

Nuts & Bolts of Nonprofit Law, WA State Law

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Today's Speakers

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Overview

- Board and Staff Roles
- State Law Issues
- Federal Tax – 501c3 tax-exemption



Executive Director Role

- Staff management
- Day-to-day management
- Implementation of programs
- Management of financial resources
- Liaison to Board of Directors
- Fundraising
- Community relations
- Problem-solver, decision-maker



Role of Board Chair

- Board choreographer
- Engage board members to contribute their talents
- Partner with ED
- Organizational champion



Board Governance Responsibilities

- Set mission and strategy
- Supervise Executive Director
- Approve fundraising strategy and monitor progress
- Financial and legal oversight
- Set policy/ensure key policies are in place
- Monitor/evaluate program impact
- Develop and strengthen board



Support Responsibilities

- Financial support
- Fundraising – host a table at the auction, share contacts, solicit donations
- Volunteer and recruit others to help
- Public relations – act as ambassadors for your organization
- Advisory – advise staff in areas of expertise when invited, act as sounding board
- Lend name and credibility



Nonprofit Corporation Terminology

- Nonprofit
- Tax-Exempt Organization
- Charity
- Foundation
- Board of Directors
 - “Trustees”
 - Advisory Board
- Officers
 - President, Vice President, Secretary, Treasurer
 - Others named in organizing documents



Terminology (cont'd)

- Public charity
- Private foundation
- Organizing Documents
 - Articles of Incorporation – filed with state
 - Bylaws – internal procedural document adopted by board
 - Members?
 - Other: “Constitution,” “Mission Statement,” Corporate Policies



Sources of Authority

- Washington’s Nonprofit Corporation Act, Chapter 24.03 RCW
- Other State Laws
 - Charitable Solicitations Act
 - Charitable Trust Doctrine
 - Uniform Prudent Management of Institutional Funds Act (“UPMIFA”)
- Common Law
- Organizing Documents (Handout Tabs 5 & 6)
- Federal Tax Law – Tax-Exempt Status



Acting within the Scope of Authority

- Authority flows from the Board
- Board may delegate authority, e.g., through Bylaws or resolutions
 - Committees
 - Officers
 - Executive Director/CEO
- Ultimate responsibility for oversight remains with the Board



Importance of Acting Like a Corporation

- Hold meetings and keep minutes
- Review governing documents regularly
- Keep corporate records
- Maintain annual filings
 - Annual corporate report
 - Charitable Solicitations
 - Charitable Trust Act
 - State and federal tax filings



Board Action

- Board acts collectively by vote
- Board acts by meeting of a quorum of directors or by unanimous written consent
 - No “email meetings”
 - No proxies
 - Conference calls permitted



Fiduciary Duties

- Duty of Care
- Duty of Loyalty
- Duty of Obedience



Standard of Care

- Directors must perform their duties (including service on committees):
 - In **good faith**
 - In a manner reasonably believed to be in the **best interest of the corporation**
 - With the care of an **ordinarily prudent person** in a like position in similar circumstances



Standard of Care – Help available

- Directors may rely on information from:
 - **Officers or employees** believed to be reliable and competent in the matter;
 - **Lawyer, public accountant, or other persons** as to matters which the director believes to be within such person's expertise; or
 - **Board committees**
 - on which the director does not serve,
 - with duly designated authority
 - which committee the director believes merits confidence



Duty of Care

- Reasonable inquiry: be informed
- Act in a manner you believe to be in best interests of the corporation
- Exercise independent judgment
- Oversight and informed decision making
- Can rely on officers, employees, experts and committees



Duty of Loyalty

A director owes undivided loyalty to, and must deal fairly, honestly and act in the best interests of the corporation

- Corporate opportunity
- Confidentiality
- Conflicts of Interest
 - Actual
 - Perceived



Duty of Loyalty (cont'd)

- Conflicts of interest
 - Have a written conflicts of interest policy
 - See sample Conflicts of Interest policy (Handout Tab 10)
 - Use an annual questionnaire to identify and disclose potential conflicts
 - The interested party should not participate in or be present for the vote on a transaction for which a conflict exists
 - Determining factor is whether the transaction is fair to the corporation



Duty of Obedience

- Comply with law
- Comply with organizing documents and policies
- Comply with mission



Liability

- Limitation of Liability
 - No individual liability except for a decision or omission that constitutes “gross negligence”
 - failure to exercise slight care (e.g., conscious and voluntary disregard)
 - Business judgment rule
- Volunteer Protection Act of 1997
 - Gross negligence standard
 - Not applicable to individual who receives compensation or anything of value in lieu of compensation in excess of \$500/yr
 - Includes directors and officers



Indemnification and Insurance

- Indemnification
 - Corporation may indemnify a director or officer for reasonable expenses if:
 - Individual acted in *good faith* and reasonably believed that conduct was in best interests of corporation
 - Corporation must indemnify directors or officers who successfully defended against lawsuits
 - Corporation may not indemnify if a director or officer is found liable to the corporation or if he or she received an improper benefit
 - Check organizational documents for indemnification and limitation of liability provisions
- D & O Insurance
- General Liability Insurance



Preventative Measures

- Attend board and committee meetings
- Read financial statements, budget proposals and other reports
- Question inconsistencies, insufficient information and other problems
- Take steps to investigate and rectify problems
- Insist on advance notice to directors of any major item of business to be acted upon at the next meeting
- Request meaningful written materials to directors in advance of the board meeting
- Insist that accurate, thorough records are kept of decisions made and process for reaching the decision



Oversight of Financial Matters

- Require regular financial reporting to Board
- Ensure that the organization is:
 - Addressing federal and state tax filing requirements
 - Properly withholding and paying payroll taxes
 - Observing donor restrictions on endowment or other funds



Oversight of Financial Matters (cont'd)

- UPMIFA
 - Effective July 1, 2009
 - Applies to “Institutions” (i.e., charitable orgs)
- Standard of Conduct for Managing & Investing Institutional Funds
 - Prudent person standard applies
 - Specific factors to consider (e.g., economic conditions, expected total return, tax consequences, etc.)
 - Management and Spending of “Endowment funds”



Special Rules for Washington Nonprofit Corporations

- Loans to officers and directors are prohibited
- Charitable solicitations: must register with the state prior to soliciting (limited exceptions)
- Charitable trust registration: investment assets of more than \$250,000 held for charitable purposes
- Solicitations in other states may require registration in those states
- Hiring consultants to fundraising or provide fundraising advice may require registration in many states



Thank you for coming
today.

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