



Are you a member of a public board or commission?

Know your responsibilities



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Introduction

- The presenter(s)
- The Office of the Inspector General
- Why this training?

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Introduction

- Note: board and committees (aka governing bodies) are all created differently, have different missions, may follow different rules
 - This training is meant to address some common elements applicable to most public governing bodies
 - We may not directly address your specific type of governing body and we may discuss things not applicable to your specific governing body



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Goals for Today

- Provide you with an outline of “Board” essentials
- Help you to better understand and appreciate your vital role



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Topics for Today

- Board Member Responsibilities
- Open Meeting Law **Overview**
- Public Records Law **Overview**
- Fraud Awareness
- Effective Meetings

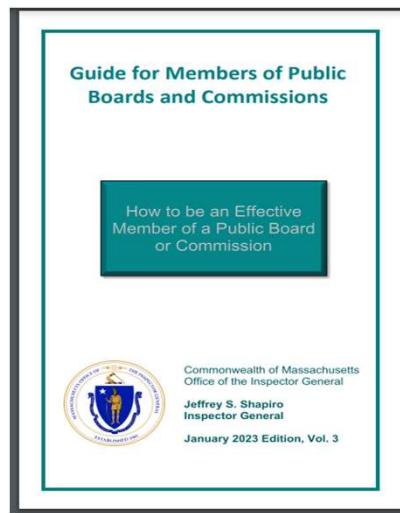


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Guide for Boards / Commission Members

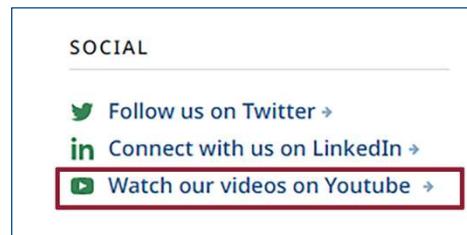


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You Tube Video



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Links

- **Guide:**

<https://www.mass.gov/doc/guide-for-members-of-public-boards-and-commissions/download>

- **YouTube:**

<https://www.youtube.com/watch?v=BFd9PmEhKZk>



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What's my job on this Board?

- Have you asked yourself this question?
- Were you satisfied with the answer?



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Always remember

- You represent the interests of others.



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Always remember

- You act as a trustee, custodian, guardian, steward, etc. of public resources, public funds and/or the safety, welfare and rights of those represented
- Whether appointed or elected, part time or full time, paid or voluntary, the same standards apply



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Major Board Responsibilities

- Tone at the top
- Policymaking
- Managing the manager
- Exercising due diligence
- Overseeing the organization



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Major Board Responsibilities

- Honoring fiduciary duty
- Fulfilling oath of office
- Decision-making



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Individual Responsibilities

- Commitment
- Integrity
- Applying knowledge and expertise
- Using sound judgement



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Board Responsibilities

Tone at the top/culture

- "The buck stops here" - responsibility
- Leadership *"is about guiding and impacting outcomes, enabling groups of people to work together to accomplish what they couldn't do working individually."* - McKinsey & Co.

Policymaking

- Creates the framework for the tone/culture you want to have and that you express to others



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Board Responsibilities

Management

- You are the owner. Managing the manager is not micromanagement.
 - Management works for you (but you are not management)
- You are the primary oversight body - not a rubber stamp



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Board Responsibilities

- Duty to participate and be engaged
 - Silence is not golden in this context
- Public face of the organization
- Be transparent and accountable
- Maintain the public trust
- Due Diligence aka Homework



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Questions you should know the answers to

- What is your organization's purpose or mandate?
- What is the role of your board?
- What is your role as a board member?
- What laws/rules govern the organization, the board, and you?
- What does the organization do and how does it do it?



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What is your job description?

- Do you have bylaws or other governing documents?
- Does your position have a job description?
- What does your website say? Your municipal annual report? Other documents?
- What do your constituents think you do?
 - “Possession is 9/10ths of the law” - you may “own” the public perception of what they think you do



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Do you know what your organization is “not” doing?

- 9/15/21
 - MA State Auditor found that the Division of Professional Licensure (DPL), and its 26 independent boards of registration did not know if legally required Criminal Offender Record Information (CORI) and Sex Offender Record Information (SORI) checks were completed on license applicants
- Should the board members have asked whether licensees met requirements before approving the licenses?



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Fiduciary Duty

- You may be considered a fiduciary
- What is a fiduciary?
 - A person [that] has a duty, created by their role, to act primarily for another's benefit
 - From the Latin *fiducia* = trust



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Fiduciary Duties

- Duty of Care
 - Be careful, diligent and thoughtful
- Duty of Loyalty
 - The organization's best interests (the "whole") come first – before your personal interests (which, is different from your personal judgment). In other words, avoid conflicts of interest.



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Fiduciary Duties

- Duty of Impartiality
 - to ensure equal opportunities (fairness) for all constituents
 - National Labor Relations Board (NLRB): "*Your union has the duty to represent all employees - whether members of the union or not - fairly, in good faith, and without discrimination.*"



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Tragedy of the Commons

- The tragedy of the commons is a term used in social science to describe a situation in a shared-resource system where individual users acting independently according to their own self-interest behave contrary to the common good of all users by depleting or spoiling that resource through their collective action

Source: Wikipedia



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Commons



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Fiduciary functions

- Assess management transactions
- Safeguard public and organizational assets/resources
- Promote accountability & transparency
- Fiscal oversight



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Oath of Office

- I, _____, do solemnly swear:
 - Faith and allegiance to the Commonwealth,
 - Support the Constitution
 - Uphold laws (enforce law and regulation - federal, state, local)
 - Uphold local by-laws/ordinances
 - (Optional) To work in best interests of my organization



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Common Challenges

- Conflicts of interest
- Expert syndrome
- Authoritarianism
- Abdication of authority
- Meeting expectations
- Meaningful due diligence



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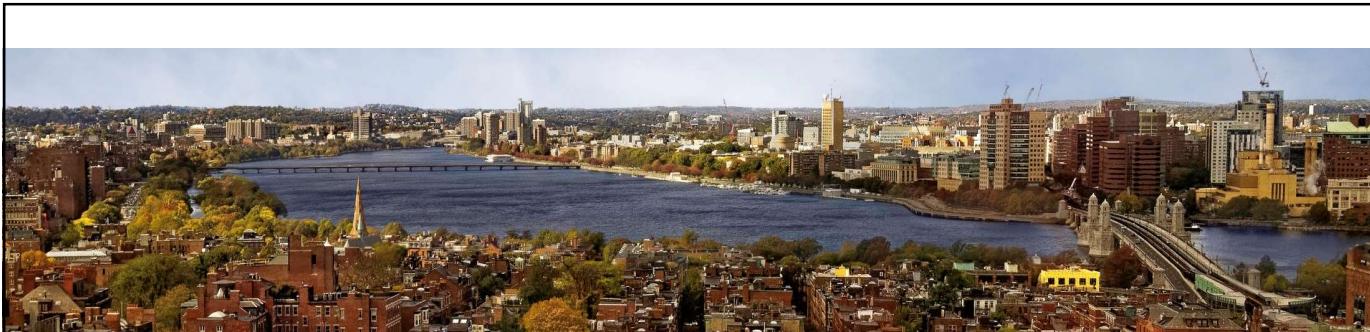
Questions?



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Open Meeting Law

Balancing Government Transparency with Government Efficiency



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Note

- The Open Government Division of the Attorney General's Office interprets and enforces the open meeting law (OML). OML investigates Open Meeting Law complaints
- *This presentation is an overview for informational purposes.* OML questions should be directed to the Open Government Division. Information provided by the Open Government Division supersedes any information provided today.



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Resources

- Attorney General's Open Meeting Law Website
<https://www.mass.gov/ago/openmeeting>
 - Guide, FAQs, Checklists, Determination Letters
- Open Meeting Law: M.G.L. c. 30A, §§ 18-25
- Regulations: 940 CMR 29.00



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Open Meeting Law Guide

- Review Educational Materials
 - **Execute and file the certificate of receipt** and review of *Open Meeting Law Guide* within two weeks of appointment
 - Contains helpful information
 - Open Meeting Law determinations by the Attorney General's Division of Open Government
 - Interpretations of the Open Meeting Law



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Purpose of the Open Meeting Law (OML)

- Government Accountability and Government Efficiency
 - **Accountability:** ensures transparency
 - Must provide notice and public access to open deliberations of elected or appointed officials
 - **Efficiency:** allows government to manage its operations
 - Executive session deliberations and confidentiality of the subject under review for safety, reputational interest or fair process



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Key Things to Remember

Notice of meetings must be posted

Meetings must be open to the public

Minutes must be kept

Complaint process



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Not a Deliberation

- Oral communications
 - Setting agenda and schedules
 - Chatting during an open meeting recess
- Writings
 - Social media posts directed to the public
- Conduct
 - Distributing documents, reports, etc. without comments
- No authority to act
 - Sub-quorum (not subcommittee)



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Public participation

- Public may attend an open session
 - Open Meeting law requires transparency of deliberations. Public participation is not a part of the open meeting law. Public participation is a board option.
- Accessibility (ADA) considerations
 - Lack of access could be OML violation



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Executive Session

- Follow AGO checklist (on AGO website)
- Executive session must be based on at least one of only ten reasons
 - Examples: personnel matters, union contract negotiations
 - Review AGO materials and/or consult with your legal counsel to determine appropriateness of an executive session



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Executive Session minutes

- Maintained as you would other meeting minutes
- Remain confidential until the purpose for the confidentiality no longer remains



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Meeting Minutes

- Minutes must include:
 - Date
 - Time
 - Place of the meeting
 - List of members present or absent
 - May include invited guests
 - May be complete list of all attendees

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Minutes for [Organization Name]	
Call to Order A [meeting type] meeting of [organization name] was held on [date] at [location]. It began at [time] and was presided over by [chairman's name], with [secretary's name] as secretary.	
Attendees Voting members in attendance included [list voting members here]. Guests in attendance included [list guests here]. Members not in attendance included [list members who did not attend].	
Approval of Minutes A motion to approve the minutes of the previous [date] meeting was made by [name] and seconded by [name].	
Officers' Reports [Report name] was presented by [name of presenter]. [Report name] was presented by [name of presenter].	
Other Reports [Report name] was presented by [name of presenter]. The following resolution was adopted: [resolution].	
Main Motions Motion: Moved by [name] and seconded that [state the motion here]. The motion [carried or failed] with [number of yes's] in favor and [number of no's] against. Motion: Moved by [name] and seconded that [state the motion here]. The motion [carried or failed] with [number of yes's] in favor and [number of no's] against. Motion: Moved by [name] and seconded that [state the motion here]. The motion [carried or failed] with [number of yes's] in favor and [number of no's] against.	
Announcements	
Adjournment [Name of mover] moved that the meeting be adjourned, and this was agreed upon at [time of adjournment].	
Secretary [Organization name]	Date of Approval

Meeting Minutes Template © 2024 iMeld LLC <http://www.imeld.com/MeetingMinutesTemplate.html>



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Meeting Minutes

- Minutes must include:
 - Summary of each topic discussed
 - Decisions made and actions taken
 - A record of all votes - secret ballots prohibited
 - List of documents and other exhibits used by the body at the meeting, including by remote participants.
 - Minutes are intended to be a meeting summary for historical reference. Can someone who did not attend know what occurred at the meeting and why?



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Meeting minutes

- Audio or video recording of a public meeting DOES NOT eliminate the need for written meeting minutes



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Massachusetts Public Records Law

Transparency



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Note

- This presentation is an overview for informational purposes. The MA Office of the Secretary of State interprets and enforces the records law. Questions should be directed to that office. Information provided by the Office of the Secretary of State supersedes any information provided today.



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MA Secretary of State

- Massachusetts Public Records Law
 - [Chapter 66, § 10](#)
 - Secretary of State's office oversees the records law
 - Publishes the Code of Massachusetts Regulations: [950 CMR 32:00](#)
 - Makes determinations related to appeals from requestors
 - [Chapter 4, § 7\(26\)](#) identifies exemptions



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Records

- Every record created or received by a governmental entity is presumed to be a public record unless an exemption applies
 - Many exemptions. Need to review the materials provided by the MA Secretary of State
 - Exemptions (examples): trade secrets, investigative records, records related to minors



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What are public records?

- Electronic records treated the same as paper records
 - Email communications
 - Text messages !!!
 - Recordings
- Record is broadly defined to mean any official communication



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Records Access Officer (RAO)

- Law requires appointment of Records Access Officers
 - Local jurisdictions (municipalities)
 - Municipal clerk or designee, or
 - Any designee appointed by the chief executive officer
- Contact information for RAO must be posted



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Access

- A person may request copies of, or access to, public records
 - May be anonymous request
- Questions are not requests for public records
- Not required to create records that do not currently exist
- If possible, provide records electronically to reduce costs



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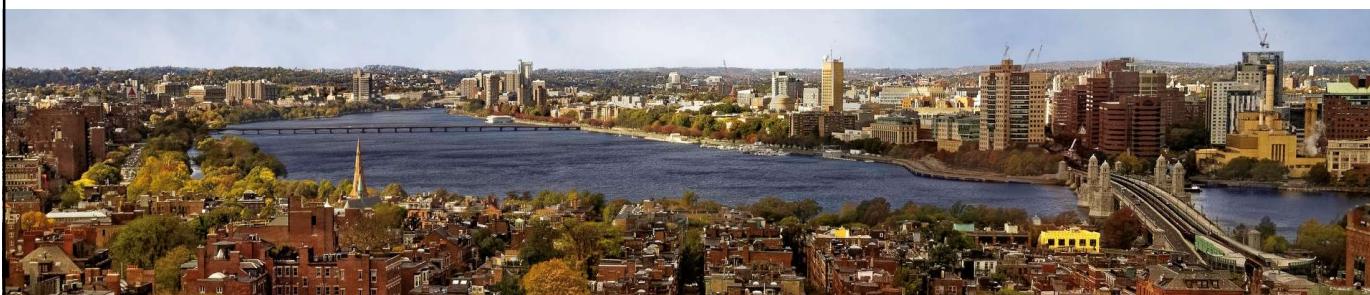
Respond to request within ten business days

- The RAO must:
 - Respond within 10 days, but a response does not mean records are provided.
 - May charge a fee for record production but fees are discouraged



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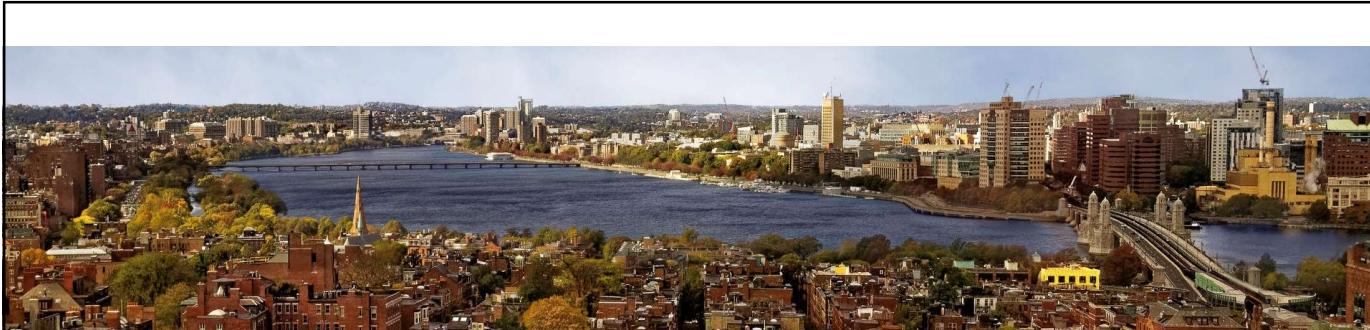
Questions?



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Running an Effective Meeting

Best Practices



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Running an effective meeting

- Note: All meetings are different and different rules may apply
 - These are generic best practices that may not fit all situations
 - Open meeting law applies to most public governing body meetings



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Best practices

Ask yourself: Why are we having this meeting?

- Meeting objectives
 - To be effective
 - To be efficient (timely)
 - To ensure accountability
 - To meet your duty and responsibility



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Nature of meetings

- Not everyone likes meetings
- Our own actions and management style may discourage interest in and the effectiveness of meetings
- “This job would be so much better without meetings.” – Anonymous public board member
 - But meetings are required by law, public policy, constituent expectations, democratic process, etc. So, how can we make them “better.”



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Efficient



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Effective



"A motion has been made and seconded that this be one of those meetings where nothing actually gets done."



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Accountable



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Hopefully Not

A meeting is an event at which the minutes are kept and the hours are lost.

- Unknown



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Can We Improve our Meetings?



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Answer

- Yes. There is always room for improvement



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Pre-meeting

- Remind yourself of the meeting's purpose
- Know your audience – it's about them – what do they need to know?
- Understand your role in the meeting (what's my job?)
- Target what you want to accomplish in the meeting



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Chair

- Set clear meeting goals
 - Nudge the meeting back on track if goals are not being met. Be a leader...
- Set the “tone” for the meeting
- Set limits – time and topics (should be a written policy)
- As needed, set clear next steps/actions/expectations
 - Meetings are typically part of a larger process



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Members

- Do your homework and come prepared
- Be clear and concise (efficient and effective)
 - Try not to ramble on or simply repeat what others have said. It's OK if you have nothing more to add.
- Keep outcomes in mind (why are we here?)
- Be respectful
- Follow the rules of order



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Best practices

- Listen to what others say
- Pay attention to body language and tone
 - Know when it's time to move on



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Best practices

- Attack problems rather than people or personalities.
Debate **within the board**, not with the audience
- Target solutions
- Don't dominate the discussion



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Good questions focus the conversation

- Use open-ended questions to encourage conversation and debate
 - Poor: We should eliminate this policy - right?
 - Better: Why should we keep this policy? (more constructive and prompts discussion)



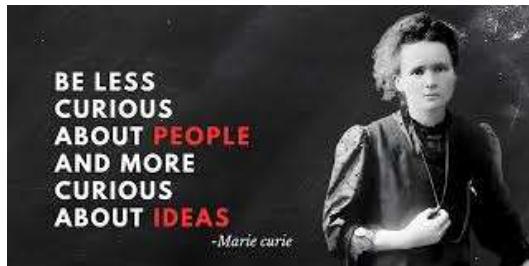
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Good questions focus the conversation

- Curiosity has a return on investment
- Stay focused
 - Ask new questions or explore answers given rather than repeat



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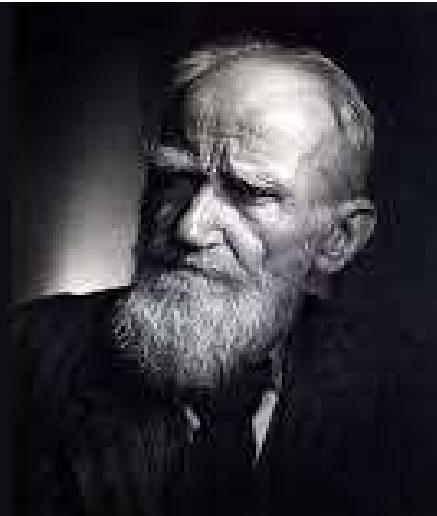
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Keep in mind

THE SINGLE BIGGEST
PROBLEM WITH
COMMUNICATION IS THE
ILLUSION IT HAS TAKEN
PLACE.

~ George Bernard Shaw



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Set Clear Next Steps

- Chair: sum up what has been accomplished
- Define next steps/tasks
- Outline next meeting's agenda items (if possible)

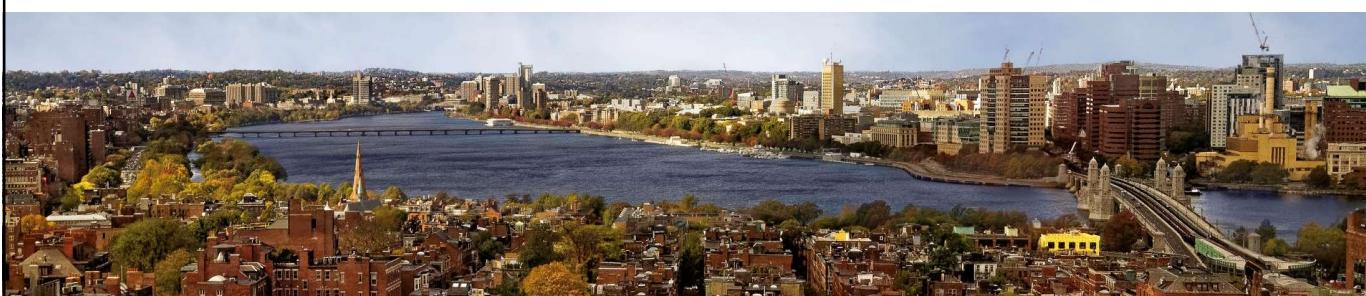
- Best Practice: periodically evaluate how the board is working.



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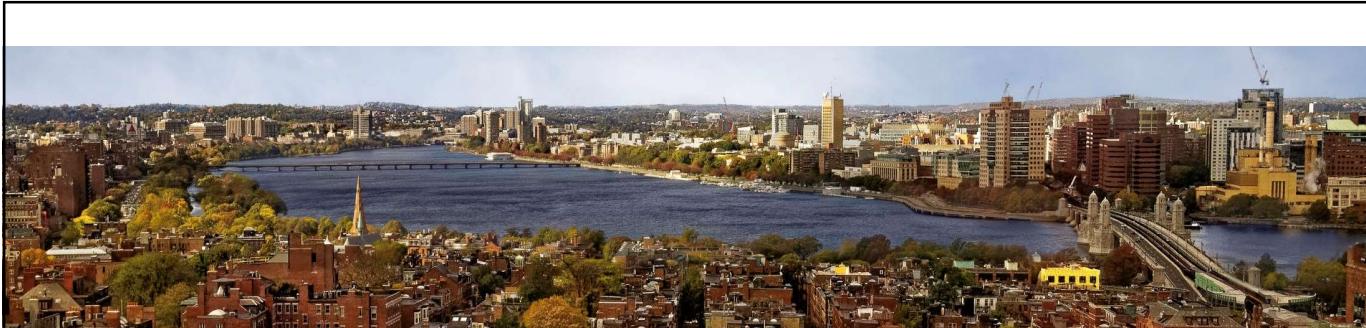
Questions?



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Fraud Awareness & Prevention

Protecting our organizations



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What is fraud?

- SIMPLE: Lying to get something that doesn't belong to you.
- Deception, concealment, and/or a violation of trust to deprive another of something of value. Typically for "**gain**."
- Fraud is committed by individuals and/or organizations.



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Why is this topic important?

1. Government programs are at high risk for fraud. Account for about 25% of all frauds. Source: Assoc. of Certified Fraud Examiners.
2. Prevention is easier than detection



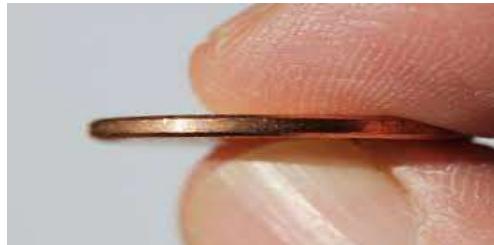
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Why?

3. It's a cost control measure - 35% reduction in losses when there is fraud training. Source: Assoc. of Certified Fraud Examiners



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Why? - Loyalty, Candor, Care

4. Fiduciary Duty - "An individual in whom another has placed the utmost trust and confidence to manage and protect property or money. The relationship wherein one person has an obligation to act for another's benefit."



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And last, but not least....

5. Because fraud happens!!!

Remember:

Fraud is often a crime and crime happens.



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Summary

- Fraud prevention is a policy issue
- Management is responsible for prevention
- Public employees have a fiduciary duty and responsibility to prevent fraud when possible



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Examples

- Library embezzlement
- Housing Authority Exec Director embezzlement schemes
- Water district embezzlement
- Common theme: oversight provided by public boards



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Criminal Acts

- We can't ignore it!
- We must report it!
- And even if we can excuse it on a personal level, we have no authority to do so in our fiduciary capacity.



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Typical Fraud

- Municipal/local frauds = \$80,000 average
- Lasts about 2 years
- Offices that deal with money, finances, contracts are the hardest hit



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Causes of Fraud

- Lack of adequate internal controls is #1 cause
- Lack of management oversight is #2
- Override of controls is #3
- Poor tone at the top is #4



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Red Flags: Basic Examples

- Red flags are warnings, not evidence. Examples:
- Lack of supporting documentation
- Overrides
- Lack of responsiveness/reporting
- Complaints



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What is your anti-fraud program?

- Inventory your anti-fraud measures
- Evaluate these measures
- Determine what else you can do
- Review your risk profile: fraud risk assessment
 - What this includes is up to you? Many options.

Any steps are better than no steps at all



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Anti-fraud measures

- Written policies & procedures
- Training
- Vendor/payment verification
- Reporting mechanism
- Reviews, inspections
- Job rotation



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Summary

- Need a program and a plan of action
- Can be implemented in phases
- Involve stakeholders - it's about the "whole"
- Again, some steps are better than no steps



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What should you do if fraud is “detected”?

- Go to your plan (if you have one)
- If only see a red flag: contact OIG, external auditor, legal counsel, local police - more work is likely needed to confirm allegation
- If you have evidence: proceed with caution! Contact OIG, DA, legal counsel, local police
- Do not investigate on your own. Preserve evidence. Do not confront alleged fraudster.



Final words

- Trust, but verify (fiduciary duty)
- Ask questions
- Be skeptical (due diligence)
- Be proactive (prevention is cheaper than detection and remediation)



Thank You!

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orgs/office-of-the-
inspector-general](https://www.mass.gov/orgs/office-of-the-inspector-general)
- Main Telephone Number
 - (617) 727-9140
- Fraud Hotline
 - (800) 322-1323



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