
Important Questions to Ask Before Joining a Nonprofit Board

Description

You are ready to join a nonprofit board so you can help support the good work that it does. Do you know the risks associated with serving in this important role?

In both Massachusetts and Rhode Island, directors of nonprofit corporations must discharge duties in good faith and in a manner he or she believes is in the best interests of the corporation.

Asking a few questions before you join a nonprofit board will not only help you to understand how the nonprofit operates, but also enable you to determine whether the organization has written procedures and policies in place to protect board members from liability and comply with applicable laws.

- **Have you checked on the Internal Revenue Service's Charities Page to Ensure Tax-Exempt Status is Intact?** Performing a search of the organization's name through the IRS search function may reveal that the organization has not filed Form 990 returns or has lost its status.
- **Is the Organization in Good Standing with the Secretary of State?** Understanding the corporate good standing is an important step to review when becoming a board member.
- **Do the Nonprofit's Articles of Organization and/or Bylaws Contain Adequate Indemnification Protections?** Indemnification provisions allow the organization to cover the legal defense and any damages in the event board members are sued individually by 3rd parties for actions or inactions taken by such individuals on behalf of the nonprofit.
- **What is the Expectation as a Board Member?** Understand what financial, time and board/committee meeting commitment is. Inquire about the strategic plan for the organization and how that may change expectations.
- **Does the Organization Have Director and Officer Liability Insurance?** To help the organization cover its indemnification obligations to board members, it should have sufficient director and officer liability insurance coverage. Inquire whether the organization is at risk or involved with any current litigation.
- **Does the Organization Have a Written Conflict of Interest Policy?** Having a written policy to disclose board conflicts at least annually is required by the IRS to maintain public charity status.
- **Are There Written Data Privacy and Cybersecurity Policies in Effect as Well as Cyber Liability Insurance?** Organizations often manage sensitive data related to its constituents, donor data, and financial data, and these all must be protected. Cyber liability insurance can provide further protection in the event a data breach were ever to occur.
- **Does the Entity Have Written Employment Policies?** If a nonprofit has employees, it should have written policies in place addressing discrimination, sexual harassment, sick leave, and extended leave, among others.
- **Has the Organization Adopted a Written Executive Compensation Policy?** Excess benefits, private inurement, and self-dealing are the subject of increased scrutiny by the IRS in determining whether executive compensation could be deemed excessive.
- **Has a Written Gift Acceptance Policy Been Adopted?** This policy should address the classes of assets the organization is prepared to accept, along with the types of designations and restricted funds to which donors may allocate gifts. Understand if the organization is properly managing restricted funds.
- **Has the Organization Established Written Investment and Financial Policies?** A finance or investment committee should work with the organization's CFO to establish written policies governing investment philosophy and prudent management of endowment funds.
- **What is the Financial Position of the Organization?** The COVID-19 pandemic created financial

uncertainty for many organizations. When in the zone of insolvency, directors should take all efforts to avoid the following: failing to collect receivables diligently; allocating funds to new, major capital projects; entering into new lines of services on a speculative basis; providing unreasonably lucrative pay or benefits to management; taking actions for the sole benefit of the parent entity in a multi-corporate nonprofit system; entering into transactions that principally benefit individual directors; or approving loans on nonmarket terms. Failure to be cautious may result in personal liability for directors, as it has in certain precedent.

- **Understand the Nature of Mission and Related Services.** Having a clear understanding of how the organization works will allow you to more effectively guide the organization, as well as assess risk.
- **Does the Nonprofit Have a Written Checklist Outlining Policies to Govern Annual Filing Requirements?** The board should be continually monitoring key filings, especially those that may be crucial to maintaining tax-exempt status. Annual filings may include charitable solicitation registrations, 990 filings, and state filings related to property, sales or other tax exemptions.
- **If the Organization has an Executive Director, Do the Homework.** This individual will be leading the organization with your support and oversight. Speak to other board members and conduct due diligence regarding his or her performance.

Partridge Snow & Hahn's [Charitable & Nonprofit Organizations Blog](#) provides practical legal guidance for charitable and nonprofit organizations. **If you are interested in receiving these updates via email, please submit the form below:**

Date Created

December 2, 2020