



Governance Checklist for Associations and Nonprofit Organization Boards

The Importance of Evaluating Your Nonprofit Board's Governance Practices



ASSESSING YOUR BOARD OF DIRECTORS POTENTIAL RISKS

The Checklist consists of lists of questions about nonprofit organization policies, programs or procedures that could carry legal liability risks. The Checklist can be used by a nonprofit organization as a self-evaluation document to help understand and evaluate the potential risks they might face.

Subjects addressed in the Checklist were identified through studies of areas in which claims against nonprofit organizations covered by Directors & Officers Liability Insurance have most often been brought.



YOU CAN'T PASS OR FAIL

The Checklist is not an objective criterion document, but instead a subjective evaluation document. It is not a test that a nonprofit organization can "pass" or "fail."

Although the questions are designed to be answered either "yes" or "no," there are no right or wrong answers for all nonprofit organizations in all circumstances.

- In most cases the answer "yes" suggests a lower risk for the nonprofit organization.
- The answer "no" suggests that consideration should be given to whether a risk exists and whether it is acceptable to the nonprofit organization.

Your answers will not necessarily identify the nonprofit organization as one that is, or is not, "liable."

- Legal liability for a nonprofit organization can only be assessed with respect to its specific factual situation under applicable legal authority.
- Only a court can determine if a nonprofit organization is "liable" when the nonprofit organization is challenged.
- Whether the nonprofit organization is likely to be able to secure insurance indemnification depends upon underwriting guidelines, available underwriting authority and other internal insurance company factors when the association applies for insurance.



YOU CAN REDUCE YOUR RISK

The exercise of attempting to answer the Checklist can be valuable, because the questions relate closely to liability and potential claims made against directors and officers.

- Use of the Checklist may lead a nonprofit organization to more knowledgeable planning to eliminate or reduce unnecessary liability risks.
- Even if the nonprofit organization has no insurance and is "self-insured," this exercise may help make it a better risk.

YOUR NONPROFIT BOARD'S GOVERNANCE PRACTICES CHECKLIST FOR GENERAL GOOD GOVERNANCE.

GENERAL

YES NO

1. Is the leadership of the nonprofit organization routinely advised, through oral or written communications, regarding avoidance of potential legal liability?
2. Is the nonprofit organization managed by one or more experienced and knowledgeable professional nonprofit organization executives?
3. Has the executive attended educational programming on legal liability of nonprofit organizations?
4. Does the executive receive and review books, periodicals or other literature covering nonprofit organization law?
5. Is qualified legal counsel available either "inside" (on staff) or "outside" (on a retained basis) to consult regarding potential legal liability situations?
6. Is legal counsel especially knowledgeable and experienced in nonprofit organization law because of professional memberships, educational seminars, legal publications, or representation of other nonprofit organizations?
7. Does consultation with legal counsel typically occur when potential liability situations are first identified rather than later when a claim or challenge is received?
8. Does legal counsel attend meetings of the governing board of the nonprofit organization?
9. Does legal counsel regularly receive and review minutes, communications and publications of the nonprofit organization?
10. Does the nonprofit organization have governing documents--a corporate charter, bylaws, and a compilation of policies and procedures--that clearly specify the rights and obligations of members, directors, officers and staff?
11. Are the governing documents periodically reviewed to make them current and consistent with present interpretation of nonprofit organization law?
12. Is the purpose of the nonprofit organization stated clearly in its governing documents with no implication of illegality?
13. Are volunteers or staff indemnified through the governing documents or otherwise?
14. Is there an established policy as to who among the volunteers and staff is specifically authorized to communicate outside the nonprofit organization its views, comments and positions?
15. Are volunteers and staff periodically advised regarding authority to communicate on behalf of the nonprofit organization?
16. Are volunteers prohibited from using nonprofit organization letterhead except when authorized for a specific task, project or purpose?
17. Has the nonprofit organization previously carried any form of "errors and omissions," "directors" and officers" or "nonprofit organization professional liability insurance"?
18. Were there no claims made under that insurance?
19. Has that insurance been terminated?

YOUR NONPROFIT BOARD'S GOVERNANCE PRACTICES CHECKLIST FOR BEST PRACTICES RELATED TO BOARD MEETINGS.

MEETINGS

YES NO

1. Is each nonprofit organization meeting held according to a notice and agenda distributed in advance to attendees?
2. Are those who preside at nonprofit organization meetings made aware by staff or legal counsel of subjects that must not be discussed because of potentially adverse legal ramifications?
3. Are attendees at nonprofit organization meetings admonished against discussion of subjects with potentially adverse legal ramifications?
4. Are minutes taken of nonprofit organization meeting proceedings?
5. Do the minutes record all or most comments, views, criticisms, considerations or discussions of each subject rather than merely reports, communications and resolutions?
6. Are minutes prepared by staff rather than by volunteers?
7. Are draft versions of minutes removed from the nonprofit organization's records once the final version is approved?
8. Are minutes reviewed by legal counsel before distribution?
9. If audio recordings are maintained of nonprofit organization meeting proceedings, are they destroyed after use in preparing written minutes?
10. Are "rump," "secret" or "off-the-record" meetings by the nonprofit organization or among its leadership or members prohibited and avoided?





Discover Where Associations Turn to for Business Insurance

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