

Best Practices for Non-Profit Boards



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Best Practices for Boards

OVERVIEW

- Legal Responsibilities of a Non-Profit Board Member
- Liabilities of Members of Non-Profit Boards
- Conflict of Interest for Non-Profit Board Members
- Expectations of Non-Profit Board Members

Legal Responsibilities

Best Practices for Boards: John L. Pogue, Esq.

ROLE OF DIRECTORS

- Primary role: Manage the non-profit
- Primary role is satisfied by:
 - Setting policies, providing guidance
 - Maintaining the corporation's financial well-being
 - Delegating functions to full-time managers whom the directors oversee and monitor

Legal Responsibilities

Best Practices for Boards: John L. Pogue, Esq.

DIRECTORS ALSO ARE ...

- Fiduciaries of the nonprofit corporation
- Prohibited from using their role for personal gain
- Required to administer the corporation in a manner that furthers its tax-exempt purposes
- Accountable to the Ohio Attorney General

Legal Responsibilities

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DIRECTORS ALSO ARE ...

- Required to exercise informed, knowledgeable participation in the affairs of the corporation in order to fulfill their fiduciary duties with respect to governance.

Liabilities

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FEDERAL VOLUNTEER PROTECTION ACT

- Provides broad protection from tort liability to non-profit directors
- Pre-empts state law, except to the extent that a state law provides additional protection to directors

Liabilities

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OHIO LAW PROTECTIONS

- “Prudent” directors are protected
 - Prudent = Wise, careful, discreet, sensible
- Business judgment is recognized
 - Director is entitled to rely on
 - Information
 - Opinions
 - Reports
 - Statements (including financial statements)
 - As presented by officers, employees, counsel, accountants

Liabilities

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DIRECTORS ARE NOT LIABLE FOR ...

- Obligations or debts of the non-profit entity

DIRECTORS ARE LIABLE FOR ...

- Votes to spend in favor of certain creditor or other board members

Liabilities

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DIRECTORS ARE ALSO LIABLE FOR...

- Personal injury and property damage arising from their own negligence
- Claims arising from actions they authorize, approve or participate in
- Federal withholding amounts the entity doesn't pay (if a director has check-signing authority)

Liabilities

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DIRECTORS & OFFICERS LIABILITY INSURANCE

- Can protect directors from their negligent acts
- Helps non-profits recruit board members

Liabilities

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6 STEPS TO MINIMIZE PERSONAL LIABILITY

- Attend meetings, be informed and ask questions

1

- Be aware of the “prudent person” standard
- Never ignore problems or be a “rubber stamp”
- Realize that ignorance of a problem is no defense

2

- Make sure advisors are experienced, qualified
 - Especially auditors

Liabilities

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6 STEPS TO MINIMIZE LIABILITY, cont'd

- Avoid self-dealing

3

- Fully disclose any potential conflicts
- Avoid role in any decisions that hint of conflict

- Respect and follow the board process

4

- Avoid unauthorized representation of board or entity
- Realize entity operates through full board, officers
- Respect confidentiality of board deliberations

Liabilities

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6 STEPS TO MINIMIZE LIABILITY, cont'd

5

- Consider directors and officers (D&O) liability insurance

6

- Carefully follow all policies
 - Particularly regarding fiscal matters
 - Adhere to auditor counsel re corporation's funds

Conflict of Interest

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TRANSACTIONS WITH BOARD MEMBERS

- A transaction between a board member and a non-profit is permitted IF
 - It is disclosed to the entire board
 - A majority of disinterested directors approve it
 - It is fair to the non-profit

Conflict of Interest

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CONFLICT OF INTEREST POLICY

- It's a requirement
- Cannot obtain tax-free charitable status from IRS without one
- IRS has provided an approved policy and you should use it

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Expectations

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8 ITEMS DIRECTORS NEED TO KNOW

- Board meeting particulars

1

- Regular date, time and location
- Estimated length for each board meeting

- Attendance requirements for board members

2

- Bylaws should provide right to remove directors who don't attend a certain percentage of meetings

Expectations

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8 ITEMS DIRECTORS NEED TO KNOW, cont'd

- Leadership expectations

3

- Committee participation
- Chairmanships
- Assumption of officer roles

4

- Term length and term limits

Expectations

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8 ITEMS DIRECTORS NEED TO KNOW, cont'd

- 5 • Financial support expectations
 - Fundraising
 - Direct support

- 6 • Conflict of interest policy disclosure
 - Essential when recruiting board members

Expectations

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8 ITEMS DIRECTORS NEED TO KNOW, cont'd

7

- Representation of the non-profit to the public
 - By being familiar with the non-profit
 - By speaking in support of its mission

8

- Orientation of new directors
 - Should be discussed with candidates before they agree to serve

Questions & Answers

Best Practices for Boards: John L. Pogue, Esq.

THANK YOU FOR YOUR ATTENTION