



ADVISORY BOARD AGREEMENTS - 7 MUST HAVES (8/19)

We've been long-time boosters of advisory boards at *Boardroom INSIDER*. They're a great tool for companies (especially private or family-held) to target needed expertise, while avoiding all the liabilities and duties of a corporate board. But this informality has a downside -- it's also easy to muddle the advisors' role, leaving both advisors and the company in potential danger. How to start your advisory board off right?:

■ “The first problem is that too often, [the advisory role] isn't documented,” says Denson Franklin, a partner in the Bradley law firm in Alabama and specialist in private business matters. “Someone may come in under an advisory capacity, but the agreement is never properly consummated.” Then, especially in smaller or less sophisticated companies, the advisor is often drawn into an increasingly hands-on role. If the company ever faces litigation, courts may decide that if it looks and walks like a legal fiduciary, it *is* a fiduciary. Avoid danger by avoiding ambiguity -- sign an *advisory board agreement* with each of your advisors. There are plenty of [template samples online](#), but any agreement with your advisors should include the crucial items below.

■ Start by walling any advisors off from management functions. Clarify that the advisor has no power to commit the company or take any actions on its behalf. Also, state who in the company the advisory board reports to. If you have a formal board of directors, make them the advisors' contact (which also reinforces that the corporate board and advisory board are two separate animals).

■ It may seem obvious, but too often advisory board engagements are weak on precisely *what* advice is sought. “You need an agreement on what is the purpose of the board, documenting what you want it to do,” notes Franklin. Do you want the advisory panel to serve as a long-term overall think tank for management? Do you want them to come up with suggestions on new strategies, products or markets? Suggest business, customer or growth opportunities? Open-ended advice doesn't lend itself to a quantitative shopping list, so focus instead on tactical benchmarks. Number of meetings per year to be attended, preparation and review expected of an advisor, availability, and any specifics (identifying business opportunities, personal go-between duties, etc.)

■ Set a term of service. “Typically, [advisory] boards don't have a sunset, but it's great discipline to make sure members have a set term.” Certainly if the board is being set up for a specific project, you can base the end date on its completion, but even an open-ended, renewable engagement helps advisors to focus. Plus, “you don't want members to think this perpetual.” The agreement should also specify that advisors serve at will.

■ Compensation for advisory boards varies all over the spread sheet, but a few rules apply. Spell out what the advisors will be paid and when. It's best to base pay on things the advisors can control (delivering advice to management) and not things out of their control (successful completion of a deal). Include expenses for travel, etc. Liability insurance cover for advisors is also wise, particularly in litigious industries. Equity pay is popular for advisors to younger growth companies, but again, levels vary widely.

■ Build language into your advisor agreement on confidentiality, conflicts of interest, and protection of intellectual property. “Certainly you'll want a confidentiality clause, because advisors don't have the same fiduciary obligations as board members,” Franklin cautions. Include attorney/client privilege discussion (legal protections on this with advisors is uncertain -- ask your counsel).

■ Finally, who's going to chair your advisory board? Include language on the chair's duties to conduct meetings, direct the board's work, and compile, process and report findings. Added compensation for the chair will be expected.

RALPH WARD'S BOARDROOM INSIDER is published monthly for directors, CEOs, those who work with corporate and nonprofit boards (corporate secretaries, corporate counsel, support staff, and consultants), and those who are board prospects.

Ralph Ward is author of the books *BOARD-SEEKER*, *BOARDROOM Q&A*, *THE NEW BOARDROOM LEADERS*, *SAVING THE CORPORATE BOARD*, *IMPROVING THE CORPORATE BOARD* and *21st CENTURY CORPORATE BOARD*, and a speaker on corporate board issues.

Our address is P.O. Box 196, Riverdale, MI USA 48877. Telephone/fax (989) 833-7615. Our website is at www.boardroominsider.com

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