Protecting the Board
Bob Harris, CAE

“What could go wrong? I’m just a volunteer on a board of directors.”

It’s better to ask about risks and protections before accepting a nomination to serve. Directors are trustees of the corporation. They are responsible for governance and the well-being of the organization.

Murphy’s Law

Although organizations are characterized as “nonprofit” and directors are “volunteers,” liabilities do arise. Consider Murphy’s Law: “If anything can go wrong, it will.”

Liability could result from discrimination, copyright violation, harassment, embezzlement, antitrust violations, and more.

Every organization faces risks. Nonprofit organizations may have added risks. For example, public record requests, recording minutes, government filings, political action, election procedures, committee accountability and member demands.

Five Protections

Consider these five methods to afford board protection. Every organization is unique. Read the governing documents and understand applicable laws. Be sure to rely on legal, accounting and insurance counsel.

Board Orientation – One of the best ways to avoid risk is to discuss its potential. Plan an annual orientation to inform directors of liabilities and how to avoid them. Risk management includes awareness, avoidance, mitigation, transference, safeguards and insurance.
For example, a nonprofit offering liquor at a meeting may want to have policies and purchase host liquor liability insurance, among other safeguards. Or the event could forego liquor entirely. Another option is to hire a caterer trained and insured to serve alcohol.

TIP: Record in the minutes that the organization provided a yearly orientation, including risk avoidance. Distribute the governing documents.

**D & O Insurance** – Directors and officers liability insurance is used to protect board members and officers from personal losses if they or the organization is sued. The coverage pays legal costs for the defense of the board and may pay associated fines.

TIP: Circulate a copy of the insurance policy or its cover page at the board meeting. Directors should be aware that the policy exists and the amount of coverage.

**Indemnification** – Some bylaws include an indemnification clause. The concept intends to cover the legal expenses of officers and directors who may need to hire an attorney to protect themselves in organizational related work. For instance, a member sues the organization for misuse of funds and the treasurer decides it is prudent to hire a personal attorney.

TIP: I’ve read indemnification clauses that are narrowly defined, and others so broadly stated that even the sons and daughters of board members have access to reimbursement. An organization offering indemnification may want to consider the amount of savings reserve that would be necessary if the clause is used.

**Corporate Veil** – A corporate veil is a legal concept that separates the actions of board from the liability of the corporation. The association is incorporated in hopes that a court would not pierce the corporate veil to go after directors’ personal assets.

TIP: The majority of states require an annual corporate report by the organization. Failure to submit the report can result in “involuntary dissolution” of the corporation.

**Volunteer Immunity** – Many states and the federal government have adopted laws to protect members of a nonprofit organization. The concept address governance and compliance with all laws. Volunteer immunity would probably not apply to actions outside of governance, for example hosting an out-of-control poolside beer-bash.

TIP: Realizing volunteer immunity relates to governance and the organization’s governing documents, I like to be certain the minutes reflect that an annual orientation was conducted and directors have access to the governing documents.
The board is responsible for governing, strategic direction, serving the membership and protecting assets. Directors should be advised of any protections in place.

It is worth repeating, be sure to rely on legal, insurance and accounting counsel regarding protections, risks and governance.

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**Note:** Bob Harris, CAE, provides free governance tips and templates at [www.nonprofitcenter.com](http://www.nonprofitcenter.com).