

Effective

Your Fiduciary & Management Responsibility

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Elizabeth Allan, CWEA Executive Director



What are you managing?

- A nonprofit or not-for profit corporation
 - Separately incorporated
- That is tax-exempt
 - In the US, 501(c)3 or 501(c)6
 - Tax ID#
- Local sections may or may not be separately incorporated with a separate tax ID#

Nonprofit ?

- What does nonprofit or not-for profit mean?
 - What distinguishes nonprofits from for-profits is not whether they can make a profit, but what they can do with the profits.
 - For-profits exist to make money owners, investors, or shareholders.
 - Not-for-profits exist to serve a mission and are strictly prohibited from distributing profit
- Is it okay to make a profit?
 - Yes! Reinvest back into the mission of the organization. “Margin = Mission.”

Tax-exempt ?

- What does tax-exempt mean?
 - US exemption from federal & state income tax
 - Some states exempt sales tax
 - Pay tax on unrelated business income (UBIT)
 - Pay other taxes: e.g. payroll tax
 - Individuals' donations to some types of tax-exempts may be tax-deductible
- Why does it exist?
 - Provide public benefit that relieves government's burden
 - Benefit to society

Fiduciary ?

- “An individual, corporation or association holding assets for another party, often with the legal authority and duty to make decisions regarding financial matters on behalf of the other party”
www.investorwords.com
- Fiduciary responsibility to manage the organization's funds
- More than money
 - “of, relating to, or involving a confidence or trust
 - ? as **a** : held or founded in trust or confidence
 - ? **b** : holding in trust
 - ? **c** : depending on public confidence for value or currency”

Legal responsibilities?



- Legal duty to be loyal, prudent, and act in good faith in the best interests of the organization

Liability Issues

The US Courts have ruled that being a volunteer does not exempt individuals from liability.



(Hydrolevel vs. American Society of Mechanical Engineers --US Supreme Court, 1985)

Liability?



- Litigation against nonprofits' directors is *increasing*
- Directors may be held individually liable
 - Personally and directly injure someone
 - Personally guarantee bank loan or debt on which the corporation defaults
 - Fail to deposit taxes or file tax returns
 - Co-mingle nonprofit and personal funds
- Directors' exposure arises from:
 - Corporate liability
 - Anti-trust activity
 - Individual breach of duty
 - Suit by member, staff member, association itself

Protection?



Incorporation

- Provides limited liability shield that normally protects directors, officers, and members from personal liability for the corporation's debts or other obligations

☐ Knowledge

☐ Indemnification

☐ Insurance

☐ Risk management

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Legal duty?

- Duty of Care
- Duty of Loyalty
- Duty of Obedience



Duty of Care



- Describes the level of competence expected of a board member
 - “Care that an ordinarily prudent person would exercise in a like position and under similar circumstances”
- Each board member owes the duty to exercise reasonable care when making a decision as a steward of the organization
 - Includes making reasonable inquiry to be reasonably informed and to participate in decisions
 - May rely on the information, opinions, reports, or statements prepared & presented by competent employees or professional experts
 - Board members who do not act in accordance with those terms may have personal liability if they are found to have failed to meet the standard/duty of care

Duty of Loyalty



- Standard of faithfulness = undivided allegiance when making decisions affecting the organization
- Can never use information obtained as a member for personal gain, but must act in the best interests of the organization

Conflict of interest



- Disclose any potential real or perceived conflict of interest
 - Should not vote on the transaction nor participate in debate on the merits of the transaction
 - Constitution/Bylaws
 - ? No director, officer or senior staff may have a material financial interest in any contract or transaction with CWEA (except under very limited conditions). Annual review by Board of the article.
- Refrain from diverting a business opportunity available to the organization for your own gain & avoid self-dealing situations

Serving on two boards?



1. At the MA board table your fiduciary duty is owed to the MA
2. At the WEF board table your fiduciary duty is owed to WEF = voting in the best interests of that body

Duty of Obedience



- Requires board members to be faithful to the organization's mission
- Not permitted to act in a way that is inconsistent with the central goals of the organization
- Basis for this rule lies in the public's trust that the organization will managed funds to fulfill the organization's mission

Putting it into practice

- Act in “good faith” in the best interests of the corporation
- Make “reasonable inquiry” to be informed
- Participate in decisions—attend meetings; no proxy
- May rely on experts--legal counsel, CPA, staff

Putting it into practice

- Exercise independent judgment
- Represent ALL members (no constituency)
- Obtain information; provide information
- Delegate to staff and other volunteers
- Set policies & establish procedures
- Avoid conflict of interest—have a written conflict of interest policy
- Protect confidentiality of Board actions
- Orient and train new Board members, committee leaders, local section leaders

Start informed



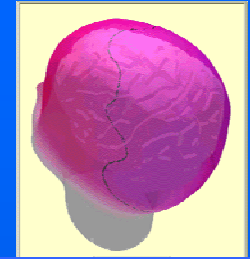
- Articles of Incorporation
- Tax ID # & Letter of Exempt Status from IRS
- Constitution, Bylaws, Policies
- Annual statement of profit and loss
- Annual audit or financial review by independent outside auditor
- Copy of annual budget
- List of insurance policies
- List of outside experts & contact info: CPA; Insurance Broker, & Legal Counsel

Stay informed



- Annual statement of profit and loss
- Annual audit or financial review by independent outside auditor
- Monthly profit and loss (budget vs. actual)
- Monthly statement on reserves and investments
- Regular Local Section/Committee Reports
- Accurate minutes

Make sound decisions



1. What do we know about the wants and needs of our members?
2. What do we know about the capacity of the organization to provide those wants and needs?
3. What do we know about the marketplace?
4. What are the ethical implications?

Protection?



✍ Incorporation

✍ Knowledge

❑ Indemnification clause in your Constitution/Bylaws

- “To the fullest extent permitted by the law, the Association shall indemnify and hold harmless all agents against claims arising out of any alleged or actual action or inaction in the good faith performance of their duties. ‘Agents’ for this purpose shall include Directors, officers, and employees.”
- “The Board and its Officers and staff shall not be personally liable for the debts, liabilities, or other obligations of the Association.”

Protection?



✍ Incorporation

✍ Knowledge

✍ Indemnification clause

□ Insurance

- Purchased by the association
- Directors' and Officers' Liability Insurance—may include employee fraud
- General liability insurance
- Employment practices insurance

Protection?



✍ Incorporation

✍ Knowledge

✍ Indemnification clause

✍ Insurance

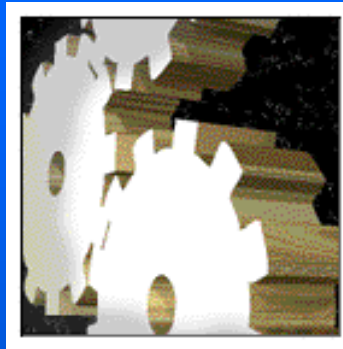
□ Pro-active Risk Management

- Contract review & signing authority
- Review local section/committee minutes, financial reports, newsletters
- Current policies & procedures
- Annual board & leadership training

Protection?



- ✍ Incorporation
- ✍ Knowledge
- ✍ Indemnification clause
- ✍ Insurance
- ✍ Pro-active Risk Management



“ Trust is the lubrication that makes it possible for organizations to work. ”

~ Warren Bennis ~

What builds trust?



- Leaders generate trust through
 - Authentic relationships that help create reliability and consistency
- Factors that generate trust:
 - Competence
 - Constancy
 - Caring
 - Candor
 - Congruity

DO

High

Low

SAY

Best practice:

- Creates high trust
- Builds commitment & enhances satisfaction

Worst practice:

- All talk and no action
- Mixed signals
- Erodes leadership credibility

Poor practice:

- Encourage grapevine
- Causes confusion & fosters mistrust
- People fill in gaps with speculation

Bad practice:

- Can be bad if there is a lingering problem or danger

Low

Roger D'Aprix

Trust in associations

- Clarity and consensus about what will constitute success
- Open access to common information
- Increased confidence in the competence of the leadership partners
- State/nat'l/int'l body actively solicits opinions of component leaders to create future
- Members are informed & asked for their opinion where appropriate so they feel part of the decision-making process

Glenn Tecker



“ Few things help an individual more than to place responsibility upon him, and to let him know that you trust him. ”

~ Booker T. Washington ~

