

**Look Before You Leap:
What You Need to Know About Nonprofit Board Service**

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You have been asked to serve on the board of a nonprofit organization. Should you accept? It used to be an honor to be asked to serve on a nonprofit board. Not much was expected of you beyond writing checks to help fund the organization's activities and maybe showing up for a meeting now and then. Some boards functioned more as social clubs than governing bodies with a short business meeting followed by a round of golf or a relaxing meal. All of that has changed. Board service in the 21st century requires active participation in the governance of the organization. Potential board members should carefully consider an invitation to join a board. There is no substitute for performing your own due diligence.

Boards and their individual members can be held liable for the actions they take and for the actions they fail to take based on a reasonable person standard. Board members can be held personally liable if the organization fails to complete state and federal filings or obtain state approval to do business or solicit charitable contributions. They can also be held liable for failure to pay withholding taxes for employees or for allowing employees, volunteers or third parties to be harassed or discriminated against. The Pension Protection Act of 2006 increased the federal excise tax on certain board members who authorize compensation or other arrangements that are deemed to be private benefit or private inurement from \$5,000 to \$10,000 per incident per board member.

The federal Volunteer Protection Act of 1997 protects volunteers from personal liability for harm they cause unintentionally while serving as volunteers. This protection is not available for intentional acts (such as defamation or sexual harassment) or if the volunteer board member was grossly negligent, reckless, or flagrantly indifferent to the rights or safety of an individual who was harmed. It also does not cover volunteers if the harm is caused by the operation of a motor vehicle, vessel, aircraft, or other vehicle for which the state requires an operating license or insurance. Any misconduct that constitutes a crime of violence or violates a federal or state civil right law is not protected. The volunteer board member is not protected if he or she was intoxicated by drugs or alcohol at the time of misconduct. Most states have a similar state volunteer protection act.

Although very little of Sarbanes-Oxley applies to nonprofit organizations, state and federal officials are applying the best practices of Sarbanes-Oxley to nonprofit organizations. Foundations and government grant making agencies are also applying tougher standards to nonprofits that seek funding. Watchdog groups like the Better Business Bureau's Wise Giving Alliance have established tough new standards for rating the effectiveness of charities' operations. Many of their standards apply to the operations of the board including the number of board meetings, the audit committee and the qualifications of committee members. (See <http://www.give.org/standards/index.asp> to view the standards and the implementation guide.)

It is enough to make the prospective board member pause and ask the all important question – do I feel lucky? Do I know enough about the organization's finances and operations to

feel comfortable with how this organization is run? Do I know enough about the strategic plan and the vision and values of the organization to feel comfortable with where it is headed? Do I trust that there are no issues hiding under rocks that will jump out once I am on the board?

Before you agree to serve on the board, you should check out the organization the way a prospective donor would. Except for religious organizations and those with annual incomes of less than \$25,000, all nonprofit organizations are required to file a Form 990 information return with the IRS each year. Starting in 2007 those organizations that are currently exempt from filing a Form 990 will have to start reporting certain information to the IRS each year. Form 990's are available on-line at www.Guidestar.org. (Certain portions of the return are available to view for free while other portions require a subscription.) You can also request a copy of the 990 from the organization. If they do not want to give it to you or say they do not have one when they should, that is a warning sign and you should think very carefully before joining the board.

What are you looking for in the Form 990? The 990 is a snap shot of the organization for the prior fiscal year. A well prepared 990 (one without missing information) can tell you the organization's budget, programming focus, senior staff compensation, major contractors and their compensation, fundraising and program costs, and funding sources. By looking at multiple years you can tell if the organization is growing or facing tough times, if the staff is stable or fraught with turnovers. You can identify the level of debt and the amount of reserves in the operating fund balance. Keep in mind that an organization's 990 is often filed six or more months after the end of the prior fiscal year so it is often almost two fiscal years behind the current year by the time you see it online.

Ask to see the current year's budget (or a summary if it is extremely detailed). Also ask for the audited financial statements from the three most recent years. There is less narrative in the financial statements than in the Form 990 but the information is presented in a different format and sometimes you can pick up useful information. Be sure to read the footnotes and attachments as important information about the organization's financial situation or operations is often disclosed there.

Read the organization's articles of incorporation and bylaws and the board's policies and procedures manual if they have one. Do they expect you to focus your time and attention on one committee or will you be expected to serve on multiple committees? Does the board even have a committee structure or is everything done as a committee of the whole? Unless the board is small (seven members or less), it should have some committee structure to work more effectively. Larger organizations often have an executive committee that is empowered to act on behalf of the board between meetings of the whole board. If the organization has an executive committee, ask how it functions. Sometimes the executive committee functions as almost a super board within a board with all power concentrated in a small number of board members. This is not healthy for the organization and can lead to frustration and resentment by the board members who are not on the executive committee. A good executive committee will only handle those matters of business that truly cannot wait for the next full board meeting or when it is impractical to call a special board meeting. An exception is the supervision of the CEO. That is often done by the executive committee rather than the full board with the results of the ongoing supervision reported to the full board in executive session.

Ask to see the minutes of the past year's board meetings. This will tell you what issues have been important to the organization and how the work is divided between staff and the board. Are the matters reflected in the minutes those that you would expect to come before the board? Is the board strategic, looking at where the organization is going in the next 3 to 5 years? Or is the board involved in the day to day operations of the organization with no strategic vision? The minutes will also tell you if the committees are active since you will see committee reports in the minutes if they are functioning.

Look at who is currently serving on the board. Is there a good mix in terms of backgrounds and experience? If the organization had a founder, is he or she still on the board? Some organizations start off with an initial bang and then face increasing problems as the organization starts to grow in a different direction than what the founder had initially visualized. The refusal of a founder to allow the organization to grow and change is so pervasive that it even has a name, Founder's Syndrome. Service on a board that is suffering from Founder's Syndrome is challenging and frustrating.

Does the organization have term limits? Organizations with healthy leadership development programs are able to bring new members on, utilize their abilities and then replace them before they burn out. If the same people have been on the board for 10-20 years, you may want to think twice about joining them. Although some people can do it, most find it difficult to sustain a level of enthusiasm for board service and be able to think creatively and strategically after that length of time.

A board should have a conflict of interest policy and a conflict statement signed each year by every board member. It will also have policies and procedures on doing business with board members or members of their families and friends. A code of ethics and a code of conduct are new concepts for nonprofit boards. A code of ethics sets forth how the board members will carry out their responsibilities. A code of conduct should cover the board and staff and set forth their common view of appropriate behavior. Sometimes an organization will have a uniform document that covers ethics and conduct.

A healthy board will conduct regular assessments of the board as a whole and the individual board members. It will also devote time to improving the skills of the board members and their working relationships. A board that takes the time to focus on the maintenance and improvement of the board itself gives the organization it supports strong governance in the future.

Service on a nonprofit board can be rewarding and can enhance your personal and professional relationships. Enjoy the experience but know what responsibilities you are accepting when you agree to serve on your next board.