# Table of Contents

Foreword .................................................. vii  
Corporate Laws Committee .............................. ix  

**Chapter 1: Overview** ................................ 1  

**Chapter 2: Joining a Board of Directors** .................. 3  
  A. Your Evaluation of the Corporation ....................... 3  
  B. Your Evaluation of the Board ............................... 4  
  C. Your Candidacy ............................................ 5  
  D. The Board’s Expectations ................................ 6  
  E. Compensation ............................................. 6  
  F. Exposure .................................................. 6  
  G. Private Corporation Boards .............................. 7  
  H. Onboarding ............................................... 8  

**Chapter 3: Duties of a Corporate Director** .............. 9  
  A. Board Duties ............................................. 10  
     1. Responsibilities ....................................... 11  
     2. Legal Obligations ..................................... 15  
  B. Board Rights ........................................... 24  
  C. Defensive Actions, Election Contests, and Sale and Change  
     of Control Transactions ................................ 25  
     1. Duties of Directors Considering an Unsolicited  
        Acquisition Proposal .................................. 26  
     2. Defensive Actions Generally .......................... 26  
     3. Defensive Actions in Election Contests ............... 27  
     4. Duties of Directors in Sale of Control Transactions  28  
     5. Duties of Directors When a Transaction Does Not Involve  
        a Sale of Control ...................................... 30  
     6. Controlling Shareholder Transactions ................ 31  
     7. Protecting an Approved Transaction ................... 32  
  D. Financial Distress Situations ........................... 32
# TABLE OF CONTENTS

## Chapter 4: Risk Oversight and Compliance

**A. Areas of Risk Facing Corporations** .......................... 35

**B. The Board’s Role in Risk Management** ....................... 37

1. The Basis for the Board’s Responsibilities ................. 37
2. The Role of Board Committees ........................... 38
3. Direct Decision Making ..................................... 38
4. Oversight of Implementation and Effectiveness ............. 39
5. Crisis Management ..................................... 40

**C. Compliance** .............................................. 41

**D. Disclosures** ............................................... 43

## Chapter 5: Board Structure, Processes, and Operations

**A. Board Composition** ....................................... 46

1. Board Size ............................................. 46
2. Qualifications .......................................... 46
3. Time Commitment ..................................... 46

**B. Board Objectivity and Director Independence** ................ 47

**C. Board Leadership** ......................................... 48

**D. Agenda, Information, and Advisors** .......................... 49

1. Agenda ............................................. 49
2. Information ........................................... 49
3. Legal and Other Advisors ................................ 50
4. Non-legal Advisors ..................................... 50

**E. Executive Sessions** ........................................ 51

**F. Number of Meetings and Scheduling of Meetings** ............. 51

**G. Minutes, Note Taking, and Board Materials** .................. 52

**H. Board Evaluations** ......................................... 53

**I. Communications outside the Boardroom** .................... 53

**J. Decision Making** .......................................... 54

**K. Disagreements and Resignations** ............................ 54

## Chapter 6: Committees of the Board

**A. Standing Committees** ...................................... 58

**B. Special and Other Committees** .............................. 59

**C. Committee Responsibilities, Composition, and Activities** ....... 60

1. Committee Responsibilities ................................ 60
2. Committee Composition ................................... 61
3. Committee Activities .................................... 61

## Chapter 7: Audit Committee

**A. Membership** ............................................. 63

**B. Principal Functions** ..................................... 64

**C. Engaging the Auditors and Pre-approving Their Services** ...... 68
D. Overseeing the Independent Audit .......................... 68
E. Interaction with Internal Audit ............................. 70
F. Meetings with Auditors .................................... 70
G. Meeting with Compliance Officers .......................... 71
H. Establishing Procedures to Handle Complaints ............... 72
I. Meetings, Time Commitment, and Compensation ............ 72

Chapter 8: Compensation Committee ............................75
A. Membership .............................................. 76
B. Principal Functions ....................................... 77
  1. Decision-Making Process ............................ 78
  2. Independent Advice ................................. 79
  3. Structure and Components of Executive Compensation ... 80
  4. Documentation of Approval of Executive Compensation ... 82
  5. Legal Restrictions on Executive Compensation ........... 83
C. Disclosure of Compensation Decisions ...................... 84
D. Director Compensation .................................... 85
E. Additional Responsibilities ................................ 87
  1. Areas of Expanded Committee Scope ................... 87
  2. ERISA Fiduciary Considerations ....................... 88

Chapter 9: Nominating and Governance Committee ............. 89
A. Membership .............................................. 89
B. Criteria for Board Membership ................................ 90
C. Evaluating Board Incumbents ................................ 91
D. Nominating Directors ..................................... 92
E. Recommending Committee Members and Chairs .............. 93
F. Chief Executive Officer and Other Management Succession .... 93
G. Other Committee and Corporate Governance Functions ...... 95
H. Board Leadership ......................................... 96

Chapter 10: The Relationship between the Board of Directors
            and Shareholders ...........................................97
A. Director Elections ......................................... 97
  1. Term .................................................. 98
  2. Voting Standards ...................................... 98
  3. Contested Elections ................................... 99
B. Shareholder Relations ..................................... 100
  1. Shareholder Engagement by Management ................. 101
  2. Shareholder Engagement by Directors .................. 102
  3. Environmental and Social Issues ....................... 103
  4. Shareholder Proxy Voting Advisory Firms ............... 104
  5. Activist Investors .................................... 105
Chapter 11: Duties under the Federal Securities Laws ............107
   A. SEC Reporting Requirements .................................. 108
   B. Proxy Statements ........................................... 109
   C. Registration Statements ..................................... 109
   D. Sales by Controlling Persons .................................. 110
   E. Reporting Share Ownership and Transactions; Short-Swing Profits .................................. 111
   F. Insider Trading ............................................. 112
   G. Fair Disclosure ............................................ 113
   H. Compliance Programs ...................................... 114
   I. Directors of Foreign Corporations ......................... 114

Chapter 12: Liabilities, Indemnification, and Insurance .........115
   A. Sources of Liability .......................................... 115
      1. Corporate Law Liability ................................ 115
      2. Federal Securities Law Liability ......................... 116
      3. Liability under Other Laws ............................. 116
   B. Protections .............................................. 117
      1. Limitation of Liability ................................ 117
      2. Indemnification ....................................... 117
      3. Advance for Expenses .................................. 118
      4. Mandatory Indemnification and Advance for Expenses .... 118
      5. Indemnification Agreements ............................ 118
      6. Insurance ............................................. 119
Foreword

This is the Seventh Edition of the Corporate Director’s Guidebook. Since its initial publication in 1978, countless directors, business executives, advisors, students of corporate governance, and others have come to rely on the advice and commentary in the Guidebook.

The primary purpose of the Guidebook is to provide concise, practical guidance to corporate directors in meeting their responsibilities. The Guidebook focuses on the role of the individual director in the context of the duties and functions of the board and its key committees (audit, nominating and governance, and compensation). Although many director decisions and tasks occur against a legal backdrop, we emphasize the law only in limited and necessary instances; otherwise the Guidebook attempts to avoid legalisms.

The Seventh Edition explores the role of directors in the ever-evolving area of engagement between a corporation and its shareholders.

Director decisions and oversight responsibilities continue to be subject to a significant level of public and shareholder scrutiny. To help directors engage in effective oversight and decision-making processes in the current environment, the Seventh Edition emphasizes the following key topics:

- the role of directors in the engagement between a corporation and its shareholders;
- tension between long-term strategies for growth and the interests of investors with a short-term focus;
- corporate responsibility and social goals in long-term value creation;
- sustainability and ESG (environmental, social, and governance) performance;
- employee safety, welfare, and talent development;
- board composition, refreshment, diversity, skills, and compensation;
• executive compensation design, particularly as it relates to performance and risk;
• risk management, including processes for identification, assessment, and mitigation;
• crisis preparedness, including natural and technological crises as well as reputational risks from any inappropriate, unethical, or illegal behavior of executives or other constituents of the corporation; and
• fiduciary duties and best practices in mergers and acquisitions (whether negotiated or unsolicited).

The Guidebook provides important information for directors of public companies and also is relevant to directors of all companies in understanding their duties and obligations. The Corporate Laws Committee hopes directors and their advisors will benefit from this Seventh Edition of the Guidebook.

Respectfully submitted,

David B.H. Martin
Chair, Corporate Laws Committee

Patrick A. Pohlen
Leigh Walton
Co-Chairs, Corporate Director’s Guidebook Task Force
Corporate Laws Committee

The Corporate Laws Committee of the Section of Business Law of the American Bar Association is composed of active or former practicing lawyers, law professors, regulators, and judges with corporate expertise. In addition to the Corporate Director’s Guidebook and other scholarly writings, the Committee is responsible for the development of the Model Business Corporation Act (the Model Act).

The Model Act, first issued in 1950, has been adopted substantially in its entirety by 34 states, the District of Columbia, and Guam. In addition, important provisions have been adopted by many other states. The Model Act has played an important role in the development of corporate law in the United States and elsewhere.

The Committee serves as the standing editorial board for the Model Act, reviewing, revising, and updating its provisions on a continuing basis. Moreover, the Committee publishes the Model Business Corporation Act Annotated, a comprehensive compilation of the Model Act with cases and authorities relevant to its provisions.

The roster of active Committee participants during the publication of the Seventh Edition of the Guidebook (including appointed members, senior advisors, reporters, secretaries, consultants, and liaisons from other ABA committees) is listed below.

<table>
<thead>
<tr>
<th>Claudia H. Allen</th>
<th>Willard L. Boyd, III</th>
<th>Nathaniel L. Doliner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chicago, IL</td>
<td>Des Moines, IA</td>
<td>Tampa, FL</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stuart D. Ames</th>
<th>Douglas K. Chia</th>
<th>Robert W. Downes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miami, FL</td>
<td>Princeton, NJ</td>
<td>New York, NY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Daniel G. Berick</th>
<th>Paul L. Choi</th>
<th>Karl John Ege</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cleveland, OH</td>
<td>Chicago, IL</td>
<td>Seattle, WA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C. Stephen Bigler</th>
<th>William H. Clark, Jr.</th>
<th>Andrea Farley</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wilmington, DE</td>
<td>Philadelphia, PA</td>
<td>Atlanta, GA</td>
</tr>
</tbody>
</table>
Margaret M. Foran
Newark, NJ

Mark J. Gentile
Wilmington, DE

Maureen Brennan Gershanik
New Orleans, LA

Steven M. Haas
Richmond, VA

Professor Lawrence A. Hamermesh
Wilmington, DE

James J. Hanks, Jr.
Baltimore, MD

Carol Hansell
Toronto, ON

Keith F. Higgins
Boston, MA

William D. Johnston
Wilmington, DE

Judith H. Jones
Hartford, CT

Mary Ann Jorgenson
Bratenahl, OH

Stanley Keller
Boston, MA

John H. Lawrence, Jr.
Hartford, CT

Professor Jonathan C. Lipson
Philadelphia, PA

James I. Lotstein
Hartford, CT

Frederick C. Lowinger
Chicago, IL

Scott E. Ludwig
Huntsville, AL

Bruce Alan Mann
San Francisco, CA

David B.H. Martin
Washington, DC

David C. McBride
Wilmington, DE

James Melville
Minneapolis, MN

Professor Donna M. Nagy
Bloomington, IN

John F. Olson
Washington, DC

Patrick Pohlen
Menlo Park, CA

Professor Elizabeth Pollman
Los Angeles, CA

Kelly Brunetti Rose
Houston, TX

Thomas E. Rutledge
Louisville, KY

Professor Hillary A. Sale
Washington, DC

Larry P. Scriggins
Great Cacapon, WV

John A. Seethoff
Redmond, WA

David M. Silk
New York, NY

Laurie A. Smiley
London, England

Professor D. Gordon Smith
Provo, UT

A. Gilchrist Sparks, III
Wilmington, DE

The Honorable Leo E. Strine, Jr.
Wilmington, DE

The Honorable E. Norman Veasey
Wilmington, DE

Patricia O. Vella
Wilmington, DE

Leigh Walton
Nashville, TN

Herbert S. Wander
Chicago, IL

Paul Washington
New York, NY

Kristine M. Wellman
Wilmington, DE

R. Daniel Witschey, Jr.
Houston, TX