



Fiduciary Governance Training for Howard County Maryland Retirement Plans

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Proper Governance Model Reflects Committee Members' Roles vis-à-vis the Retirement Plans

Howard County Retirement Plans' Committee Member Roles:

- Trustee/Fiduciary
- Public Official
- Assigned authority over administration and investment of funds of public retirement system; responsible for oversight and monitoring
- Decision-maker with quasi-judicial authority as to other matters within retirement system jurisdiction (e.g., review of decisions by Disability Review Board)
- Policy-maker with some quasi-legislative and other authority over governance of the retirement system within statutory bounds (e.g., actuarial determinations for funding of retirement plans)

Committee Governance with Respect to Fiduciary Role

- Trustees are to understand and comply with fiduciary responsibilities
- Committees must carry out responsibilities consistent with the trustees' fiduciary duties:
 - Act in good faith as a prudent expert (duty of care)
 - Act in the overall best interest of members and beneficiaries

Fiduciary Duty of Care Applicable to Committee Governance

- **Attend Committee Meetings:**
 - “[N]o one should become a director without being reasonably certain that he or she will actively participate in the board’s work”
 - *(A.A. Sommer Jr., ABA Journal, June 1992).*
- **Homework:**
 - Read and seek to understand the information that is reasonably available.
- **Be Prepared and Ask Questions:**
 - Reliance on management, staff and consultants should be actively considered, reasonable and fact-based.

Fiduciary Duty of Care Applicable to Committee Governance

- **Action:**
 - When the Committee members have been put on notice about an issue, they should be persistent in obtaining accurate and complete information.
- **New Committee members should take reasonable steps to learn about the organization they are being asked to serve:**
 - Attend trainings
 - Ask questions
 - Educate self on industry, trends

Fiduciary Duty of Loyalty Applicable to Committee Governance

Primary Duty Rule:

- Act loyally for overall best interest of your retirement system's members and beneficiaries
- Duty not to acquire a material benefit from a third party in connection with your or other retirement systems' transactions
- Duty not to use or communicate confidential information for own purposes or those of a third party
- Similar and parallel to the statutory and common law conflict of interest prohibitions.

Expectations of Trustees and Vulnerabilities Common to Public Pension Plan Design

- Appointed, elected and ex officio members assume positions on Committees as provided by plan design
- Trustees' loyalty is to the overall best interest of the retirement plans' members and beneficiaries – not to appointing authority, ex officio position, or to contingent of membership that elected the Committee member:
 - Under general trust law, a Committee member does not sit on the Committee as representative of the group that elected or appointed him or her

Committee Governance with Respect to Role as Public Official

- Comply with rules applicable to local public officials (e.g., conflict of interest rules)
- Conduct meetings in accordance with Open Meetings Act
- Follow Public Records Act

General Conflicts of Interest Principles

- A Committee member may not participate regarding a retirement system matter that impacts his or her own finances in a manner that is different from how it impacts retirement system membership generally.
- A Committee member also may also not participate in a matter if it is expected to impact his or her own employment or personal finances (other than public employee salary and benefits in the same manner as other similarly situated members of the retirement system).

Open Meeting Act and Public Records Principles

- State and local laws provide parameters regarding the extent to which all or portions of Committee meetings must be conducted in a manner that the public may observe them, or may be discussed in closed session
- State and local laws also provide parameters for retention and disclosure of public documents, upon request.
- One aspect of good governance is for Committee members to be educated regarding those open meeting and public record requirements.

Committee Governance with Respect to Administration of Retirement Plans

- The retirement “plan” is contained in provisions of the County Code that permit or require retirement and related benefits to be paid from the retirement trust funds the Plans administer, as well as ordinances, resolutions and policies that have been adopted to implement those statutes.

The Retirement Plan: Other Provisions

- Other laws also set rules regarding the administration of public retirement systems and may be deemed part of the plan, such as:
 - Financial reporting and actuarial valuation requirements
 - Must prepare annual reports in accordance with generally accepted accounting principles
 - Must secure the services of an enrolled actuary and conduct actuarial cost projections in connection with proposed benefit changes.

Committees' Governance: What do Trustees Control?

- Effective conduct of Committee meetings:
 - All non conflicted members have equal rights, privileges, and obligations:
 - Majority vote decides.
 - Full and free discussion of every proposition presented for decision is an established right of members.
 - Every member has the right to know the meaning of the question before the assembly and what its effect will be.
 - All meetings must be characterized by fairness and by good faith.

Rules of Conduct for Effective Meetings: The Chairperson as Presiding Officer

- **Role of the Chairperson**
 - Tracks who has spoken
 - Recognizes members with different viewpoints
 - Monitors time allotted for discussion until members close debate or otherwise dispose of the motion
- **The Chairperson also:**
 - Calls the meeting to order, announces items on the agenda and reads motions at meetings so that they may be properly understood and debated.
 - When the Committee is ready to vote, the Chair submits the motion for the final decision and, after the vote, announces whether or not the motion has carried.

Rules of Conduct for Effective Meetings

- **Voting:**
 - Once debate has ceased on an issue, the Chair of the meeting will conduct a vote on the motion under consideration.
 - There are several ways to vote at a meeting:
 - by voice
 - by show of hands
- Routine business normally requires only a simple majority of those present to be approved, unless Committee rules provide otherwise.

Rules of Conduct for Effective Meetings

- **Minutes:**

- Minutes are kept at meetings to accurately record the proceedings:
- They are not a verbatim account of debates, but may include summaries of major points made
- Inaccuracies in the record are noted and the appropriate corrections made

How Else do Committees Provide Good Governance of the Retirement Plans?

- **Oversight of Retirement Plans by Committees**
 - Through selection, monitoring and compensation of Retirement Coordinator and other staff; currently performed by Chair of the Committees
 - Potentially through use of subcommittees to maximize productivity and provide oversight. Possible subcommittees include, and are not limited to:
 - Investment
 - Finance, Risk Management, Audit?
 - Governance?
 - Education?
 - Though policy development and monitoring

Committee Oversight: Staff

- **Selection of Staff:**
 - Define roles and responsibilities.
 - Identify credentials
- **Monitoring:**
 - Direct report to Committees by Retirement Coordinator, legal counsel and other advisors, as appropriate.
 - Retirement Coordinator accountable to Committees, and any subcommittees, regarding executive staff and consultants and reports to Committees regarding any significant matters.
 - Annual evaluation of Retirement Plans' staff.

Committee Oversight: Investments

- **Committee of the whole currently oversees Retirement Plans' investments**
 - Develops and amends Investment Policy Statement
 - Monitors investments and investment advisors

Policies: Bylaws

- **Bylaws for HCPF and HCRP**
 - Describe predicates to calling a Committee meeting and conduct of meetings (quorum, voting, open and closed sessions, et al.)
 - Define members of the Committee (including term, Chairperson, and role of Retirement Coordinator)
 - Establish authority and steps for Committee to enter into contracts
 - Provide for indemnification of present and former Committee members (including requirement for procurement of insurance)
 - Address waiver of notice of meeting and amendment of bylaws provisions

Policies: Standards of Professional & Ethical Conduct

- **Code of Conduct for HCPF and HCRP**
 - Describes legal structure of retirement plans and role of members of Committees as Trustees
 - Lists responsibilities of trustees

Policies: Standards of Professional & Ethical Conduct

- Provides Code of Conduct Guidance:
 - Act in good faith and in the best interest of participants and beneficiaries
 - Act with prudence and reasonable care
 - Act with skill, competence, and diligence
 - Maintain independence and objectivity by avoiding conflicts of interest
 - Refrain from self-dealing and promoting personal interests
 - Refuse gifts or benefits that may affect independence, objectivity or loyalty
 - Abide by all applicable laws, rules, and regulations, including Howard County Code
 - Treat all participants and beneficiaries fairly, objectively, and impartially
 - Take actions consistent with Master Trust's mission and supporting policies
 - Regularly review efficiency and effectiveness of Committees' success in meeting goals
 - Communicate with participants, beneficiaries and supervisory authorities in a timely, accurate and transparent manner

Policies: Investment Policy Statement

- **Applicable to HCPF and HCRP and addresses:**
 - Introduction
 - Describes Police and Fire Plan and Employees Plan origin and mandate
 - Delegation of Responsibilities to
 - Committees
 - Investment Consultant
 - Investment Manager
 - Legal Counsel
 - Plan Actuary

Policies: Investment Policy Statement

- Additionally
 - Investment Objectives
 - Asset Allocation Policy
 - Professional Investment Managers and Advisors
 - Performance Objectives
 - Review Procedures
- Last approved by the Committees on April 29, 2021

Policies: Disability Benefits

- **Separate Procedures for Determining Entitlement to Disability Benefits By HCPF and HCRP**
 - Describe manner in which employees apply for disability benefits
 - Define members of the Disability Review Committee (DRC)
 - Establish authority and steps for Retirement Coordinator, DRC and Retirement Plan Committee to grant or deny applications for disability benefits
 - Provide for appeal procedures
 - Set forth administration and adjustment of disability payments
 - Define key terms

Policies: Travel and Training

- **Travel and Training Policy for HCPF and HCRP**
 - Travel Guidelines permit attendance at “at least one” public/governmental pension conference each fiscal year
 - Guidelines and Talking Points focus primarily on logistics and expense reimbursement
 - Talking points do not to “take some notes on topics that you would like to bring back to the committee as a whole”

Potential Improvements to Committee Governance?

- Appointment of a governance and/or education subcommittee, any others?
- Adoption of charter(s) to set forth responsibilities of subcommittee(s)?
- Annual calendar to set meeting dates for subcommittee(s), usually semi-annual or quarterly. Include annual Strategic Workshop?
- Robust new trustee orientation, with trustee handbook and in-person/virtual meeting
- Establish periodic review cycle for Committees' policies, usually annual, tri-annual, or sometime on 5-year cycles
- Determine policies that may assist in the governance of the Retirement Plans and report back to the Committee

Additional Policies for Consideration by the Committees, or a Governance Subcommittee

- Education Policy, separate from Travel Policy?
- Investment Code of Conduct and Insider Trading Policy?
- Portable Electronic Device Policy?
- Retirement Coordinator Evaluation Policy, with Business Objective provisions?
- Senior Management Contingency Plan Policy?
- Annual Affirmation as to Key Policies?
- Others?

Thank You



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