Best Practices for Non-Profit Boards

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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
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


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
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.
FEDERAL VOLUNTEER PROTECTION ACT

- Provides broad protection from tort liability to non-profit directors
- Pre-empted state law, except to the extent that a state law provides additional protection to directors
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
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
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)
DIRECTORS & OFFICERS LIABILITY INSURANCE

• Can protect directors from their negligent acts
• Helps non-profits recruit board members
6 STEPS TO MINIMIZE PERSONAL LIABILITY

1. Attend meetings, be informed and ask questions
   - 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
6 STEPS TO MINIMIZE LIABILITY, cont’d

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

3

• Respect and follow the board process
  • Avoid unauthorized representation of board or entity
  • Realize entity operates through full board, officers
  • Respect confidentiality of board deliberations

4
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
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 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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8 ITEMS DIRECTORS NEED TO KNOW

1. Board meeting particulars
   - Regular date, time and location
   - Estimated length for each board meeting

2. Attendance requirements for board members
   - Bylaws should provide right to remove directors who don’t attend a certain percentage of meetings
8 ITEMS DIRECTORS NEED TO KNOW, cont’d

- Leadership expectations
  - Committee participation
  - Chairmanships
  - Assumption of officer roles

- Term length and term limits
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
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
THANK YOU FOR YOUR ATTENTION