



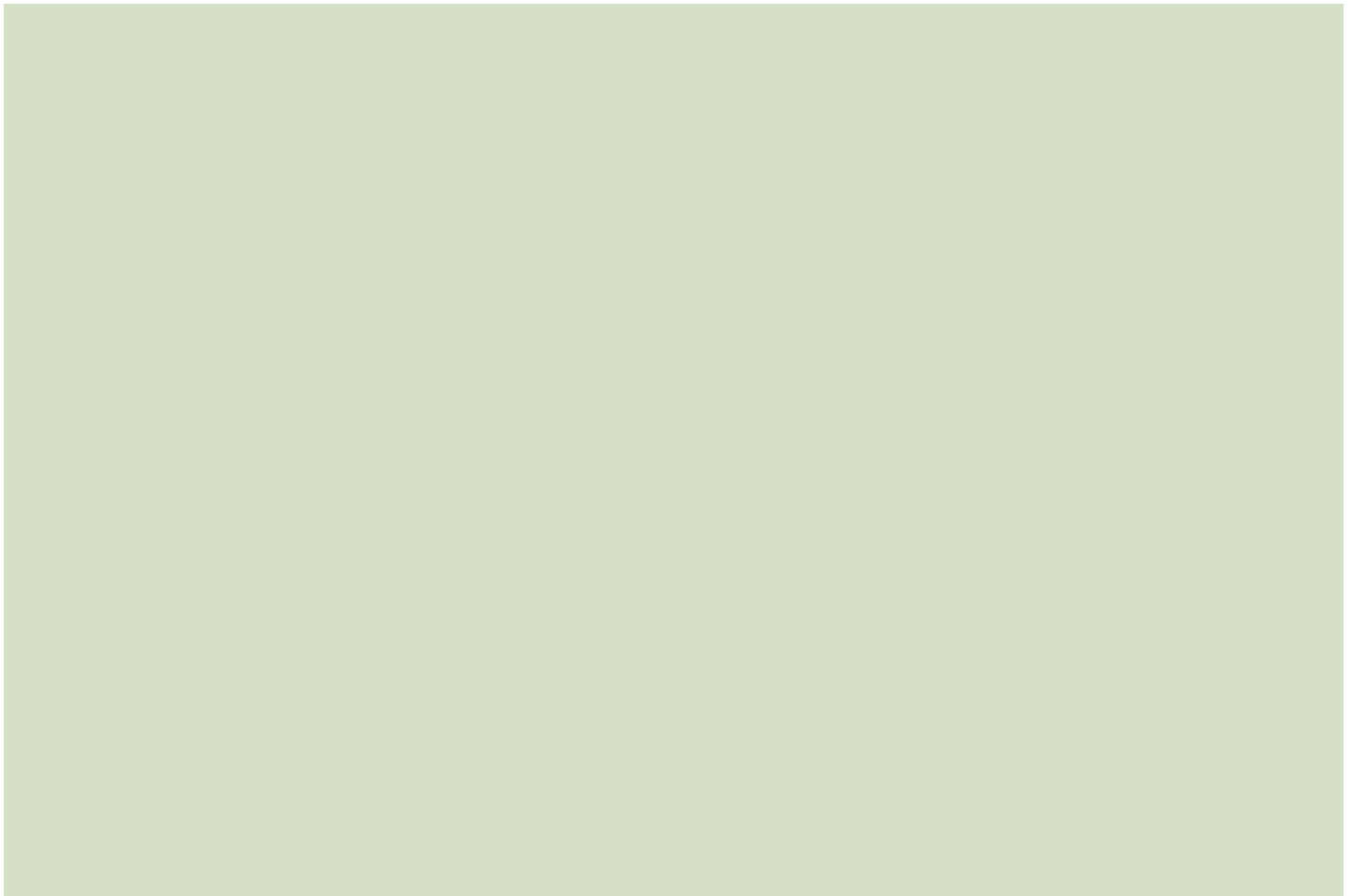
**SOCIETY**

of Corporate Secretaries  
& Governance Professionals

P U B L I C A T I O N

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*The Corporate Secretary:  
An Overview of Duties and Responsibilities*



## *Introduction*

### **What Does a U.S. Corporate Secretary Do?**

What does a corporate secretary do? Just as no single corporate governance model fits all companies, there is not one right answer to this question, particularly in the U.S. context. Generally, the secretary works closely with a company's Board of Directors, its CEO, and senior officers, providing information on board best practices and tailoring the board's governance framework to fit the needs of the company and its directors, as well as the expectations of shareholders. The secretary also supports the board in the carrying out of its fiduciary duties.

The actual work of the secretary falls into many "buckets" and varies from company to company. This overview highlights several typical areas of responsibility. Regardless of how many of these roles the secretary plays at any one company, in the post Sarbanes-Oxley and Dodd Frank world, governance issues have become increasingly important to directors, institutional investors and other stakeholders. In most companies, the secretary serves as the focal point for communication with the board, senior management and shareholders, and plays a significant role in the setting and administration of critical corporate matters.

### **Core Competencies of Successful Corporate Secretaries**

Several years ago, the leadership of the Society of Corporate Secretaries and Governance Professionals published a list of personal and professional attributes of a successful corporate secretary. These "core competencies" include:

- Understanding the company's business thoroughly
- Having at least a basic knowledge of corporate and securities law
- Demonstrating an "executive presence," backed up with solid communication skills
- Being sensitive and intuitive to what the CEO and directors are thinking and feeling
- Being able to read signals on the horizon and provide early warning to management and the board
- Being able to lead and work within a multi-disciplinary setting to achieve consensus
- Knowing how to overcome bureaucratic thinking
- Being detail-oriented
- Being flexible and creative, and
- Maintaining the appropriate perspective no matter how pressured a situation

### ***The "Nuts And Bolts" of Key Corporate Secretary Functions***

For many corporate secretaries, the "core competencies" identified above are evidenced in the following areas:

- Coordinating and attending board and committee meetings and drafting minutes
- Serving as a liaison for directors, officers, and shareholders
- Directing the activities related to the annual meeting of shareholders
- Maintaining key corporate documents and records
- Supervising stock transfers
- Staying tuned in to activities in the securities markets
- Ensuring compliance with laws and regulations, and
- Tending to various other tasks either unique to a company or simply "as assigned"

Summary details on these subject matters follow.

Within each of these “core competencies,” it is important for the secretary to take primary responsibility for anticipating and addressing a company’s corporate governance needs, for keeping the board up-to-date on trends and issues, for periodically assessing the board’s structure and governance practices and to suggest opportunities for the board to better perform its responsibilities.

To more fully understand the corporate secretary’s role at a specific company, it is helpful to review state statutes and corporate bylaws, from which the powers and duties of the corporate secretary and other corporate officers are derived.

Lastly, it is worth noting that in addition to the core corporate secretary functions, many corporate secretaries have additional responsibilities that compete for their time. For example, if the secretary is a lawyer, he or she may also serve as general counsel or be responsible for a significant legal area such as securities compliance, mergers and acquisitions or employee relations and benefits. The secretary could also head up the ethics or corporate compliance departments.

## Board and Committee Meetings

Planning and preparation for meetings is one of the more traditional responsibilities of the corporate secretary, and yet requires significant expertise and knowledge. Among other things, the secretary must address each of the following:

**Scheduling:** A secretary must understand the obligations of the board, and ensure an adequate number of meetings and time at each meeting be scheduled.

A secretary must understand and comply with meeting notice requirements and ensure directors are available to attend meetings. In addition the secretary is often tasked with the logistics of transportation, lodging, meeting sites, and meals.

**Agendas:** Agenda-setting is closely tied to but discrete from scheduling. Typically a secretary creates an agenda for at least a full year, to ensure compliance with state, Federal, listing and other requirements, as well as compliance with the company’s own articles of incorporation and bylaws. A secretary must work closely with the CEO, HR, investor relations, accounting, legal, compliance, the board chair or lead director, and others, in creating, maintaining and, inevitably, revising, the agenda.

**Materials and Presentations:** Materials must be prepared and, when appropriate, securely disseminated prior to the meeting. The secretary must consider the adequacy, consistency (with prior and subsequent documents), ease of use, and quality of the materials. A secretary must be concerned not only with how documents may be viewed by current users, but by subsequent readers, who in the worst case could include plaintiffs’ lawyers. A secretary must ensure that draft documents are easily discerned from final versions, and that drafts are disposed to the extent required by the company’s record retention guidelines. The secretary must also ensure that all users of the information understand how to keep the information secure.

Meeting materials may be delivered to users, including the board, in hard copy or electronically (via board portals or other platforms).

The secretary should review materials prior to presentation, and often sets and ensures compliance with the company’s document retention policy.

The secretary will offer advice with respect to corporate, legal, regulatory, conduct of meeting, and other matters, both during and outside meetings.

**Executive Liaisons:** Generally every board committee will have a designated executive point person. Often the CEO is the point person for the board, the chief financial officer is the point person for the audit committee, the chief human resources officer for the compensation committee and the secretary is the point person for the nominating and governance committee. As the executive liaison to the nominating and governance committee, the secretary may prepare written governance updates that are included in each board mailing, draft director orientation and education programs, prepare background materials for the annual board and committee evaluations, serve as the liaison for director search firms, prepare draft director skill matrixes, review board independence and potential conflicts of interest, and conduct committee charter compliance audits.

**Documenting the Meeting:** The secretary drafts, distributes, and maintains minutes of meetings. Minute-taking is an art, requiring writing skills and an understanding of what is important to record, the level of detail to record, and a sensitivity to issues that require special attention.

## Directors and Officers

The secretary may advise directors and officers on a number of matters, including those related to:

- Director and officer selection
- Officer succession planning processes
- Director and officer responsibilities, including fiduciary obligations
- Corporate governance
- Regulatory and legal requirements and compliance
- Executive and/or director compensation
- Director independence and other director qualification matters
- Board evaluations
- CEO evaluations
- Board committee composition
- Communication between and among directors and officers
- Public relations
- Charitable contributions by, or to entities supported by, officers and directors, and
- Corporate calendars

In addition, the secretary may:

- Help create and effect onboarding orientation for new directors and officers
- Help create and deliver ongoing training for officers and directors
- Be responsible for ensuring information is delivered to officers and directors in a timely manner
- Collect information from officer and directors to ensure legal and regulatory compliance
- Assist directors with travel arrangements
- Administer stock option and stock award programs
- Help create reports relating to compensation
- Prepare and maintain a fact reference book, and
- Administer compensation- and postemployment-related plans

## Annual Meeting of Shareholders

The annual meeting of shareholders is a very significant event for most public companies. The corporate secretary typically plays a major role in this event and duties range from creating documents supporting this event, securing space, ensuring adequate security, scripting and engaging relevant members of the board and management, and ensuring that the shareholder vote is accurately and impartially tabulated, recorded and disclosed.

The secretary is usually responsible for determining who has responsibility for each component for the annual meeting, which usually involves coordination with some of or all the following:

- Facilities management personnel for site selection and set up and if the meeting is held at an offsite location, transportation to and from the location
- Corporate security
- Communications and/or investor personnel for script writing and/or question and answer
- Investor relations if the meeting will be webcast
- Proxy solicitor, and
- Inspector of election

The secretary usually has primary responsibility for the “legal” documents associated with the annual meeting, including the preparation and distribution of the proxy statement (called “proxy circular in some markets) and notice of meeting. The secretary’s responsibility may also include the annual report, including the annual 10-K filing for SEC registrants. Production of these documents requires knowledge of applicable federal and state laws and regulations, and of the rules of the relevant stock exchange. It also requires coordinating input from a diverse group of people, including some combination of internal and external legal, financial, investor relations, compensation, and public relations personnel as well as the CEO and the board. There are also a host of ancillary documents for which the secretary is responsible, including meeting admission procedures, inspector of election documentation, certificates of mailing and other related materials.

The secretary may also have budgetary responsibility for the annual meeting, and have responsibility for determining whether to implement some form of notice and access, selecting financial printers and determining mailing and production schedules.

Negotiations with shareholders regarding shareholder proposals are also frequently the responsibility of the secretary. These activities usually involve confirming appropriateness of the proposal under relevant state law and SEC rules, discussions with the shareholder proponents, acting as a liaison between shareholder proponents, the board and senior management, and determining whether the proposal is properly included in the proxy materials or requesting exclusion of the proposal through the SEC’s no-action process.

The secretary may have either primary or shared responsibility for drafting the script and agenda for the annual meeting and to help directors and management prepare to respond to shareholder questions at the meeting by creating briefing materials on current or “hot button” issues. The secretary usually also serves a coordinating function for security arrangements including admission procedures and working with corporate security on how to handle disruptive or emergency situations at the meeting.

The secretary is usually involved in soliciting proxies either directly or by working closely with the company’s investor relations department and/or external proxy solicitors, to help achieve a quorum and deliver the vote. The secretary is also responsible for assuring that the vote is properly and impartially tabulated, the results are duly reported in the minutes of the meeting, the vote results are timely disclosed in an 8-K filing with the SEC, and possibly working with the communications and/or investor relations department to issue a press release on the voting results.

## Shareholders and Investor Relations

In addition to interaction with shareholders in connection with the annual meeting, the corporate secretary may have primary responsibility for investor relations or may share that responsibility with an investor relations department. When the responsibility is shared, the secretary may have primary responsibility for dealing with retail shareholders, acting as a liaison for board/shareholder communications and general outreach to shareholders on corporate governance, executive compensation and/or social responsibility matters. Increasingly companies are actively reaching out to shareholders to solicit their views on matters ranging from corporate strategy to governance to executive compensation. The secretary may also be responsible for the company's stock watch programs, alerting management to unusual trading in company securities.

## Corporate Records

The corporate secretary is responsible for maintaining and in many cases creating critical corporate records.

The secretary must understand what documents need to be created, the level of detail to be contained in the documents, whether or not the document requires further action, whether it is consistent with prior records (in both substance and form), or if it conflicts with corporate policies, creates concerns under existing agreements, results in a violation of law, or has tax implications.

The secretary is responsible for storing, maintaining, retrieving, certifying, and explaining corporate documents. Many issues are implicated relating to document storage, including the length of time records are to be retained, ensuring the documents are stored in a safe place, whether documents are backed up, either in hard copy or electronically, and access.

The secretary is often responsible for documents relating to subsidiaries, joint ventures, consortiums, and other entities, many of which may be at locations other than corporate headquarters, including locations around the world. In such cases the secretary must consider whether and to what extent to rely on local partners to help maintain and create corporate records, as well as to what extent he or she must exercise oversight. In addition, the secretary should help ensure that each subsidiary remains in good standing or the local equivalent and complies with obligations relating to meetings, and approvals. The secretary is often involved with matters relating to the staffing of subsidiaries, including determining which officers and directors will serve, how to ensure smooth director and officer transitions, and ensuring the individuals appointed may be reached in a timely manner.

The secretary may also execute documents on behalf of the company.

The secretary may also be involved in maintaining or advising with respect to the corporate website and social media.

## Stock Transfer

Maintaining shareholder records and providing for the transfer or replacement of stock certificates is ultimately the responsibility of the corporate secretary. In most companies, however, this function is handled by a dedicated unit or by an outside transfer agent with the secretary acting as the corporate liaison. As liaison, the secretary will be responsible for giving instructions regarding issuance or removal of securities legends and may advise the transfer agent as to personnel who are authorized to give instructions for issuance of shares upon equity exercise or treatment of share repurchases by the company.

## Escheatment

Although escheatment functions are usually handled by the company's treasury function, the secretary may have responsibility for escheatment related matters for shareholders and bondholders.

## Securities Markets

Depending on the company and the background of the corporate secretary, the corporate secretary often serves as liaison with the securities markets on which the company's shares are listed, and is responsible for ensuring compliance with stock exchange listing standards, including timely reporting. He or she may also have a team of people who assist with these matters. In cases where the company is listed outside the United States, the secretary should consider local partners to help ensure compliance.

Securities markets duties may include some or all of the following:

- Pre-clearing purchases and sales of the company's securities by directors and officers
- Preparing and filing "insider" trading reports with the SEC
- Understanding and complying with the stock exchange's listing standards and annual filing requirements
- Preparing and filing registration statements with the SEC
- Preparing and filing 10-Ks, 10-Qs and 8-Ks with the SEC
- Preparing and filing state annual reports and related filings, and
- Drafting documents required for compliance with debt preferred stock or other instruments

## Compliance

In addition to securities compliance related matters, and depending on the company's governance structure and the background of the corporate secretary, he or she may have other compliance duties, which may include some or all of the following:

- Ensuring compliance with by-laws and corporate charters
- Ensuring compliance with committee charters and governance guidelines
- Preparing internal and external communications on governance and board related matters
- Administering and ensuring compliance with the company's code of corporate conduct (ethics) and hotline
- Foreign corrupt practices act compliance
- Developing processes to identify and approve related party transactions, and
- Developing and administering other corporate-wide policies and policy manuals intended to keep the company current with governance best practices

## *Concluding Thoughts*

### **Does the Corporate Secretary Have to be a Lawyer?**

Many corporate secretaries are lawyers and some serve as their company's General Counsel or in another legal position with responsibility for advising on legal matters. But while a legal background is helpful when carrying out the duties of the secretary, it is not required. In fact, at times, having a secretary who also provides legal advice creates interesting questions as to whether particular communications made to management are legal advice - which may be subject to the attorney-client privilege - or general corporate/business advice, which is not. Thus, the "dual hat" corporate secretary/lawyer must always be careful to distinguish (and, as secretary, record) which "hat" is being worn, and whether it is legal or managerial advice that is being given to directors and management.

## Is the Corporate Secretary the Chief Governance Officer?

Due to the increasing interest in corporate governance, and the increase in governance related regulations by both the SEC and the stock exchanges, some companies have formalized the role of the secretary as corporate governance advisor with a title such as chief governance officer.

## Is the Corporate Secretary Role Held by the General Counsel? Who Does the Corporate Secretary Report To?

The corporate secretary is an officer of the company and is elected by the board of directors. Beyond that, to whom the corporate secretary reports varies significantly from company to company depending upon its size, culture and other matters. If the corporate secretary is also the general counsel, he or she usually reports directly to the CEO and may also report functionally to the chairman of the board or to the lead independent director. If the corporate secretary is not the general counsel, he or she may report directly to the general counsel, or in some cases to the CEO, or another officer.

Regardless of to whom the position reports, the secretary is often in a unique position of advising the board, the CEO and management—and, therefore must build a trusting relationship with each contingent. The secretary's role is often one of diplomat and mediator and requires confidentiality, objectivity and sensitivity.

## Conclusion and Sources for Further Information

This brief monograph outlines the general parameters of the role of the corporate secretary. Volumes have been written on the individual aspects of the job, and more detailed accounts of the overall role are also available. The Society of Corporate Secretaries and Governance Professionals, a professional association composed principally of corporate secretaries, assistant secretaries and business executives involved in the duties associated with the corporate secretarial function, maintains and publishes information to assist corporate secretaries in carrying out their duties. The Society promotes the voluntary exchange of information through member committees, on-line forums, local chapters, publications and research, as well as through seminars and conferences. For further information on Society programs, publications and reference materials, visit: [www.governanceprofessionals.org](http://www.governanceprofessionals.org).

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This monograph is a product of the Society's Corporate Practices Committee. The Corporate Practices Committee is the definitive source of expertise on board practices, corporate governance and the corporate secretarial function. The committee benchmarks, conducts studies, analyzes data and publishes publications on governance and board practices.

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