



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Size Matters: How Many Board Members Do You Need?

How many board members should your Georgia nonprofit organization have? This question can be particularly tricky for new or small nonprofits, but it is an important topic to consider. A small board made up of members with close relationships does pose some advantages, but the potential downfalls eventually outweigh any benefits. A small, closely related board probably does not effectively serve the needs of the organization, and the IRS may have problems with it as well.

A founder of a nonprofit often chooses trusted friends and family to serve on the organization's founding board. Early in the life of a nonprofit, there are rarely paid employees and a "working" board commonly handles the new organization's operations. But as an organization grows, raises more money, and eventually adds paid staff, it becomes necessary to expand the board. There are some key practical reasons for this - for example, a larger board can handle the expanding workload and raise more money. But the focus of this article is on the legal reasons for expanding an organization's board – both in size and diversity.

The Georgia Nonprofit Code requires a minimum of three board members for all nonprofit corporations created after July 1, 2023. Plus, the IRS closely monitors the size and makeup of an organization's board. On both the Form 1023 application for tax-exempt status and the Form 990 annual return, the IRS requires a list of board members and asks multiple questions about the size of the organization's board, any compensation of board members, and relationships among board members.

What does the IRS consider to be an appropriate board size? The IRS does not require a set number of members or a particular composition of the board, but it focuses on the potential for private benefit in a board. The IRS has stated that close control of a nonprofit by a few individuals, without a system for public oversight, creates an environment for potential abuse and insider benefit. It places the burden on an organization to prove that it serves a public interest rather than private interests, such as designated individuals, the founder or his/her family, or persons controlled, directly or indirectly, by such private interests. While the IRS has not dictated a formal rule on board size, some IRS rulings provide guidance for what NOT to do.

First, a tax-exempt organization should never have a single-person board. Even though the Georgia Nonprofit Corporation Code allows a Georgia nonprofit corporation

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created prior to July 1, 2023 to have only one board member, the IRS does not approve. It has determined that an organization with only one board member did not qualify for tax-exemption under 501(c)(3) because it could not prove that its net earnings would not benefit the organization's sole board member and founder.

Next, a board should not be composed only of immediate family members. The IRS has revoked the tax-exempt status of an organization because its board consisted of a pastor and his spouse. The IRS also has revoked the tax-exempt status of a nonprofit organization because the board consisted of only a father and his son. The IRS determined that the structure of that organization resulted in an obvious level of private benefit to the father and son. In another example where the board consisted solely of a husband, wife and son, the tax court noted that such circumstances "provide an obvious opportunity for abuse of tax-exemption and therefore there must be open and candid disclosure of all facts of the organization, including its finances and operations." In that case, the organization didn't furnish complete information and the court decided the organization couldn't prove that it was not operating for the private benefit of the family.

While the IRS has not set any bright line rules for board composition, the following are best practices for a 501(c)(3) nonprofit corporation to follow:

- Have a minimum of three board members. For Georgia nonprofit corporations formed after July 1, 2023, it is not only a best practice but required under Georgia law to have a minimum of three board members.
- Make sure that a majority of board members are independent of one another and of the founder – with no family relationships or business relationships outside of the nonprofit.
- Don't fill the board with just family and friends of the founder. In order to fulfill their legal duty of oversight, the board members must be comfortable questioning and even challenging the leadership.
- Always consider what work the board needs to accomplish and fill the board with enough people with the right talents to do the work. A diverse board with members with different strengths will best serve the nonprofit.
- Have a rotating board with staggered terms and consider term limits in order to encourage fresh ideas and excitement while maintaining mission consistency.
- Just as too small of a board can present problems, so can too large of a board. Resist the urge to have a board that is very large (such as 20 members or more) as it may make it more difficult to operate (to obtain quorum for meetings, keep board members engaged, etc.).