

KNOW YOUR ROLE

Roles & Responsibilities of Serving
on the Nonprofit Board of Directors



Side Project Inc.

BUILDING CAPACITY

IDENTIFYING RESOURCES

CAPTURING OUTCOMES



Board of Directors

Role of the Board of Directors:

- Time, Talent, Treasure
- Govern (not manage) the corporation
- Sets policy and strategic direction
- Guards the mission, sets the vision
- Advocates and represents the organization's mission
- Helps to fundraise and identify new donors
- Fiduciary relationship to corporation

Legal Responsibilities

Duty of Care

- ✓ Expected to participate in planning, decision making, and oversight

Duty of Loyalty

- ✓ BOD must put interests of the nonprofit before their personal or professional interests.



Documents to Review

1. Articles of Incorporation
2. Bylaws
3. Mission Statement
4. Annual Report (Last FY)
5. Current Budget
6. List of Existing Board Members & Officers
7. List of Board Responsibilities
8. Conflict of Interest Policy
9. IRS Form 990 (Last FY)
10. Most Recent Audit or financial reports
11. IRS 501(c)(3) Determination Letter
12. Most Recently Filed Corporate Annual Report from State of Incorporation
13. Copy of Most Current State Charitable Organization Registration or Renewal
14. Sales Tax Certificate
15. Board Meeting Minutes/ Minute Book



Check Your Status

Department of State

- <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName>

Department of Agriculture

- <https://csapp.800helpfla.com/cspublicapp/giftgiversquery/giftgiversquery.aspx>

IRS

- <http://www.irs.gov/Charities-&-Non-Profits/Search-for-Charities>

Guidestar

- <http://www.guidestar.com>

Bylaws

- Bylaws are the written rules that govern an organization.
- Should be reviewed every couple of years to ensure they accurately reflect how the organization operates



The bylaws describe...

- How many board members there can be
- How board members are elected
- How to remove members
- How often the board will meet
 - Ex: 6 times per year
- Define quorum for board meetings



The bylaws how and who will manage the organization...

- Officers
 - Ex: chair/president, vice chair/president, secretary, and treasurer, and their duties
- Terms and term limits
 - Ex: A term is three years, and maximum is 2 three-year terms in a row.
- Officer terms
 - Ex: A term is one year.
- Attendance by conference calls and electronic voting



Bylaws also explain...

- Whether your corporation is a membership organization or a non-membership organization
- How an emergency board meeting can be called
- How a board committee can be created and dissolved
- What the permanent committees are



Well crafted bylaws included provisions on...

- Conflict of interest policy, or simply stating that one exists elsewhere
- How the bylaws can be changed
- Indemnification of board members
- Organization dissolution statement
- For more: www.blueavocado.org/content/bylaws-checklist



Corporate Formalities

- Corporate Minute Book
- Do your articles and bylaws accurately describe your current purposes, organization, and procedures?
- Is your registered agent still at the address filed with the Secretary of State?
- Can you rely on your registered agent to give you mail that comes to the corporation?
- Local business registration requirements



Corporate Formalities

Common Corporate Policies

- Bylaws
- Conflict of Interest Policy
- Document Retention Policy
- Whistle-Blower Policy
- Executive Compensation Policy
- Gift Acceptance Policy
- HR Policies



Corporate Record Keeping & Disclosure Requirements

- Are you saving lists of members, annual reports, and all correspondence with members for at least three years?
- Do you prepare an annual financial statement or audit?
- Are you saving financial records for at least seven years?
- Does your organization have a document retention (destruction) policy?
- Have you revoked the check-signing authority of former staff or board members?



Corporate Record Keeping & Disclosure Requirements

- Do you keep minutes of all meetings of the board and committees, including resolutions and other formal actions?
 - Are they available to your members, if any, for inspection?
- Do you have a current list of names, addresses, and terms of office of your board members?
- Do minutes reflect actions to elect or reelect current board members, and the resignation or termination of former board members?

Motions

- Boards act via “motions”
- Word carefully
- Second, Discussion, Vote, Amend, Withdrawal
- Recorded in the meeting “minutes”
- Resolution = a formal written motion



Example Resolution

RESOLVED, that the firm of Smith & Co., is hereby appointed auditors of Nonprofit Corporation Inc., and that the remuneration for their services for the year 2015, shall be fixed at \$3,000.00



Board Meeting Minutes

- The official record of a Board Meeting
- Not a verbatim transcript. Capture the main points

Minutes – What to Include?

Board minutes should include basic information such as:

- Date and time of meeting
- Whether the meeting is a special or regular meeting
- Whether notice was given or a waiver of notice signed by all directors
- Names of directors in attendance and directors not in attendance
- Names of other guests in attendance (and their titles or associations, if relevant)
- Whether a quorum was established
- Any departures and re-entries of attendees
- Any board actions (e.g., approvals, delegations of authority, directives)



Minutes – What to Include?

Suggestions:

- Include alternatives considered for important decisions to show diligence and reasonable care
- Know what vote is required by your bylaws (e.g., majority, supermajority) for certain actions and clearly indicate if such a vote was reached
- Contact CEO or General Counsel if there was a legal issue discussed before recording in minutes
- Record recusals from discussions and abstentions from voting
- Include those votes that were against a motion
- Include action items, what people commit to do



6 Keys to Financial Health

1. Board Members with Finance Background
2. Prepare an Annual Budget and Compare to Actual Performance
3. Regular Board Review of Financial Performance & Practices
4. Long Term Financial Planning
5. Internal Financial Controls and Accounting Systems
6. Outside Payroll Service

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Appellate court upholds most of jury's verdict against officials of Lemington Home for the Aged



By Brian Bowling

Monday, Jan. 26, 2015, 6:39 p.m.

A federal jury doesn't have to consider a defendant's wealth when deciding whether to impose punitive damages, an appeals court ruled Monday in a precedential decision.

But the jury in a lawsuit creditors brought against the officers and board of the Lemington Home for the Aged erred when it assessed directors despite a lack of evidence that their conduct was "outrageous," the Circuit Court of Appeals ruled.

An eight-person jury in March 2013 found that former administrator Mr. Officer James Shealey and 13 of the 15 directors failed in their duties into bankruptcy.

The jury awarded \$5.75 million in damages including \$2.25 million in officers and 13 directors, \$1 million in punitive damages against Shealey and Causey and \$350,000 each in punitive damages against five directors.

Lawyers for the defendants argued that tort law required the jury to hear evidence before they could award punitive damages. The appeals court said that was not the case.

The appellate judges upheld the jury's verdict except for the punitive damages against five directors, reducing the total to \$4 million.

Brian Bowling is a Trib Total Media staff writer.

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TRIBLIVE

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13-2737

In re: LEMINGTON HOME FOR THE AGED

OFFICIAL COMMITTEE OF UNSECURED CREDITORS,
ON BEHALF OF THE ESTATE OF LEMINGTON HOME
FOR THE AGED

v.

ARTHUR BALDWIN; LINDA COBB; JEROME
BULLOCK; ANGELA FORD; JOANNE ANDRIORIO, J.W.
WALLACE; TWYLA JOHNSON; NICOLE GAINES;
WILLIAM THOMPSON; ROY PENNER; MELODY
CAUSEY; JAMES SHEALEY; EUGENE DOWNING;
GEORGE CALLOWAY; B.J. LIBBER; REVEREND
RONALD PETERS,
Appellants

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 2-10-cv-0800)
District Judge: Honorable Arthur J. Schwab



Board of Directors – Best Practice Tips

- All directors should have a Board manual containing basic documents, prior minutes, etc.
- Establish expectations through job descriptions for the various roles – Director, officers, etc.
- Train directors regularly
- Recruit and select Directors wisely