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ATTORNEY GENERAL

**YOU -- THE BOARD MEMBER
of an
Illinois Not-For-Profit Organization**

Welcome, and thank you for undertaking this vital public service. The not-for-profit organization is unique to the United States. Unlike the rest of the world, we rely heavily on private organizations to provide public service. Your gift of time and talent as a board member makes possible many important benefits to your fellow citizens. We have prepared this pamphlet as a guide; specific legal questions should be directed to your attorney.

YOU -- THE BOARD MEMBER

have the basic legal and policy responsibility for your not-for-profit organization. Even though you are an unpaid volunteer, you must:

1. Be active;
2. Receive no material profit;
3. Avoid conflicts of interests;
4. Exercise judgment in overseeing the organization's affairs;
5. Comply with applicable governmental regulations.

to HELP YOU

the following three pages briefly describe your responsibilities as a board member. For additional information contact your organization's lawyer or the Office of the Illinois Attorney General at 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601, or 500 South Second Street, Springfield, Illinois 62701. All are anxious to help you serve the public effectively.

The board must act with knowledge and after adequate deliberation. The board must carefully set organizational policy and regularly oversee its administration by competent staff. To exercise its duty or care the board must:

Appoint and regularly review the chief administrative officer of the organization, and

Establish and monitor, without getting involved in day to day activities, basic organizational policies and procedures which

- a. clarify and assure adherence to the purposes of the organization and monitor effectiveness in achieving results -- a copy of the Charter, By-laws and tax exemption letter, if any, will help with this
- b. assure a personnel program which provides competent staff
- c. assure that staff compensation and professional consulting fees are reasonable
- d. provide sound investment and management of organizational funds and assets not expended directly for charitable purposes, to yield a reasonable return without undue risk.
- e. protect the organization's property, including reasonable provision for safekeeping, replacement, and divestment procedures which will benefit the organization
- f. require board review, adoption, and monitoring of the annual budget
- g. ensure financial resources to conduct organizational activities
- h. request regular financial information and, if appropriate, an annual independent audit of the organization's financial affairs
- i. provide for competent legal counsel to assure compliance with applicable local, state and federal laws, including timely filing of reports
- j. provide for regular meetings of the board and its committees with adequate reports on - and discussion of - organizational activities
- k. maintain adequate minutes of board and committee meetings as well as other pertinent organizational records
- l. provide for careful selection and orientation of new board members

1. Be Active.

You should attend meetings of the Board and Board committees on which you serve. You must have general knowledge and understanding of how the organization is functioning, and you must have particular knowledge and understanding about the purpose of the organization and the specific responsibilities assigned to you.

Absence from meetings and inactivity do not excuse you from legal responsibility.

2. Receive no material profit.

Board members only can receive reimbursement for reasonable expenses and costs incurred in carrying out their board responsibilities. Illinois law prohibits loans by the organization to its directors and officers. If a board member is also an employee, compensation can be paid but the employee-board member should not participate in setting his or her compensation.

3. Avoid conflicts of interest.

As a board member you owe a duty of loyalty to the organization which takes precedence over your personal interests.

Self-dealing. You should avoid transactions with the organization where you have a personal or business interest beyond your interest as a board member. In the rare instance where it is in the best interests of the organization to deal with you, you should make a full disclosure to the board of all the circumstances involved in the transaction, be sure that the transaction is fair to the organization, refrain from voting on the transaction as a board member, and not be counted in determining the existence of a board quorum. This restriction applies also to your relatives, business associates and friends.

Organizational opportunities. In all matters of interest to the organization, you must put its interests ahead of your own. If an opportunity related to its purposes comes to you either as a board member or otherwise, you must make it available to the organization before you take it for yourself or another entity.

4. Exercise judgment in overseeing the organization's affairs.

As a board member you have a duty to care for the organization's affairs in good faith and with at least that degree of diligence, care, and skill which ordinarily prudent people would exercise under similar circumstances in like positions. Your good faith is not enough.

5. **Comply with applicable governmental regulations.**

A number of local, state, and federal laws and regulations apply to not-for-profit organizations. The board is responsible for assuring that the organization complies with these requirements.

a. **Organizational Regulations**

Illinois not-for-profit organizations are organized either as not-for-profit corporations (Ill.Rev.Stat.1985,Ch.32) or as charitable trusts. Not-for-profit corporations must file annual reports with the Illinois Secretary of State's Office, and charitable trusts must file reports with the appropriate court. The Secretary of State or the court is responsible for ensuring compliance with the laws under which the organization is created.

b. **Administration and Solicitation of Funds**

The Illinois Charitable Trust Act and the Illinois Act to Regulate Solicitation and Collection of Funds for Charitable Purposes generally apply to charitable not-for-profit organizations functioning in Illinois whose assets exceed \$4,000 or who solicit more than \$4,000 annually, and to all whose fundraising is not conducted exclusively by volunteers. Such organizations must register and then file annual reports with the Office of the Illinois Attorney General. The Attorney General is responsible for assuring that charitable funds are properly solicited and administered.

c. **Taxation**

Some not-for-profit organizations are eligible for tax exempt status. Each exemption from income, real estate, or sales tax requires a separate application. Most taxing authorities also require annual reports. Not-for-profit organizations are subject to all employer-employee taxes and regulations.

Contributions to some not-for-profit organizations are deductible by the donor from income taxation where specifically granted by the taxing authorities upon petition.

d. **General Regulations**

In conducting their operations, not-for-profit organizations are subject to most of the laws affecting individual and corporate conduct.

e. **Accountability**

The Illinois Attorney General has the responsibility to the public of assuring sound and legal operation of not-for-profit organizations. This includes bringing legal action against board members for failure to exercise their legal responsibilities. Board members can be held personally liable by third parties injured by actions of the organization. Directors and officers liability insurance is often available to cover some of these situations.

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