

Serving Your Local Charity As A Director: What Do You Need To Know?

You are a socially minded individual, and one of your friends has asked you to be a director for their non profit organization. You think that this will be a good use of some of your time, and hey, it even looks good on a resume, so you say “Why not? Of course I’ll serve as a director for Save the Kittens.” It’s just doing charity work and there’s really nothing that can get me in trouble, right? Most likely saving the kittens won’t get you in trouble, but there are some things that you will need to be aware of in order to stay ahead of the game.

What Is The Status Of The Organization?

Charities must have the approval of the IRS in order to operate as a 501(c)(3) tax-exempt organization. Thus, as you would expect with the IRS, there are a number of filings that must be completed in order to achieve tax-exempt status and to be able to receive donations that the donor can write off of their own tax return. Along with those documents, the organization should have a number of other documents on file that outline the governance of the organization. After all, when you are dealing with a tax-exempt organization, all that money is the public’s money, not the organization’s. And because of that, there need to be policies and procedures in place to ensure that the charity is being run as it should be.

Here is a minimal list of the documents that every tax-exempt organization should provide to its directors, when they are elected and on an ongoing basis:

1. The Certificate of Formation (or other formative document)
2. The current bylaws or trust documents
3. The Application for Recognition of Exemption (IRS form 1023)
4. The Determination Letter from the IRS
5. The most recent tax return of the organization
6. The most recent audited financial statement or year end financial statement
7. The most recent annual report
8. The mission/vision statement
9. All adopted policies (Conflict of Interest Policy, Document Retention and Destruction Policy, Gift Acceptance Policy, Whistleblower Policy, Compensation Policy, etc.)
10. A list of the current directors and officers (or trustees) of the organization
11. An organization chart that shows how the organization is connected to other organizations (if it is part of a system of organizations)

Why Do I Need To Know All Of This Information?

As a director of a non profit, the law imposes a number of duties on you. One of these is the duty of care. The duty of care requires the director to be informed on the affairs of the organization, to perform the duties of a director in good faith, to exercise the same

care that a prudent person would exercise as a director, and to act in what the director reasonably believes to be in the best interest of the organization. What does that look like in action? At a minimum it means attending regular board meetings, staying informed on the finances and business affairs of the organization, and using independent judgment on making decisions regarding the organization (not just rubber stamping the course of action the executive director suggests).

What Other Duties Do I Owe To The Organization As A Director?

In addition to the duty of care, each director also owes a duty of loyalty to the organization under the law. The duty of loyalty requires that the director put the interest of the organization ahead of that person's own interests or the interests of another. How does one carry out the duty of loyalty? By revealing to the board of directors any relevant conflicts of interest that may arise, and abstaining from discussing or voting on any issue after the possible or actual conflict has been revealed. The director must also refer business opportunities to the organization prior to using them for their own benefit. Additionally, the director must not disclose to an outside party any confidential matters of the organization.

Also, as a director, you want to ensure that the organization keeps its tax exempt status. You will want to make sure that the organization is receiving sound tax and legal advice from the organization's CPAs and lawyers. Directors are allowed to rely on the information provided to them by staff members, public accountants, lawyers and other board members, unless and until the board member is aware or has reason to believe that the information is inaccurate or unreliable.

That's A Lot Of Responsibility

It is a great deal of responsibility to be a director for a non profit organization. But you won't be doing it alone. You will have the other board members and staff members along with you. And you can always request information from the organization's accountants and legal counsel. Plus these responsibilities keep the non profit strong and able to do its work in the community which hopefully makes the world a better place.

This article was written by Seth J. Hinkley. Mr. Hinkley has been advising business owners and non profits on multiple aspects of corporate and business law since 1997. This is not legal advice and does not give rise to an attorney-client relationship. If you have any questions regarding the issues discussed in this article please contact Mr. Hinkley at:

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