



How to Minimize Liabilities of Nonprofit Board Members

Each Board member is personally liable in his/her fiduciary role as a Board member. The “business judgment rule” 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 undertake the activities listed below. (The following is not offered as legal advice.)

Board Practices

- Have Board meetings at least quarterly.
- Be sure that By Laws accurately reflect Board members’ specifications of the structure of the nonprofit and how it is to be managed.
- Produce and approve Board minutes that include highlights of members’ deliberations, decisions and actions from Board meetings and committee meetings.
- Include an indemnification paragraph in By Laws, which explains corporate protection of members.
- Be sure the personnel policies are up-to-date and approved by the Board, and staff are trained on the policies.
- The Treasurer should not also be the auditor.
- Be sure each member undergoes basic training on roles and responsibilities of governing Board of Director.
- Be sure that Board members are trained on their roles and the roles of staff.
- Conduct a Board self-evaluation once a year.
- Conduct an evaluation of the Executive Director at least once a year according to the personnel policies.
- Approve and train about Board policies, including By Laws and conflict-of-interest.
- Adhere to the Board policies, especially conflict-of-interest and ethics 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.
- As much as practical, ensure staff members are not involved in recruiting Board members.
- Train Board members how to analyze financial information.

Board Deliberations and Decisions

- Participate in all Board meetings or be excused beforehand.
- Participate in Board deliberations and Board decisions.
- Notify members if there is an apparent conflict of interest with any member.
- Be sure that highlights from deliberations, decisions and actions are included in 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.

Financial and Tax Management

- ❑ Train Board members about how to analyze financial information.
- ❑ Have up-to-date, Board-approved fiscal policies and procedures and follow them.
- ❑ 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 audit (audits range from reviews to comprehensive analysis and reporting).
- ❑ 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).
- ❑ Ensure any revenue not related to the charitable purpose of the nonprofit is reported (for example, Form 990-T in the USA).

Insurance

- ❑ Have you incorporated the nonprofit? (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.)
- ❑ Do you have general liability insurance in case someone sues because of workplace injury?
- ❑ Do you need property insurance in case property is damaged or lost?
- ❑ Should you have professional liability insurance, which covers you in case someone sues as a result of perceived malpractice?
- ❑ Would the Board members benefit from Directors and Officers Insurance to pay any lawsuits lost by Board members when someone sued the Board, alleging damage because of members’ actions or inactions?
- ❑ Do you need workers’ compensation insurance in case someone is injured on the job?