grant decision, are you pulling out your conflict-of-interest policy and following it?

Start by knowing the law. There's federal law and state law, and while we can't run a mini-webinar for every state or territory, at the federal level there are four prohibited activities every board member should understand: electioneering, lobbying, self-dealing, and jeopardizing investments.

What are the prohibited activities and what should boards keep in mind?

Akimoto: If we think about the federal law, there are four things that you really need to keep in mind. These four areas are what are called prohibited activities, which are electioneering, lobbying, self-dealing, and making jeopardizing investments. Start by making sure that everyone on your board understands those four things.

Howell: Knowing the law is always a great place to start, and I hope we all know that foundations and all 501(c)(3) organizations are prohibited from any kind of involvement in elections. They can't endorse candidates, give to election campaigns, etc. It's also really important to know the rules around funding lobbying versus advocacy. You can absolutely support advocacy and public education about crucial issues, but there are bright lines about what constitutes lobbying and you need to stay on the correct side of those lines.

Self-dealing seems to trip a lot of families up. What's the most important thing to understand?

Akimoto: The self-dealing rules are the most complex area of the IRS code, but they rest on a simple principle: they exist to prevent someone associated with a foundation from benefiting personally—especially financially—from that relationship. Once assets are in the foundation, they're no longer personal dollars. A charitable deduction has been taken, and those dollars are now in the public trust.

The rules define a class of "disqualified persons"—broadly, the donors, trustees, certain senior staff, and their family members. Every foundation should know exactly who its disqualified persons are; it's an important list to have on hand. Some examples are clear-cut: donating to a private school on the condition that your own children's tuition is waived is an egregious personal benefit—and yes, someone actually tried it. Others are less intuitive. You can pay a family member a salary as a program officer if you properly benchmark and document that it's reasonable. But your family business cannot rent office space to your foundation—even at below-market rent—because that's a prohibited transfer of foundation money to a disqualified person. Anytime there's a financial interaction between the people who created or control the foundation and the foundation itself, stop and take a hard look. Asking the question early is always the better move.

How should foundations approach compensating staff or family members?

Howell: There's no fixed formula; nothing says compensation for a given role should be a set figure. What the IRS requires is that it be reasonable, necessary and not excessive. The way you get there is by documenting your analysis: the job description and responsibilities, the skills and time the role requires, your foundation's size and complexity, your grantmaking methods, and geographic location. Then look at comparable compensation with foundations similar to yours. That documentation is what protects you.

Akimoto: In situations where one family member wants to be compensated and others don't, what I've more commonly seen work is reimbursement of expenses rather than compensation. Financial stability can vary across a family, especially in later generations, and traveling to an out-of-town board meeting may be more of a burden for some. A policy might simply state that board members may request reimbursement for travel related to board meetings, and then it's up to each member to decide whether they need it.

Which written policies should every foundation have in place?

Howell: A handful are critical. An investment policy that sets your objectives, benchmarks, and the types of investments that aren't permissible. A conflict-of-interest policy—probably the most important—that defines when personal or professional interests compete and sets the rules for managing them, including when to disclose and when to abstain. An expense policy that clearly describes which expenses and travel are reasonable and necessary for the mission; this one needs to be thorough and unambiguous, because it's an area where people run into trouble. A document retention policy specifying how long records are kept, especially around grantmaking and board decisions. And, if you compensate board or staff, a compensation policy that details the process behind those decisions.

These matter for foundations of every size—small and family foundations included. Review them with the whole board periodically so everyone keeps them top of mind. Good policies offer clarity and remove ambiguity; they set the right guardrails from the start. And when a sudden event hits—an influx of assets, a change in leadership—the policies are already there, so people know the rules of the road.

Akimoto: The practice piece matters as much as the policy. I worked with a close-knit family that took on a big decision to change the focus of their grantmaking, and they assumed that because they got along, they'd reach consensus. They couldn't—multiple generations, strong views, real frustration. When they finally went back to their bylaws, the bylaws said decisions were made by majority vote. They had the policy; they just hadn't been practicing it. If you have policies, go back and look at them and actually use them.

What makes for good board recruitment—especially when bringing on non-family members?

Akimoto: Any time you're adding board members, it's a chance to step back: What's your mission? What skills do you already have, and which are you about to lose as members term out? Recruit to fill the gaps—and remember that, like any hire, chemistry and fit matter too.

In terms of whether you should add non-family members to a family foundation board, my answer is "yes, no, maybe." First, check your bylaws—I've seen family foundation bylaws that require board members to be bloodline descendants, so make sure a non-family member is even permitted, or that you can amend to allow it. Beyond that, be clear on why you're bringing someone in. "Near-family" members—a close family friend, the family attorney or CPA—already understand the culture but may tend to defer to the family's wishes. If what you actually need is a fresh community perspective or someone willing to challenge the family, recruit for that instead, and consider adding more than one at a time so they aren't isolated, and be sure you are ready to really listen to those voices. Whoever you bring on, invest in onboarding and orientation so new members can use their voices early rather than hanging back trying to figure out how things work.

How should families think about engaging the next generation?

Akimoto: There's a saying: if you've seen one family foundation, you've seen one family foundation. That said, one good practice stands out—treat next-gen engagement as neither an obligation nor a right, but as an earned opportunity. When the National Center for Family Philanthropy studied next-gen board members, some who'd simply been told "Congratulations, you're a trustee" on their 25th birthday described it as feeling like a life sentence. They hadn't been asked; they often weren't prepared; and they had a lot going on in their own lives.

Make it an invitation instead, with on-ramps and off-ramps that fit the seasons of a person's life. Some families ask younger members to log volunteer hours or shadow a few board meetings first; one family allows members to join as committee members at 25 but required a number of hours of philanthropic education—webinars, a conference—before joining the full board, with the family covering the cost. Define the role clearly, make it a two-way conversation, and give every new member a board buddy or mentor. When you can, pair across family lines—an aunt or uncle rather than a parent—because, well, we've all been teenagers.

How often should a board meet and review its governance?

Akimoto: Check your bylaws first—they may set a minimum, and the answer can also depend on whether you're a trust or a corporation and on your state. A very small foundation making a couple of grants a year might get by meeting once. But if you want to build board culture and a real learning agenda, you'll need to meet more often. At minimum, an annual meeting agenda usually covers electing officers and directors, approving budgets and grants, and handling your executive director's compensation and review. A great discipline is a standing governance-review item on the agenda.

As for reviewing the governance itself, I'd say every five to seven years, on a rotating cycle—one year the whistleblower policy, the next conflict of interest, the year after that the bylaws. It doesn't mean you'll change them, but you have the structure to make sure nothing quietly falls out of date, and you can move something up the rotation if a change in state law affects it. Through all of it, keep coming back to that combination of people, policies and practices.

Howell: In my experience, I've rarely seen a board meet less than twice a year—quarterly is common. And to answer a question we often get: Foundation Source won't write your bylaws, because we don't practice law, but we do have templates, best practices and sample policies we're glad to share.

This is a condensed, edited version of the conversation. Get full insights by watching the entire video of the presentation here.

ABOUT FOUNDATION SOURCE

Foundation Source is the leading provider of philanthropic software and services. At the forefront of PhilTech, Foundation Source is the partner of choice for flexible software and services that offer end-to-end support for private foundations, donor-advised funds and planned giving. We offer a range of purpose-built, cloud-based platforms that facilitate all stages of giving and a configurable suite of administrative, compliance, tax, and philanthropic advisory services for donors, nonprofits and charities, and professional advisors, including RIAs and financial institutions serving wealth management and private banking clients.

With over 100 years of combined experience, Foundation Source empowers people and companies to create a better world through philanthropy. We support more than 27,000 charitable organizations, administer more than $55 billion in charitable assets, and facilitate more than 190,000 grants and planned gifts annually.

HAVE A QUESTION?

Call 800.839.0054 or send us an email at info@foundationsource.com.

www.foundationsource.com

FOUNDATIONSOURCE
Your Partner in Giving