

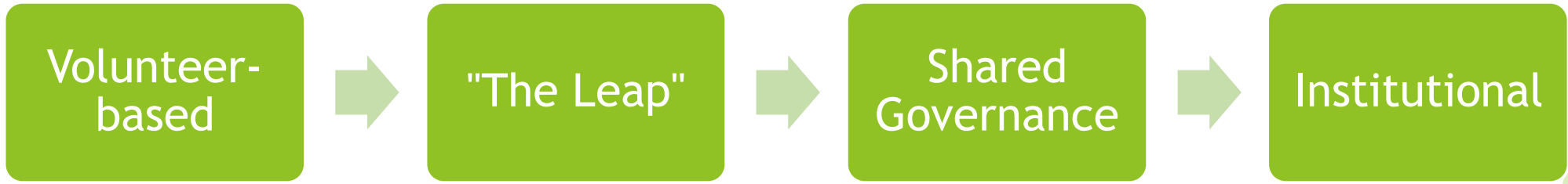
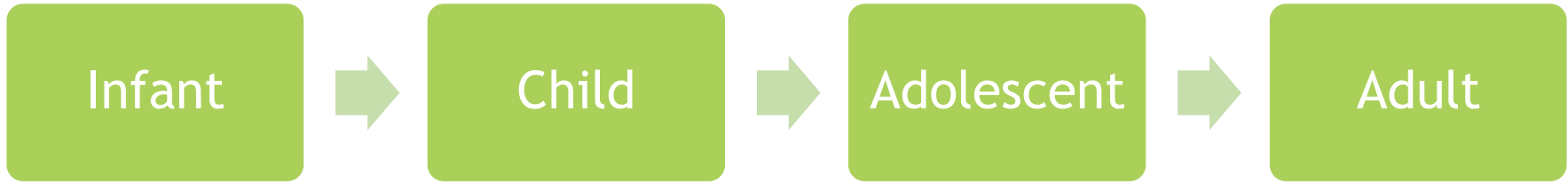
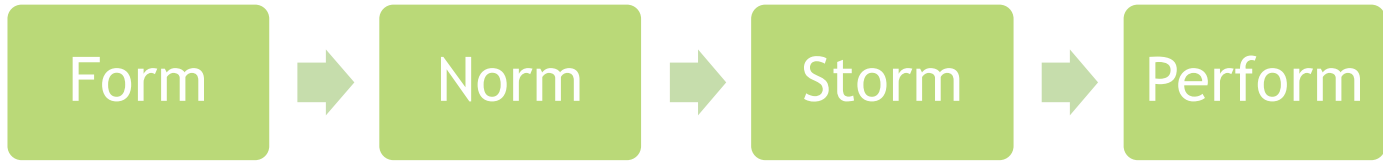
Land Trust Board Member Roles and Responsibilities Demystified

Ontario Land Trust Alliance Gathering

October 6, 2019

Agenda

- ▶ Introduction
- ▶ Organizational Development & Types of Boards
 - ▶ Stages of Growth of an Organization
 - ▶ Governance vs Non-governance boards
- ▶ Director Roles & Responsibilities
 - ▶ Director Obligations
 - ▶ What are Standards & Practices
 - ▶ Standard 3 - Board Accountability
- ▶ Case Studies & Scenarios
- ▶ Discussion
- ▶ Concluding Thoughts



WHAT IS GOVERNANCE?

- ▶ Governance plays an important role in determining how many organizations function.
- ▶ A definition of governance is
"the processes, structures and organizational traditions that determine how power is exercised, how stakeholders have their say, how decisions are taken and how decision-makers are held to account."

GOOD GOVERNANCE IS IMPORTANT

- ▶ Good governance is the primary role of the board of directors and is critical to being able to manage risk effectively
- ▶ The board cannot look to others to achieve good governance
- ▶ Good governance is not “perfection” - rather good governance is intended to minimize the risk of things going wrong, identify what may go wrong and prevent it, and address problems when things go wrong in a legal and ethical manner

GOVERNANCE MODELS

- ▶ **Operational Model:** The board manages, governs and performs the work of the organization.
- ▶ **Traditional Model:** The board governs and oversees operations through committees established along functional lines (finance, human resources, programs) but delegates the management functions to the executive director.
- ▶ **Policy Governance (Carver) Model:** The board governs through policies that establish organizational objectives, governance approaches, and management limitations. Management has broad discretion to determine the means that will be used to achieve organizational objectives.

UNDERSTANDING THE DUTY OF CARE

- ▶ Directors of all corporations must exercise certain standard of care in carrying out duties
- ▶ Standard of care varies depending on type of corporation and incorporating statute
- ▶ Canada *Not-for-Profit Corporations Act* standard of care:
 - In exercising powers and discharging duties to the corporation, every director and officer shall:
 - (a) act honestly and in good faith with a view to the best interests of the corporation; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

FIDUCIARY DUTIES

- ▶ In addition to discharging the standard of care, directors must abide by the rules of fiduciary conduct:
 - Act in the best interest of the corporation
 - Good faith
 - Honesty
 - Confidentiality
 - Obedience/board solidarity
 - Avoid conflict

MANAGEMENT OF THE CORPORATION

- ▶ Directors have a common law and statutory obligation to manage or oversee the management of the corporation and are responsible for all aspects of corporations operations
- ▶ To fulfill duties, directors must ensure:
 - ▶ Objects are properly carried out and activities comply with objects
 - ▶ Corporation's financial stability and overall performance
 - ▶ Proper hiring and supervision of management and staff
- ▶ Failure to act, i.e. inaction, can result in personal exposure to liability i.e. liability of Worldcom directors

AVOID BREACH OF TRUST

- ▶ In addition to higher fiduciary duties, directors of charitable corporations may also be trustees of specific charitable property, eg. gifted land or stewardship funds
- ▶ However, fiduciary duties and trustee duties in relation to charitable property have general similarities
- ▶ The Aids Society case emphasizes that directors have fiduciary obligation to apply charitable property to charitable objects
- ▶ Where charitable property is wasted as a result of actions or inactions of directors, breach of trust could be found

▶ **Areas for potential liability:**

- ▶ **Remuneration of directors** - In Ontario, directors, but not officers, of charitable corporations cannot receive direct or indirect remuneration, e.g. as employee or contractor, without court approval or complying with new regulations
- ▶ **Dealing with charitable property** - Directors are responsible for handling of charitable property. Personal liability may result where mismanagement occurs
- ▶ **Dealing with charitable objects** - Charitable property can only be applied to charitable objects and a failure to properly apply charitable property may result in personal liability
- ▶ **Dealing with special purpose charitable trusts** - Liability for breach of trust possible where donor restrictions or terms of endowment funds are not complied with
- ▶ **Investment of charitable funds** - Liability can result from failure to comply with investment powers as well as bad investments, overly conservative decisions and missed opportunities

CANADIAN LAND TRUST STANDARDS AND PRACTICES

- ▶ Largely voluntary exercise with some administrative support from N.C.C.
- ▶ The revision process was divided into the following 6 steps:



- ▶ Released January 2019:
https://cltstandardspracticesrevision.files.wordpress.com/2019/01/cltsp_2019_en_final.pdf

STANDARDS

- ▶ STANDARD 1 - Ethics, Mission and Community Engagement
- ▶ STANDARD 2 - Compliance with Laws
- ▶ STANDARD 3 - Board Accountability
- ▶ STANDARD 4 - Conflicts of Interest
- ▶ STANDARD 5 - Fundraising
- ▶ STANDARD 6 - Financial Oversight
- ▶ STANDARD 7 - Human Resources
- ▶ STANDARD 8 - Evaluating and Selecting Conservation Projects
- ▶ STANDARD 9 - Ensuring Sound Transactions
- ▶ STANDARD 10 - Tax Benefits and Appraisals
- ▶ STANDARD 11 - Conservation Agreement Stewardship
- ▶ STANDARD 12- Land Stewardship

STANDARD 1 Ethics, Mission and Community Engagement

- ▶ Land trusts maintain high ethical standards and have a mission committed to conservation, community service and serving the public interest.
- ▶ Practices include:
 - ▶ Adopt a written code of ethics and/or values statement and adhere to it in implementing the land trust's mission, in its governance and in its operations
 - ▶ Adopt a written whistleblower policy that protects individuals who come forward with information on illegal practices or unethical behavior
 - ▶ Adopt a mission that advances conservation and serves the public interest
 - ▶ Establish strategic goals for implementing the mission, and then review and update them, as needed, at least once every five years

STANDARD 2 Compliance with Laws

- ▶ Land trusts fulfill their legal requirements as not-for-profit organizations and comply with all laws and regulations.
- ▶ Practices include:
 - ▶ Comply with all applicable federal, provincial and municipal laws and regulations
 - ▶ Incorporate or organize according to the requirements of provincial or federal law and maintain legal status
 - ▶ Operate in accordance with established bylaws
 - ▶ Maintain status as a non-profit, registered charity or qualified donee under the Income Tax Act (Canada)
 - ▶ Comply with applicable rules regarding business activity and private or undue benefit
 - ▶ Where applicable, comply with federal requirements regarding political activities

STANDARD 3 Board Accountability

- ▶ Land trust boards act ethically in conducting the affairs of the organization and carry out their legal and financial responsibilities as required by law.
- ▶ Practices include:
 - ▶ Individual board members are informed of and understand their role and their responsibilities as not-for-profit board members, including their legal and fiduciary duties
 - ▶ The board reviews and approves the land trust's mission and strategic plans, and is responsible for evaluating them
 - ▶ The board provides oversight of the land trust's finances and operations
 - ▶ The board hires, oversees and evaluates, at least annually, the performance of any executive director (or chief staff person)

Case Study Break-Outs

- ▶ Has this or something similar occurred with your organization?
- ▶ What issues arise in these situations?
- ▶ Where would you go for answers?
- ▶ Do you have a policy that deals with these situations?

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