



How to Minimize Nonprofit Board Member Liabilities – A Checklist to Audit Nonprofit Board Operations, Finance, Fundraising and Insurances

(have on table during all Board meetings)

Each Board member is personally liable, in his/her fiduciary role, for the operations and effects of the nonprofit corporation. The “business judgment rule” somewhat protects Board members from liability as long as they can show that they are trying to act reasonably and in good faith – that they are performing their duties of care and loyalty. An exception would be if there was clear evidence of intent to break the law, for example, theft, fraud, forgery, burglary, misappropriation of funds, or obstruction of justice. Liability can be significantly reduced if Board members regularly audit occurrence of certain practices. (The following is not offered as legal advice.)

NOTE: Consider having an Audit Committee of independent Board members who regularly ensure that the following practices are followed. “Independent” means the members are not employees, do not regularly benefit from the services of the nonprofit and do not have close relationships with staff.

Board Operations

- ❑ Be sure that By Laws accurately reflect Board members’ specifications of the structure of the nonprofit and how it is to be managed.
- ❑ Include an indemnification paragraph in By Laws, which explains corporate protection of members. (The paragraph affirms limited liability protection of corporations, e.g., that corporation’s might get sued first, but does not guarantee members’ protection against liability. Members might be covered from financial penalties and damages if the nonprofit’s assets are sufficient to pay for those damages.)
- ❑ Adopt conflict-of-interest, whistleblower and document retention/destruction policies.
- ❑ As much as possible, staff the Board with independent members – those who are not staff members, have no business affiliation with the nonprofit, and are not friends of the CEO.
- ❑ Have Board meetings at least quarterly and ensure a quorum of members is present.
- ❑ Ensure all committee meetings produce accurate minutes that are provided to the full Board.
- ❑ Produce and approve accurate Board minutes that include attendance, highlights of members’ deliberations, and specification of decisions and actions from Board meetings and committee meetings. (“If it isn’t in the minutes, then it didn’t happen.”)
- ❑ Be sure each member undergoes basic training on roles and responsibilities of governing Board of Director. Also train on the roles of staff, especially as compared to Board members.
- ❑ Approve and train about Board policies, including By Laws, conflict-of-interest, whistleblower and documentation destruction/retention.
- ❑ Train Board members how to analyze financial information.
- ❑ Notify members if there is an apparent conflict of interest with any member.
- ❑ Be sure highlights from deliberations, decisions and actions in correct, Board-approved meeting minutes.
- ❑ Be sure all contracts with vendors specify them as independent contractors and also specify the scope of their liabilities in dealings with the nonprofit. They should be approved by the Board if over, e.g. \$500.
- ❑ Conduct a Board self-evaluation once a year, and list results in Board Development Plan.
- ❑ Use an Audit Committee to audit occurrence of critical practices, at least once/quarter! Test a disaster recovery plan during the audit.

Financial and Tax Management

- ❑ Reviewed the Form 990 in a Board meeting, so members are aware of inquiries on the Form.
- ❑ Have up-to-date, Board-approved fiscal policies and procedures and ensure they’re followed.
- ❑ Train Board members about how to analyze financial information.

Adapted from "Field Guide to Developing, Operating and Restoring Your Nonprofit Board"
– to get the publication, click on "Publications" at www.authenticityconsulting.com

- ❑ Regularly review cash flow and budget-versus-actual reports, and Statement of Financial Activities and Statement of Financial Condition at least quarterly.
- ❑ Have a yearly financial audit (audits range from reviews to comprehensive analysis and reporting).
- ❑ The Treasurer should not also be the auditor.
- ❑ Institute cash controls so all funds are recorded, tracked and reviewed.
- ❑ Ensure all cash transaction require two different people to track invoices and payments.
- ❑ Ensure that payroll taxes are paid.
- ❑ Ensure annual tax filing is submitted (for example, the Form 990 in the USA) and made public.
- ❑ Ensure any revenue not related to the charitable purpose of the nonprofit is reported (for example, Form 990-T in the USA).
- ❑ Adopt a formal, written compensation policy that guides decisions about compensation and benefits for all staff, including the CEO.
- ❑ Use Request for Proposals (RFP) when hiring vendors, and solicit at least 3 bids. If a Board member will be responding to an RFP, then that member should abstain from selection of the vendor.
- ❑ Are staff salaries "reasonable" per IRS guidelines? (<http://www.irs.gov/charities/article/0,,id=169727,00.html>)
- ❑ All transactions with current or former Board and/or staff members are disclosed.

Personnel

- ❑ Be sure the personnel policies, including job descriptions, are up-to-date and approved by the Board, and staff and volunteers are trained on the policies. Policies should include guidelines for hiring, compensating and managing performance.
- ❑ Do background checks and references for new hires.
- ❑ Get a written, dated report from the Executive Director, provided and reviewed in each Board meeting.
- ❑ Conduct an evaluation of the Executive Director at least once a year according to the personnel policies.
- ❑ Conduct succession planning and cross train personnel for the most critical roles in the organization.

Fundraising

- ❑ Nonprofit is registered in each state, in which it does fundraising, to do fundraising – or in cities in which it does door-to-door solicitations.
- ❑ Receipts are provided to donors.
- ❑ The nonprofit is registered with a gambling Board if it does charitable gambling.
- ❑ Restricted funds are spent only on the programs/accounts for which the funds are specified.

Insurances (Your Insurances Depend On the Nature of Your Services)

- ❑ The nonprofit is incorporated. (Corporations enjoy a limited liability shield, whereby the corporation is sued before its members. Benefits of the shield are in effect, especially if Board members can show good faith in their Board activities.)
- ❑ Nonprofit has general liability insurance in case someone sues because of negligent acts that cause bodily or personal property injury.
- ❑ Nonprofit has property insurance in case the nonprofit's property is damaged or lost.
- ❑ Nonprofit has professional liability insurance, which covers the nonprofit in case someone sues as a result of perceived malpractice.
- ❑ Nonprofit has Directors and Officers Insurance to costs (and perhaps damages) if Board members sued by a party alleging intentional actions that caused damage, i.e., because of members' actions or inactions.
- ❑ Nonprofit has Workers' Compensation insurance in case someone is injured on the job.

NOTE: An even more comprehensive organizational assessment is on the Web at
<http://www.surveymonkey.com/s.asp?u=3754722401>