LEGAL OBLIGATIONS OF NON-PROFIT BOARDS
ARE WE AT-RISK??

Source:
http://www.mncn.org/info/FAQ_gov.htm#requirementofbdDF
BOARD PRACTICES

- Do we have Board meetings at least quarterly.
- Do our By Laws accurately reflect Board members’ specifications of the structure of the nonprofit and how it is to be managed?
- Do we produce and approve Board minutes that include highlights of members’ deliberations, decisions and actions from Board meetings and committee meetings?
- Do we include an indemnification paragraph in By Laws, which explains corporate protection of members?
- Are our personnel policies up-to-date and approved by the Board, and staff are trained on the policies?
• The Treasurer should not also be the auditor.
• Does each member undergo basic training on roles and responsibilities of governing Board of Director?
• Are Board members trained on their roles and the roles of staff?
• Do we conduct a Board self-evaluation once a year?
• Do we conduct an evaluation of the Executive Director at least once a year according to the personnel policies?
• Do we approve and train about Board policies, including By Laws and conflict-of-interest?
• Do we adhere to the Board policies, especially conflict-of-interest and ethics policies?
• As much as possible, is our Board comprised of 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, are staff members are not involved in recruiting Board members?
• Do we train Board members how to analyze financial information?
Board Deliberations and Decisions, Do we:

- 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?
- Ensure that highlights from deliberations, decisions and actions are included in Board-approved meeting minutes?
- Ensure that all contracts with vendors specify them as independent contractors and also specify the scope of their liabilities in dealings with the nonprofit?

Adapted from “Field Guide to Developing, Operating and Restoring Your Nonprofit Board” at www.authenticityconsulting.com
Financial and Tax Management, Do we:

- 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 status?
- Review 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

• Are we 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.)

• Do we have general liability insurance in case someone sues because of workplace injury?

• Do we need property insurance in case property is damaged or lost?
• Should we have professional liability insurance, which covers you in case someone sues as a result of perceived malpractice?

• Would our 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 we need workers’ compensation insurance in case someone is injured on the job?
Major Policy Areas with Legal Implications
• Personnel
• Finance
• Conflict of Interest
Personnel Policies

• It is the board's responsibility to ensure:
  • Personnel policies are compliant with minimum legal standards
  • Personnel policies are followed
  • Personnel policies are reviewed and revised on a regular basis
Federal Laws

- Examples of some minimum legal standards contained in federal law include:
- Equal Employment Opportunity (EEO)
- Sexual Harassment (contained within Title VII of the 1964 Civil Rights Act)
- Occupational Safety and Health Act (OSHA)
- Fair Labor Standards Act (FLSA)
- Federal Insurance Contributions Act (FICA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Family Medical Leave Act (FMLA)
State Laws

• State law may go further than what federal law contains.
• Leave for Victims of Violence
• Minimum Wage
• Family Medical Leave Act
INSERT INFO HERE ON YOUR STATE-SPECIFIC LAWS (NEXT 4 SLIDES ARE MINNESOTA’S)

SEE NOTES
• File Form 990 with the IRS and the Minnesota State Attorney General's Office, Charities Division on an annual basis if the organization has more than $25,000 a year in financial activity (purely religious organizations exempt).

• Have an audit completed if total organizational revenue exceeds $350,000 in a year; file with the charities division of the State Attorney General's Office.

• Report change of name, address, or amendments to the Articles of Incorporation to the Secretary of State and pay fee for such changes.

• Make Forms 990 and 1023 available to the public.

• Report any Unrelated Business Income (UBI) to the State Department of Revenue and the IRS, and send tax payments with form 990T.

• Withhold taxes from employees, and send withholding payments to the IRS and MN Department of Revenue.
• Comply with laws that affect all employers including: ADA, OSHA, FLSA, FICA, COBRA, Family Medical Leave Act.

• Report any lobbying activities on Form 990, and register as a lobbyist if required by the Minnesota Ethical Practices Board.

• Give receipts to donors for contributions above $250.

• Collect sales tax on items sold by your organization, unless you are selling tickets to performances as a performing arts organization.

• Get court approval for distribution of assets.

• If the organization conducts charitable gambling activities, register with the gambling board.
• If the organization owns real property, pay property taxes or obtain an exemption from the county where the property is located.

• If the organization sends bulk mail, pay regular bulk mail rate or obtain a nonprofit bulk mail permit.

• Comply with the terms of donations; promises made to donors are legally binding. Funds given for specific projects or programs need to be kept separate.

• Comply with Minnesota state law regarding conflicts of interest.

• Make sure any professional fundraisers register with the State Attorney General's Office, Charities Division; file copy of contract.
• Obtain city permits for all cities in which the organization actively solicits door-to-door by paid solicitors.

• Record minutes of board and annual meeting.

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http://www.mncn.org/info/FAQ_gov.htm#requirementofbdDF
BOARD

STRUCTURE

And

MEMBERSHIP
Board Structure

• Q: Is it required to have board members?
**A:** Yes, most nonprofits are corporations, which mean they are legal entities distinct from the individuals who founded them and they have legal and ethical responsibilities that cannot be delegated.
How big should a Board be?

• Board sizes can vary from three to more than 50 members. Each state has regulations that determine the minimum size of the board, but the optimum number of people who sit on the board should be determined by the needs of the organization.
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• A preliminary analysis of public charities for the 1998-2000 period using the GuideStar-NCCS National Nonprofit Database indicates that the mean board size is slightly less than 11 directors per organization. Some analysts think the ideal size is seven.
• A large number of members represent a challenge in terms of using them effectively and/or having any kind of meaningful individual participation.
Board Committees

• There are four recommended committees: executive, audit, compensation and nominating. There may be more committees as determined by special circumstances relating to a particular company's line of business.
• The minimum number recommended for each committee is three and no one person is on more than one committee, which also helps avoid any conflicts of interest.
Board Officers

• The officers of a board should consist of a president, a vice president, a secretary, a treasurer, each of whom shall be elected or appointed for a time, manner, and term as may be prescribed in the articles of incorporation or the bylaws.
• In the absence of a provision in the by-laws, all officers shall be elected or appointed annually by the board of directors.
How often should Boards Meet?

Between nine and 12 meeting times are recommended each year. As with the size of your board, the number of board meetings each year should be determined by the work that needs to be accomplished.
Can Board members be paid?

Yes, as long as the organization’s bylaws allow compensation of board members. Most often, bylaws will restrict payment to directors to reasonable reimbursements.
Family and Staff on Boards?

• There is no law forbidding family members from serving on the same board, but it is wise for organizations to address the issue in bylaws or board policies. The recommendation is that a board consist of at least 7 unrelated persons.
• There is also no law prohibiting staff from serving on a board. The recommendation is that no more than one staff person serve as a voting member of the board and should not serve as the chair or treasurer. Most often this staff person is the executive director.
Board Term Limits?

• Term limits for board membership should be specified in the organization’s bylaws. Experts suggest that terms for board members (or the boards themselves) only run from one to three years.
• Term and age limits for board members can for example be a blessing when a friend should leave but you're afraid to ask or if someone just becomes too disinterested.
• Additionally, stagger terms so that you don't have too many board members leaving on the same year.
Recommendation

• Check your state statute to ensure that your articles of incorporation and by-laws are inline with your state’s rules and regulations.
lobbying
Legal Duties

- Care
- Obedience
- Loyalty

Legislative Advocacy to support our Mission
Federal Advocacy and Non-Profits

• “Non-Profits can and should lobby!”

~ The National Alliance to End Sexual Violence
Federal Advocacy and Non-Profits

- Direct lobbying
- Non-legislative Advocacy
- Grassroots lobbying
Lobby Guide for Non-Profits

• NAESV Sexual Assault Advocacy Guide
Resources

• Alliance for Justice (www.afj.org)
• NAESV (www.naesv.org)
• RSP (www.resourcesharingproject.org)
Board Oversight of Documents and Guidelines Governing Nonprofits
Board Responsibility

• Responsibility to ask questions to determine what reports, site visits, etc. govern agency, and ask questions to determine if in compliance

• Responsible inquiry – documents should be available for review if asked
Types of documents, suggestions for monitoring

- Articles of incorporation, bylaws
  - Should have copy in board manual
- 990
  - Ask if filed
- Annual audit
  - Does auditor present to the board?
- Agency or personnel certification or licensing guidelines, what applies?
  - Overall agency?
  - Specific to personnel – which personnel
- Insurance
  - D and O insurance
  - Worker’s Compensation
  - Liability Insurance
  - Employee health insurance

  » Ask if Are there report backs on any unusual claims – health insurance issues
Types of documents, suggestions for monitoring

• Financial policies
• Personnel policies
• Related compliance issues – ADA, civil rights, LEP, DOL (esp. wage and hour), OSHA

• Process for when personnel matters become board concern?
  (public, lawsuit, egregious)
• Need process for handling confidential matters?

http://www.garberconsulting.com/FAQ.htm#confidential matters
Types of documents, suggestions for monitoring

• Client-related policies, rights, complaint procedures
  Process for when/if client complaints become board concerns?
    (What would trigger, examples: public, lawsuit, against director)
What other documents can have impact on agency?

• Reports specific to funding source?
  – Typical: VAWA, VOCA, state funding, RPE, United Way, county, city, university
  – Are there site visits or reports back on compliance issues?
  – Are there any overall agency recommendations?
  – Typically a compliance monitoring/site visit might include items such as
    http://www.servicelearning.org/filemanager/download/LSA_Compliance_checklist_FINAL_6_10_09.doc [note, need to find one specific to SA agency]—what is board’s process for learning this information?
Additional kinds of documents/guidelines

• For ED evaluation and review
  – Compensation comparisons
  – Open meetings/records guidelines
    • State case law and current climate may be relevant
No Need to Be an Expert!

Your Responsibilities as a Board Member:

• Know what you don't know
• Have an attorney review your personnel policies
• Know who to call when you have a personnel question
• Try to have an attorney on the board
RESOURCES

• **Free Complete Toolkit for Boards**
  What are the Board Member's Legal Responsibilities? Sarbanes-Oxely Act (USA legislation) and Implications for Nonprofits
  http://managementhelp.org/boards/boards.htm

• http://www.mncn.org/info/FAQ_gov.htm#requirementofbdDF

• *Legal Responsibilities* of a Board member. Responsibilities of serving on a board.
  www.usenix.org/about/minutes/Jun06.pdf