KNOW YOUR ROLE
Roles & Responsibilities of Serving on the Nonprofit 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.
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<td>Board Meeting Minutes/Minute Book</td>
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Check Your Status

Department of State

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

Department of Agriculture


IRS


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
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
4. Long Term Financial Planning
5. Internal Financial Controls and Accounting Systems
6. Outside Payroll Service
Appellate court upholds most of jury's verdict against officials of Lemington Home for the Aged

By Brian Bowling

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 $2.26 million in punitive damages against 13 of the 15 defendants despite a lack of evidence that their conduct was "outrageous."

Circuit Court of Appeals ruled.

An eight-person jury in March 2013 found that former administrator Mary Shealey and 13 of the 15 directors failed in their duties to protect the home when the non-profit group filed for bankruptcy.

The jury awarded $5.75 million in damages including $2.26 million in punitive damages against Shealey and 13 directors, $1 million in punitive damages against Shealey and 13 directors, and $350,000 each in punitive damages against five of the directors.

Lawyers for the defendants argued that tort law required the jury to hold punitive damages to a standard that the defendants' conduct was "outrageous."

An appeals court agreed that the punitive damages were against the weight of the evidence and that the jury had to compare the conduct of the defendants against the standard, concluding that the conduct was "outrageous."

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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Precedential

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13-2867

IN RE: LEMINGTON HOME FOR THE AGED

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

v.

ARTHUR BALDWIN, LINDA COBB, JEROME
BULLOCK, ANGELA FORD, JOANNE ANDIORE, I.W.
WALLACE, TWILA JOHNSON, NIKOLLA CAIUSK,
WILLIAM THOMKINS, ROY PENNER, MELODY
CAIUSK, JAMES KIRALY, FUGA/DOWNING,
GEORGE CALLAWAY, MLLEEBER, REYNARD
RONALD PETERS,

Appellants

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 2-13-cv-0860)
District Judge: Honorable Arthur J. Neiwand
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