A Not-for-Profit Director's Checklist

Written by Janet Bandera, JD

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The question is: What does a good board member do? Raise money? Stuff envelopes?

In seeking to answer that question for others, I have begun to answer it for myself. A good board member helps the organization stay focused on its mission. Thus, the most important job of all board members is to be informed and to govern. So, what do we need to know? The search for this answer has resulted in the following work-in-progress.

The Checklist

Before undertaking his or her role, each potential board member must review the background, history and related details of a nonprofit organization ("NFP"). The following are some issues to consider prior to accepting a position and during your term.

Exempt Purpose

In order to qualify under Code Sec. 501(c)(3), the NFP's exempt purpose must be stated in the organizing document. A director is measured by the success or failure of the pursuit of accomplishing this exempt purpose. A director is also measured by the course taken by the organization in getting there. Thus, it is important to review the NFP's activities to determine whether they are consistent with the purpose set out in its organizing documents.

Organizational Details and Documentation

After you find that the mission of the organization resonates with you, you'll want to know whether it can accomplish the mission. The first questions are who are the people guiding the way; what skills and experience does each contribute; and is the foundation for effectively accomplishing the mission in place? The devil is in the details: So what are the details? The following is not an exhaustive list; it is meant to alert the conscientious prospective board member that he or she has a duty to the organization that goes beyond lending a name and/or raising money or having fun.

What is the organization's stated purpose?

Review the Application for Exemption (IRS Form 1023) and the Mission Statement. Is the organization a corporation or a trust; who formed it and when? Review the Articles of Incorporation or trust agreement. Have Bylaws been adopted? Review the Bylaw and any amendments. How many directors are there and what do they do? Have there been changes in

the directors; how are they appointed; how often do they meet; how many are a quorum; how many are required to approve actions; are adequate records of their actions kept? Review the Bylaws, resolutions and minutes.

Have the required state and federal annual reports been filed?
Check with the Secretary of State and ask to see copies of both the state annual report and the federally mandated annual report.

Have the tax returns been filed and any taxes paid?
Who prepares/reviews the tax returns; are you prepared to review them; is there someone other than the person in charge of payroll verifying that all withholdings are deducted and forwarded to state and federal authorities?

Where are the organization's records kept?
Each director should have a general knowledge of the books and records. Are independent audits performed to ensure accuracy? If not, is someone charged with oversight of the record keeper? Ask where they are and who is overseeing this function.

Does the organization provide insurance to directors?
What are the policy limits; what is the deductible; who pays the deductible; do the bylaws include indemnity provisions? Ask to see the insurance policy.

Does the organization have other necessary insurance?
This includes property insurance; what about acts or injuries to third parties, riders for large events, appropriate environmental indemnities if property is or was purchased? Ask to see the insurance policy.

Has the board adopted a Conflict of Interest Policy?
An NFP must adopt and review on an annual basis its conflict of interest policy. Our state law defines a conflict of interest transaction as “a transaction with the corporation in which a director of the corporation has a material interest” each state will have its own definition. Ask for a copy of the Policy.

Has the board adopted a Code of Ethics?
Although not required, a Code of Ethics Policy is a sign that the board and its members have carefully considered their responsibilities, wish to ensure compliance with all laws and regulations and promote the organization’s purpose with the highest integrity. Ask for a copy of the Policy.

Is there a budget? How is the budget determined?

Are directors expected to actively participate in budgeting or merely review the budget annually? Ask to see the budget. Who is managing the organization's money? When considering the board appointment, be aware of whether directors participate in reviewing financial statements. Consider how much experience this will require. Will you understand if the organization has made poor investment choices or has excess business holdings? Do you understand issues such as the meaning of unrelated business taxable income (UBIT), which may subject the organization to additional tax? If not, is there someone who does charged with this responsibility? Ask who this person is and their qualifications.

Who reviews distributions and expenses?

Each director should be prepared to actively review any grants, loans and distributions to outside organizations to ensure that such distributions further the organization's exempt purpose and that adequate records are kept.

Are there employees, and who sets their compensation?

Employee compensation is an important issue. The organization should follow the recommended practices provided in IRS Form 1023 when setting compensation. The amount paid by similarly situated organizations for similar services, current salary surveys compiled by independent firms and written offers from other organizations are all general guidelines in setting compensation.

The individuals responsible for setting the compensation level should also follow the organization's conflict of interest policy. It is advisable that the compensation be approved in advance and documented in writing when it is approved. It is also advisable to document in writing the identity of the directors who voted on the compensation. Review the minutes as to how compensation was determined.

Does the organization strive to comply with Sarbanes-Oxley?

Sarbanes-Oxley says that it applies to companies that have registered equity or debt securities with the U.S. Securities and Exchange Commission in order for the securities to be publicly traded. Most nonprofit organizations have never issued registered securities and since no nonprofit ever issues publicly traded equity securities, one would tend to think that nonprofits are exempt. However, it is important that an NFP recognize the implications and understand how it will be affected. New GAO independence standards are similar to parts of Sarbanes-Oxley. These apply to, and were recently implemented for, the auditors of organizations that receive federal funding. These regulations already require many firms to comply with quite restrictive independence requirements.

That's the end of my basic checklist for now. Stay tuned for refinements, lessons learned, mistakes overcome and triumphs. In the interim, the Internet is full of free information for and about the governance of NFPs.

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