

Essentials for Commissioners

Day 2

SERC-NAHRO

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Essentials for Commissioners SERC NAHRO

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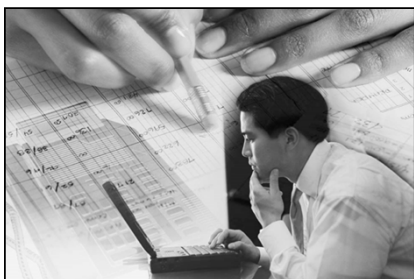
Day 2

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Nan McKay
AND ASSOCIATES, INC.

Experience – Leadership – Collaboration

PHA Finances and Management Controls



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Introduction



- The board is entrusted with public funds
- Financial management is the planning, directing, monitoring, organizing and controlling of PHA funds

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Components of Financial Management

- Planning
- Budgeting and cost effectiveness
- Accounting
- Financial systems
- Internal controls
- Evaluation and communication
- Personnel requirements

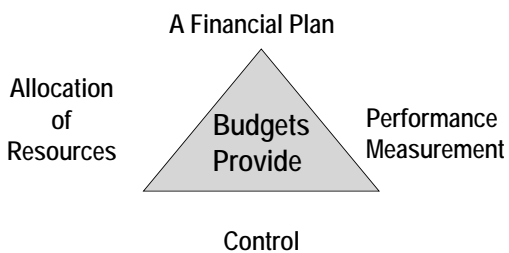


Components of Financial Management – Planning

- Financial planning:
 - Identifies goals or objectives to be achieved
 - Formulates strategies to achieve them
 - Arranges or creates the resources required
 - Implements, directs, and monitors



Why We Budget



Components of Financial Management – Accounting

- Accurate recording of financial transactions
- Analysis, verification and reporting
- Document gains and losses



Components of Financial Management – Financial Systems

- Processes and procedures used to exercise financial control and accountability
 - Include recording, verifications, and timely reporting of transactions that affect revenue, expenses, assets and liabilities



Components of Financial Management – Internal Controls

- Purpose is to provide reasonable assurance regarding:
 - Effectiveness and efficiency of operations
 - Reliability of financial reporting
 - Compliance with laws and regulations
- We'll discuss more later



Components of Financial Management – Evaluation and Communication

- PHA can evaluate its progress!
- Maintaining and communicating oversight



The Essential Questions

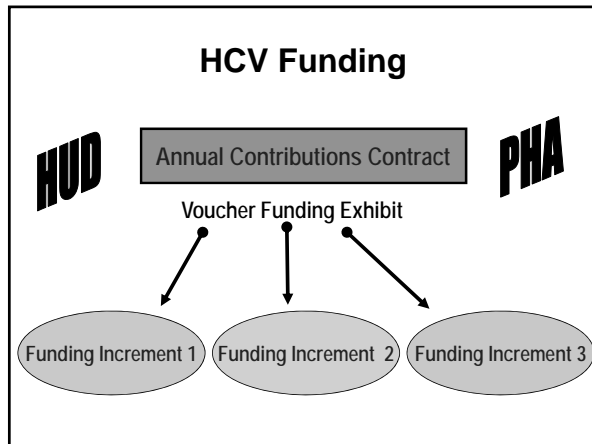
- How can I be sure my PHA has enough financial resources and is managing them well?
- Does the PHA produce budget-to-actual reports?
- Does the PHA have adequate financial controls?
- Is the PHA earning more than it's spending?
- What is the status of program reserves?



The Essential Questions

- Is the HCV program fully leased?
- What is our SEMAP score?
- If more than 250-400 units, has PHA fully implemented PH asset management?
- What is our PHAS score?
- What is the occupancy rate and rent collection rate for the projects?





HCV Budget

- The PHA receives a yearly amount of funding known as the annual budget authority (ABA)
 - The HCV program needs to use as much of the ABA as possible
 - ABA not used may be recaptured by HUD

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HAP Funding

- Each year, Congress determines the amount of the federal budget that will be available to fund the HCV program
- Under SEMAP, PHAs are graded on whether they have enough families leased up

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HAP Funding

- In today's environment of rising rental costs, many housing agencies cannot afford to lease all units awarded
 - This is why SEMAP allows PHA to be graded on whether it's fully using its funding
 - PHA *cannot* exceed the total units allocated under the ACC



Administrative Fee

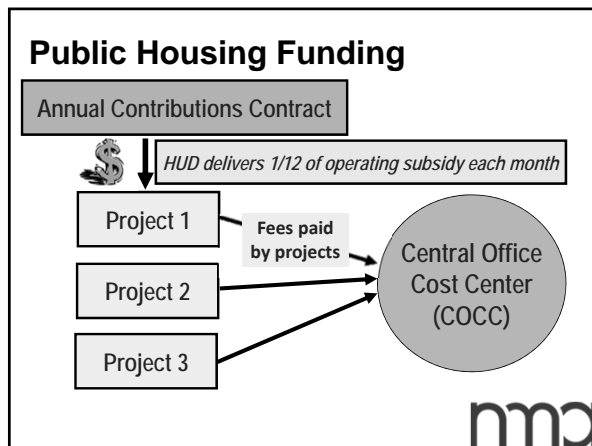
- PHA earns an admin fee for acting as HUD's contract administrator for HCV
 - Congress determines amount
 - PHAs notified each year of amount they will receive
- Admin fee is largest source of income to cover HCV admin expenses



Monitoring Funding

- PHA management must make sure that the ABA is used to assist as many eligible families as possible
 - PHA may overlease in a given month(s), but must be within ACC authorized units by end of calendar year





Paying for Services

- How property services are arranged is an important consideration
 - Frontline (at the project)
 - Shared between projects
 - Allocated/prorated
 - Fee-for-service (COCC or third party)

Paying for Services

- Some functions can be centralized and prorated (allocated) back to the properties:

▪ Waiting list *	▪ Work order intake
▪ Intake/screening *	▪ Resident services *
▪ Rent collection	▪ Security *
▪ 504 coordinator	

* Includes supervisor

Paying for Services

- Centralized maintenance specialists are paid by fee-for-service
 - The project can only be charged for actual time spent on the job
 - Fee-for-service can't be higher than the market bears



Fees Paid by the Project to COCC

- COCC can only be funded through fees paid by the projects:
 - Property management fees
 - Bookkeeping fees
 - Asset management fees
 - CFG administrative fees



The Public Housing Budget

- If a PHA has ten projects, then ten budgets will be prepared
 - Budgets must be approved by the board before the start of the fiscal year
 - Approved board resolution must be submitted annually to HUD
 - Only one board resolution is required



Budget Controls

- Summary management reports
- Line-item budgeting
- Comparing actual against budget
- Timely obligations of grant or operating funds



Internal and Management Controls



Internal Control Components

- Control environment
- Risk assessments
- Control activities
- Information and communication
- Monitoring



Audits



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Audits – What to Look For

- You want to see that the auditor's opinion is "unqualified"
 - This means the auditor can give a firm opinion based on PHA's financial records
 - A "qualified" opinion is serious – it means the PHA's financial records are irregular or insufficient

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Audits – What to Look For

- A "finding" is a monetary irregularity, or condition not in compliance with statutory or regulatory requirements
 - HUD will require remedy

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Audits – What to Look For

- A “concern or observation” is a deficiency that needs to be corrected but is not in violation with a regulatory or statutory requirement



Avoiding Lawsuits



Legal Considerations

- When considering legal protection:
 - Board members cannot abdicate responsibility
 - Must make PHA is operating legally
 - Have a legal responsibility to protect assets
 - Must validate major contracts
 - Must attend most board meetings
 - Absence does not release from responsibility



Directors and Officers Insurance

- Directors and officers can be held personally responsible for misuse of funds, misappropriation of funds, making improper loans, or fraud
- D & O insurance provides coverage



HUD's Requirement

- Fair housing is civil rights as it pertains to the sale and rental of housing
- HUD has the role of monitoring and enforcing fair housing
 - HUD monitors and investigates
 - Voluntary compliance agreements (VCAs)
 - DOJ prosecutes



Federal Fair Housing Laws

- Federally protected classes – PHA must post policy on nondiscrimination for:

▪ Race	▪ Disability/handicap
▪ Color	▪ National origin
▪ Sex	▪ Family status
▪ Religion	



Federal Fair Housing Laws

- Civil Rights Act of 1964
- Fair Housing Act
- Americans with Disabilities Act (ADA)
- Section 504
- Section 3
- Limited English Proficiency (LEP)
- Violence Against Women Act (VAWA)

HUD's Equal Access Rule

- Requires that HUD programs be available regardless of actual or perceived sexual orientation, gender identity, or marital status
- PHAs must revise definition of "family" in ACOP and admin plan




What Does Discrimination Mean in the Fair Housing Context?


- There are three types of discrimination courts or administrative enforcement agencies (HUD) may examine:
 1. Overt
 2. Disparate treatment
 3. Disparate impact




FHA Enforcement




- Three ways the Fair Housing Act is enforced:
 - DOJ
 - Administrative enforcement
 - Private actions



FHA Enforcement DOJ



- DOJ may bring lawsuits where a “pattern or practice” of discrimination exists
- DOJ may also bring an action on behalf of an individual upon a referral from HUD
- DOJ investigates and takes aggressive action



HUD FHEO “Voluntary” Compliance Agreements



- Could be for any fair housing issue
 - Most common are for accommodations, not extending vouchers, service and assistance animals, racial and religious discrimination, harassment
- Often result of FHEO audit, complaint investigation, or local enforcement effort by field office



HUD Administrative Enforcement



- Complainant may also bring case to court whether or not HUD finds "cause"
- Complaints filed with HUD may be turned over to a local fair housing agency
- Administrative complaints could also begin at a state or local fair housing agency



FHA Enforcement Private Actions

- Private actions can also be brought in local, state, or federal court
 - Families don't need to file a complaint with PHA, HUD, or anybody else first



Limited English Proficient Persons



What is the PHA's Obligation?

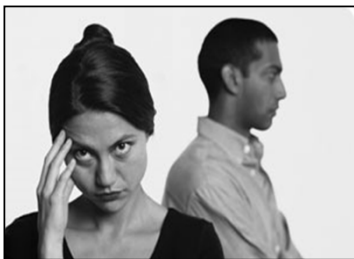
- Competent oral interpretation available upon request, free of charge



- Analyze for written translation



Violence Against Women Act (VAWA)



VAWA

- Protects victims or threatened victims of domestic violence, dating violence, sexual assault and stalking
- PHAs must notify applicants and tenants of right to invoke protections
- PHAs need to work with advocates!
- PHAs must have emergency transfer plan



Familial Status Discrimination

- Many lawsuits
 - Landlords refusing families with children
 - PH refusing to admit children in elderly/disabled developments



Reasonable Accommodation

- Reasonable accommodation eliminates barriers for persons with disabilities – a change, exception or adjustment to a rule, policy, practice or service



Live-In Aides



Additional Bedroom for Medical Equipment



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Service and Assistance Animals

- FHEO Notice 2013-01
 - Makes distinction between service animal and assistance animals



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The RA Process

1. PHA must inform of right to request
2. Request by or on behalf of person with disabilities
3. Nexus
4. Reasonable?
5. PHA responds
6. Track!!!

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504 Coordinator

- If PHA employs 15 or more people, the PHA must designate an employee to coordinate compliance with Section 504
- Follow-up, track and report accessibility, reasonable accommodation requests, VAWA, LEP, Section 3



Application of the Fair Housing Act to the Use of Criminal Records

- OGC Guidance 4/4/16 addresses how the discriminatory effects and disparate treatment methods apply in FHA cases where PHA denies or terminates based on an individual's criminal history



Application of FHA to the Use of Criminal Records

- OGC states that since disproportionate incarceration rates exist for African Americans and Hispanics (creating a disparate impact), the FHA applies to criminal convictions



Application of FHA to the Use of Criminal Records

- This is one of many consequences of the U.S. Supreme Court's "disparate impact" decision
 - Texas Department of Housing and Community Affairs v. Inclusive Communities Project Inc.
- The guidance underscores HUD's de-emphasis in the use of criminal histories in housing decisions
 - Decision should not be made solely on basis of arrest
 - But it does NOT forbid the consideration of such information



Application of FHA to the Use of Criminal Records

- PHAs must scrutinize their policies to ensure they do not create a disparate adverse impact on protected classes
- Policy must distinguish between "criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not."



Sexual and Other Forms of Harassment

- HUD final rule on harassment and liability for discriminatory practices
- Published in Federal Register on 9-14-16
- Amends 24 CFR Part 100
- Clarifies harassment can not only be a form of discrimination based on sex, but also based on race, color, religion, national origin, disability, or familial status



Two Types of Harassment Claims

1. Quid pro quo harassment (something for something)
2. Hostile environment harassment
 - These types are now clearly defined in the final rule
 - Not limited to sexual harassment



Hate Crime and PHA Liability

- From DOJ *Hate Crimes Bulletin*:

- Violence of intolerance and bigotry, intended to hurt and intimidate someone because of their race, ethnicity, national origin, religion, sexual orientation, or disability




Fair Housing – One Last Note


- If a PHA fails to respond to a fair housing complaint, the complaint can be filed against the Board



Avoiding Lawsuits in Human Resources





- There are a number of litigious issues in the workplace
- PHA should be knowledgeable in federal, state and local employment laws




Human Resources

- Many lawsuits
 - Wrongful termination
 - Demotion
 - Sexual and other harassment
 - Exempt vs. nonexempt
 - If what is allowed is different than policies, court may consider what is allowed the "de facto" policies

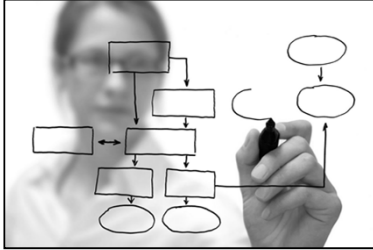
Reasonable Accommodation

- If PHA employs more than 50 people, ADA requires PHA to adopt grievance procedures for anyone, including employees, denied reasonable accommodation:
 - Personnel policy
 - Job restructuring
 - Revising/simplifying work instructions
 - Rescheduling work hours



Procurement & Contracting

- Procurement is a litigious area



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Role of the Commissioner

- Must not use position on board to prevent the PHA from fair competition
 - Provide for fairness to all persons or firms involved in providing goods and services
 - Ensure supplies, services and construction are efficient and effective
 - Ensure purchasing actions in compliance with laws
 - Avoid conflict of interest and even *perception* of conflict of interest

Procurement

- Once procurement policy is approved, board designates ED to implement
- ED has expenditure authority at certain level
 - Above that level is procurement
 - Board must approve

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Procurement Policy

- Procurement policy should include:
 - Statement of policy
 - Procurement delegation of PHA
 - Procurement methods
 - Contract qualifications
 - Types of contracts
 - Specifications
 - Appeals & remedies
 - Assistance to small and other businesses
 - Statement of ethics
 - (Sample procurement policy in HUD Procurement Handbook)



Hearings and Reviews

- Applicants are entitled to reviews
- Participants and tenants are entitled to hearings
- Participants and tenants may hearing decision in court



Due Process Principles

- U.S. Constitution – government cannot deprive a person of life, liberty or property without due process of law – 5th, 14th Amendments
- Right to hearing upheld by Supreme Court - Goldberg v. Kelly



Due Process – What it Means

- Right to:
 - Adequate notice to tenant
 - Right of tenant to be represented by counsel
 - Opportunity to view and copy any documents PHA intends to use at the hearing, *before* the hearing
 - Opportunity for tenant to refute evidence, including the right to confront or cross-examine witnesses & present defense
 - A decision based on the merits



Preponderance of the Evidence

- The hearing officer's decision is based on two things:
 - Did the PHA follow all due process steps
 - Did the party seeking the change meet the burden of proof – preponderance of the evidence



Safety

- High stakes harm
- PHA may be sued for actions or failure to act
 - If PHA knew or should have known



Management of the Board



- A board that operates as a team, with effective conflict resolution and rigorous debate with mutual trust and respect has a better chance at driving better performance



Communication Competencies

- Interpersonal communication
 - Ability to interact with others, understand them, and interpret their behavior
- Intrapersonal communication
 - Our cognitive ability to look within and understand our "self"
- Linguistic communication
 - Ability to communicate orally and in writing



What is your Leadership Style?

- High "D" – directive
- High "I" – interactive
- High "S" – steady
- High "C" – compliant



What is your Leadership Style?

- What if my fellow commissioner is this style, and I'm a different style..., or
- How might I need to adapt to other styles on the board
- How do our styles affect our communication and decision-making?



High D Behavioral Tendencies

- High "sense of personal worth"
- Task oriented - needs results
- Motivated by directness
- Getting immediate results
- Causing action
- Accepting challenges
- Making quick decisions



High D needs others Who...

- Weigh pros and cons
- Calculate risks
- Use caution
- Create a predictable environment
- Research the facts
- Recognize the needs of others

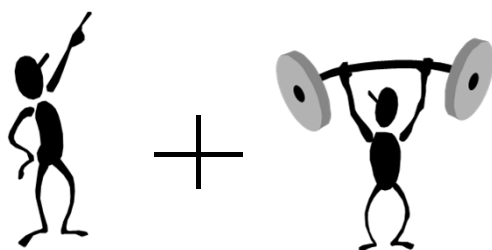


High D Vulnerability:

- *Perceived* as having a lack of concern for others' views and feelings

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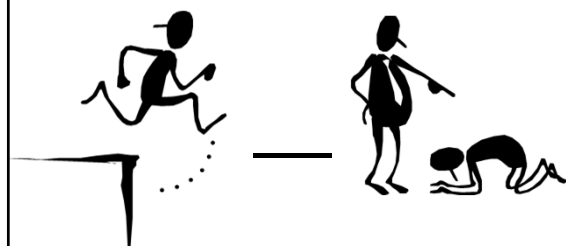
DOMINANCE



Can you see how D's are essential?

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DOMINANCE



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High I Behavioral Tendencies

- Optimistic
- People-oriented
- Motivated by social recognition
- Making a favorable impression
- Being articulate
- Creating a motivating environment

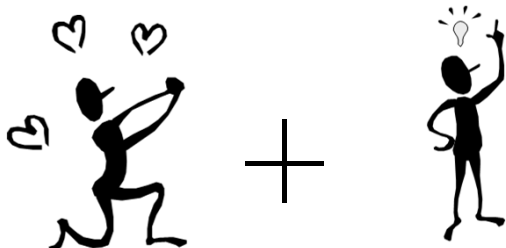


High I Needs Others Who....

- Concentrate on the task
- Seek facts
- Speak directly
- Respect sincerity
- Task instead of people oriented
- Take a logical approach
- Demonstrate follow-through



INFLUENCING




Can you see how I's are essential?



INFLUENCING

$1+1=3$

Have trouble
following through —



High S Behavioral Tendencies

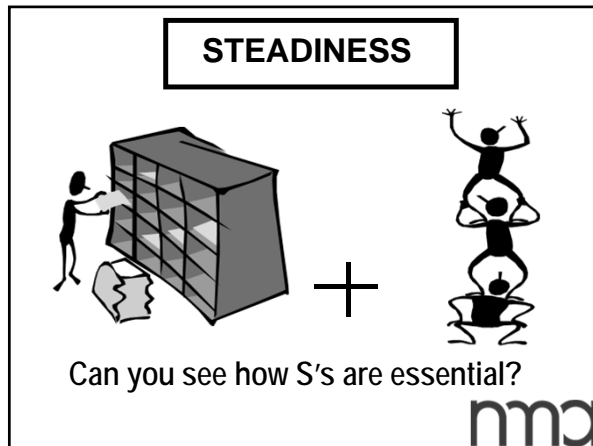
- Team player, family oriented
- Motivated by established practices
- Steady, ritualistic
- Consistent, predictable performance
- Demonstrates patience
- Helping others
- Showing loyalty

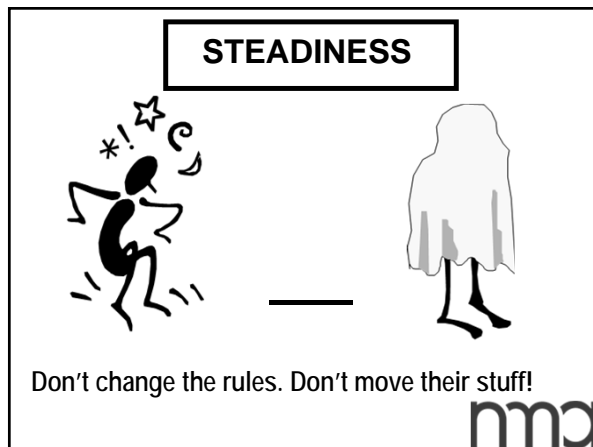
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High S: Needs others Who....

- React quickly to unexpected change
- Become involved in more than one thing
- Apply pressure on others
- Work comfortably in an unpredictable environment
- Help to prioritize work
- Are flexible in work procedures

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High C Behavioral Tendencies

- Accurate - precision quality control person, weigh pros and cons
- Task oriented
- Motivated by adherence to standards
- Thinking analytically
- Using subtle or indirect approaches to conflict
- Checking for accuracy

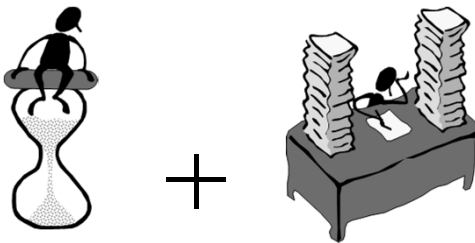
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High C: Needs others who...

- Delegate important tasks
- Make quick decisions
- Use policies only as guidelines
- Compromise with the opposition
- State unpopular positions
- Initiate and facilitate discussions
- Encourage teamwork

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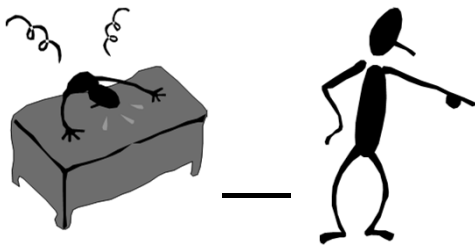
CAUTIOUSNESS



Can you see how C's are essential?

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CAUTIOUSNESS



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A Perspective

- C's rule the world
- D's think they rule the world
- I's talk about ruling the world
- S's get the job done



Meeting Management

- A well-run meeting makes a difference in a board's effectiveness



Meetings

- Although the ED is not a member of the board and has no voting rights, the ED is more than just an employee of the board; he or she is a valuable resource on all issues
- The ED should sit at the board table at meetings and should be expected to make well-supported recommendations



Closed & Open Meetings

- All board meetings are open to the public unless, for a specifically named and limited purpose, a meeting is scheduled as a closed meeting, or an open meeting is called into a closed session
 - In compliance w/public notification procedures
 - All votes on an item discussed in a closed meeting or session must occur in a meeting open to the public



Types of Meetings

- It's important to know the purpose and protocols of the types of meetings
 - Annual meeting
 - Regular board meeting
 - Special board meeting
 - Executive session



Principles for Effective Meetings

- Clearly identify purpose of meeting
- Focus on well-chosen and clearly stated goals – affirm the PHA's mission and goals
- Identify purpose of each agenda item
- Facilitate information exchange when appropriate:
 - Learning, brainstorming, critical thinking, goal setting, or decision-making, etc.



Principles for Effective Meetings

- Set clear ground rules – examples:
 - Everyone participates
 - No one interrupts
 - Time limits will be adhered to
 - Board resolves or refers all issues on the agenda
 - Confidentiality maintained when appropriate



Principles for Effective Meetings

- Set clear ground rules
 - Chairperson may need to reiterate these at each meeting if there is conflict within the board or if there is a contentious agenda item
 - Important to create an environment where everyone feels safe to contribute
 - Again, meetings are not a good forum in which to resolve interpersonal conflict



Tips for Decision Making

- Know what the agenda item calls for
- Don't make decisions that aren't yours to make
- Some decisions are best made collaboratively - if possible, move slowly on high-stakes decisions
- Try to avoid snap decisions - unless it must be made right now, and you're the right person
- Make the decision while you still have time
- Do decision-making on paper



Board Decision Making

- Know what decision you're making and how you're making it
 - Brainstorm
 - Consensus
 - Authoritative
 - Participative
 - Benefit analysis



Diversity

- Diversity is creating a culture where everyone can thrive and contribute
- Cultural identities should not be ignored, but should be maintained and valued



Strategic Planning

- Major difference between a PHA that "fights fires" only and a strategic organization is the skill to see the broad perspective and take the long view



Strategic Planning

- Purpose:
 - Carry out mission through realistic goals
 - Communicate the goals to PHA and customers
 - Ensure effective use of PHA's resources
 - Provide a base from which to measure progress



Step 1 in Strategic Planning

- Define how the PHA will plan and who will participate
 - Number of meetings, length of time
 - Who will participate, who will provide key information
 - Schedule



Step 2 in Strategic Planning

- Review your mission and vision statements
 - Bring fresh eyes
 - Your mission and vision will drive the process



Step 3 in Strategic Planning

- Know your PHA's baseline
 - Do you really know how your PHA is doing?
 - You can't solve a problem you don't know you have
 - Quality control tracks performance – and then you can conduct trend analysis



Step 4 in Strategic Planning

- Conduct SWOT analysis – consider:
 - Strengths – what gives PHA advantage
 - Weaknesses – what place the PHA at a disadvantage
 - Opportunities – external chances to improve performance
 - Threats – external environment that could cause trouble



Step 4 – SWOTs

- Issues that may emerge during strategic planning:
 - Lack of quality control and trend analysis
 - Generational differences
 - Succession planning



Step 5 in Strategic Planning

- Prioritize and agree on goals and objectives
 - Decide on your top strategic goals
 - Objectives to achieve strategic goals
 - Objectives will be measured and validated
 - Strategic goals should be realistic but should drive the PHA beyond business as usual
 - Limit the number of strategic goals



Step 6 in Strategic Planning

- Prioritize and agree on strategies to achieve goals and objectives
 - How to measure
 - Action plan
 - Timelines and responsibilities
 - Allocation of resources, including budget



Step 7 in Strategic Planning

- Plan is drafted and submitted to Board, the team and stakeholders
 - You want a participatory process
 - Board needs to be engaged and committed to the long-range vision and direction of the PHA
 - Time period for comment, review and revision



Step 8 in Strategic Planning

- Plan out the implementation, disseminate, and train
 - Communication of the plan should be formal and planned out - everyone in the PHA sees and understands (including any new QC system)
 - Written and verbal communication
 - ED implements the plan as approved by Board



Step 9 in Strategic Planning

- Periodic review and calibration
 - Should be a living document
 - Monthly report – progress of strategic goals
 - Annual report – overall progress
 - Revise the plan if needed
 - Unanticipated changes, unforeseen circumstances, change in leadership



The Multigenerational Workplace

- If your PHA is losing its younger next-generation talent, should address strategically how to manage multigenerationally



Which Generation Are You In?

- Traditionalist (born before 1945: 72+)
- Baby Boomer (born 1946-1964: 53-71)
- Generation X (born 1965-1977: 40-52)
- Millennial (Gen Y) (born 1978-1989: 28-39)
- Gen Z (born 1990-2000: 17-27)
- Post-Millennial (2001-?: <17)

- Cusper/In-Betweeners: Within 5 years of range, you may also identify with another generation



Resolving Generational Differences

- Is it a business necessity?
- Or is it a generational preference?
- If it's not a business necessity, it's a preference and should be flexed
- Different, therefore wrong, or not wrong, just different



Succession Planning

- PHAs, and most businesses, need to plan for new leadership
 - So that historical information (lessons learned, relationships built) and critical information (documents, processes) are not lost



Succession Planning

- Succession planning:
 - Prepares employees to undertake key roles
 - Develops talent and long-term growth
 - Improves workforce capabilities
 - Improves employee commitment and retention
 - Career development support to employees



Succession Planning Models

- There is succession planning software
- Suggestions:
 - Talent management and recruitment should be directly aligned with strategic goals
 - Directors can be viewed as talent scouts
 - The 70-20-10 model is 70% with experience, 20% with coaching, 10% from formal training



Succession Planning Steps

- Develop a model for every job, or key jobs
 - Behavior and attitude as well as KSAs
- Know where you are going
- Map the gaps
- Ask for directions – talk to employees about their career goals and aspirations
- Identify roadblocks – bottlenecks?



Ethics

- Ethics is knowing what is right and wrong, and doing the right thing
- Ethics is your moral compass in times of crisis and confusion



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Ethics

- General guidelines for managing ethics:
 - It's a process - the bottom line is achieving preferred behaviors in the workplace
 - The best way to avoid ethical dilemmas is to avoid their happening in the first place
 - Value forgiveness

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Top 15 Board Mistakes

1. Failing to understand fiduciary duties
 - You accept responsibility to act in good faith, and also accept potential liability
 - It's not enough to rubber stamp
2. Failing to provide effective oversight
 - Policies, financial submissions
 - Difficult or time-consuming tasks can be assigned to committees, but Board still has oversight

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Top 15 Board Mistakes

3. Deference to the ED or board chair
4. Micromanaging staff
5. Avoiding the hard questions
 - Calmly and respectfully speak your mind
 - Open discussions about key issues should be encouraged
6. Insufficient conflict of interest management
 - Real or perceived



Top 15 Board Mistakes

7. Lack of awareness of laws and HUD regulations
8. Operating with outdated, inconsistent governing documents and policies
9. Airing disagreements outside the boardroom
10. Failure to cultivate board diversity
11. Recruiting and selecting board members without due care



Top 15 Board Mistakes

12. Failing to educate and motivate board members
 - Many commissioners on Boards simply don't understand what they're supposed to be doing
13. Failing to document actions appropriately
14. Failing to review program effectiveness and efficiency and take appropriate follow-up actions



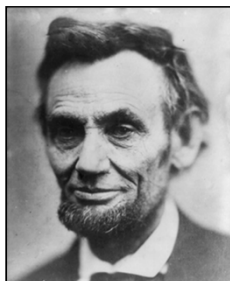
Top 15 Board Mistakes

15. Failing to hold executives and nonparticipating board members accountable
- Do executives, managers and staff know what is expected? Do commissioners?
 - The workforce is now multigenerational – younger managers
 - Have you ever had to remove a board member who doesn't show up for meetings?



Leadership

- A leader is someone with a vision who articulates the vision
- When you come together with a shared vision, extraordinary things happen



Conclusion



Conclusion

- Board members have high-stakes duties
 - Duty of care requires “reasonable prudence” based on common sense
 - Lack of diligent attention, nonattendance at meetings, and unquestioning reliance on ED doesn’t lessen duty



Five Truly Essential Questions

- *Wait, what?*
- *I wonder...?*
- *Couldn’t we at least...?*
- *How can I help?*
- *What truly matters?*



Summary

- What did you learn that will be helpful to you as a board member?