



Policies for Nonprofit Boards

Dan Rollman
August 18, 2011

Mission of Pro Bono Partnership of Atlanta:

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit organization.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- Host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the Workshops Page on our website

Overview of Board of Directors Responsibilities

- Purpose
- Responsibilities
 - ✓ Oversight
 - ✓ Management
- For more information: [“Good Corporate Governance”](#) webcast

Duties of Directors

- Duty of care
- Duty of loyalty
- For more information: [“Practical Advice About the Legal Responsibilities of Board Members”](#) webcast

A Best Practice: Implement Policies

- Policies can help directors fulfill their obligations and comply with their fiduciary duties
- IRS Form 990 requires nonprofits to disclose whether they have certain policies
- Not all policies discussed here are appropriate for all organizations – must be tailored to the organization's specific mission and needs

Conflict of Interest Policy

- Reasons to have a conflict of interest policy
 - ✓ IRS
 - Recommended for all 501(c)(3) organizations
 - Disclosure required on Form 990
 - ✓ Avoid liability for breach of duty of care
- Does not need to prohibit transactions in which a director is conflicted
 - ✓ Disclosure requirements (annual and for specific transactions)
 - ✓ Specific procedures

Confidentiality Policy

- Purposes
 - ✓ Duty of loyalty
 - ✓ Prevent misappropriation of proprietary information
 - ✓ Protect organization's clients/stakeholders
- Should be suited to the organization's particular needs
 - ✓ For example, foster care organization vs. food bank

Harassment Policy

- Purpose – protects the organization from potential legal liability
- What to include
 - ✓ Prohibition on harassment
 - ✓ Procedures for employees to report a complaint

Whistleblower Policy

- Protects employees who report violations of law or other improprieties
 - ✓ Prohibits retaliation
 - ✓ Establishes procedures for employees to report concerns
- Required for non-profits by the Sarbanes-Oxley Act
- Disclosure required on IRS Form 990

Document Retention Policy

- Provides that records will only be retained for a specific amount of time and will then be destroyed
- Required for non-profits under the Sarbanes-Oxley Act
- Disclosure required on IRS Form 990
- Should include provisions for:
 - ✓ Electronic records, including e-mail
 - ✓ Back-up procedures, archiving of documents, and regular check-ups of the reliability of the system

Board Attendance Policy

- Board attendance might be addressed by an organization's bylaws
- Board attendance policy is an opportunity to be more specific
- Board attendance policy will vary depending on the specific organization (should be tailored to the organization's specific mission and needs)

Gift Acceptance Policy

- Purposes
 - ✓ Helps directors avoid conflicts of interest
 - ✓ Helps directors comply with the duty of loyalty
- Should establish guidelines for the types of gifts directors may give/receive in the normal course of the organization's business

Investments Policy

- Imposes guidelines on the board of directors for evaluating investment opportunities and to take steps to guard the organization's assets
- Disclosure required on IRS Form 990 if the organization:
 - ✓ Invests in,
 - ✓ Contributes assets to, or
 - ✓ Participates in a joint venture or similar arrangement with a taxable entity

Executive Compensation Policy

- A 501(c)(3) organization may not pay its executives more than reasonable compensation for services rendered
- IRS Form 990 asks if executive compensation is:
 - ✓ Reviewed and approved by independent persons
 - ✓ Based on comparability data
 - ✓ Subject to “contemporaneous substantiation of the deliberation and decision”
 - Keep board meeting minutes that reflect deliberation
- A written executive compensation policy may not be appropriate for all organizations
- Regardless, it is the duty of the board of directors to determine appropriate compensation for the organization’s executive officers

Ethics/Business Code of Conduct Policy

- Sets uniform expectations and standards of conduct for directors
- May include topics such as:
 - ✓ Legal and ethical compliance
 - ✓ Fund raising/financial contributions
 - ✓ Fiscal responsibility
 - ✓ Serving on a committee of the board
 - ✓ Accountability
 - ✓ Communication with outside people and organizations

Other Policies

- Written policies/procedures governing local chapters, branches, or affiliates
 - ✓ Disclosure of this policy is required on IRS Form 990 if the organization has local chapters, branches, or affiliates
- Policies specifically tailored to the organization's mission
 - ✓ e.g. foster care; domestic violence; etc.
- Financial policies
 - ✓ See ["Good Financial Policies for Nonprofits 101"](#) and ["Good Financial Policies for Nonprofits 102"](#) webcasts for more information

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

Phone: 404-407-5088

Fax: 404-853-8806

Info@pbpatl.org

www.pbpatl.org