

CONVERSATIONS IN GOVERNANCE

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BOARD'S ROLE IN INSTITUTIONAL RISK



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THE BOARD'S ROLE IN
INSTITUTIONAL RISK

INTENT

- This session is designed to give you an overview of legal and risk topics and guide you in asking good questions.
- It is not intended to be legal counsel or to make you an expert on any topic presented.

REFLECTION – DIRECTOR’S DUTIES

- **Duty of Care** - Active involvement and informed for decision making as a reasonable, prudent person.
- **Duty of Loyalty** – Your actions and decisions are in support of the organization, not your personal or other interests.
- **Duty of Obedience** – abide by the applicable laws, and according to the controlling documents of the organization.

LEGAL STRUCTURE

- Directors should know the type of legal structure of the organization:
 - Nonprofit Corporation [most commonly used in the Church]
 - For Profit Corporation.
 - Other legal entity recognized by your jurisdiction – e.g. Trust, Limited Liability Company, Partnership, Foundation.
 - Division of another Church organization but not legally separate.
 - Is your organization a subsidiary of another or does your organization have a subsidiary? How are they related?
 - Does your organization operate as an affiliate of another?

LEGAL REQUIREMENTS

- Look to local civil law for requirements for registration of your organization, preparation of Articles of Incorporation (Constitution) and Bylaws. Directors should have access to these documents and information.
- What requirements are there for meetings of the Board? Is there a membership/constituency and how often does it need to meet?
- Are there specific laws that your organization must operate under? e.g. hospitals and educational institutions.
- Director's awareness of general business laws. You don't need to be an expert, but you need to be sure the Administration is caring for these.
- Be sure to meet the legal requirements to avoid liability.

OWNERSHIP CREATES LIABILITY

- What does the institution own?
 - Real property (land and buildings). Hospitals and Educational institutions have unique campus requirements.
 - Are there land or other assets ownership arrangements with another entity such as the Conference or Union Corporation?
 - Personal Property – equipment, vehicles. Hospitals tend to have specialized and expensive equipment.
 - Have such assets been acquired with proper approvals and is documentation of ownership in safe keeping (for land, vehicles and other titled assets)
 - Are you reflecting the current value of the assets? [Accounting, Insurance] Maintain a current inventory of assets.

RISK CAN OFTEN BE IDENTIFIED BY WHAT YOU CAN INSURE!

Types of Risk covered by Insurance to consider:

- **General Liability** – Risks that involve a wide range of activities. Church has uniform GL for most organizations.
- **Property** – loss of property is a big risk ranging from natural to manmade disasters. Coverage to replace buildings and other property such as equipment in case of fire or other disaster. Replacement Cost needed. Specialized coverage for natural disasters - floods, earthquake.
- **Vehicle Insurance** - protects for accidents and other losses related to vehicles and to replace them.

RISK IDENTIFICATION

- **Business Interruption** – expenses and lost profits related to events that impact your ability to operate. Comes from a range of threats from natural to manmade.
- **Executive Risk Coverage** – generally includes coverage for Administrators, Managers and Board Directors.
- **Professional Liability [Errors and Omissions]** – Medical malpractice is a reality that must be addressed. Hospitals and other specialized organizations may employ staff involved in medical practice, in-house lawyers and others.

RISK IDENTIFICATION

- **Employment Practices** – Risks range from wrongful termination to sexual harassment to a wide range of employee activities.
- **Workers Compensation** – often required by law to protect for injuries or death of employees on the job.
- **Medical Insurance** – may be needed for employees if there is no government or otherwise provided coverage.

RISK IDENTIFICATION

- **Cyber Liability** –

- Most common arise out of breach of privacy but with increasing concern for hacking and ransomware!
- The most prominent cyber risks are privacy risk, security risk, and operational risk.

Insurance Coverage generally includes:

- Network security, privacy
- Network Business Interruption
- Media liability
- Errors and omissions

Insurance **DOES NOT** include:

- Potential future lost profits
- Loss of value due to theft of your intellectual property
- Betterment: the cost to improve internal technology systems, including any software or security upgrades after a cyber event

Risk & Insurance Considerations

- Risks should be avoided through careful management and steps to prevent loss. Insurance is not a reason to let your guard down. Good risk management is essential for exceptional organizations.
- Many insurance policies may be combined into one and sold as a package.
- Awareness of types of risk and insurance is helpful to your discussions on the Board and to help you ask the right questions! [Your Duty of Care] **INSURANCE DOES NOT EXCUSE NOT DOING DUE DILIGENCE FOR DIRECTORS IN MAKING GOOD DECISIONS!**
- Recommend annual board review of insurance coverage, deductibles and status of premium payments.

EMPLOYEES – YOUR MOST VALUABLE ASSET

- Employees should expect and receive fair treatment not just under the law but working for a Christian organization.
- Employment policies and expectations should be clearly stated, published, communicated and practiced.
- Failure to live by your own policies in the treatment of employees may generate liability. [Corporate Due Process] Do what you say you will!

GREAT EMPLOYEES NEED GREAT PROCESSES

Internal controls provide reasonable assurance about achieving objectives regarding: Effectiveness and efficiency of operations; Reliability of financial reporting; and Safeguarding of assets.

The seven internal control procedures are separation of duties, access controls, physical audits, standardized documentation, trial balances, periodic reconciliations, and approval authority.

Employees deserve the protection afforded by having good internal controls in place.

HELP! WE'VE BEEN SUED!

- Litigation is not uncommon in business today, even for the Church. DO NOT PANIC!
- Insurance Carriers require early notice and control of the litigation.
- Directors should be informed of any suits in a timely manner especially when they have significant impact.
- The Board may meet in a Privileged Meeting with legal counsel. This information must remain confidential.

LITIGATION

- Preserve documents and information related to the suit and inform the Board Chair or whoever is designated you have it.
- Directors named in suit generally provided coverage and legal defense.
- Litigation is distracting, time consuming and expensive. Take reasonable steps to prevent litigation through good governance and procedures.

RESPONDING TO QUESTIONS ON LITIGATION

- Remember, your duty of confidentiality!
- If there is litigation and you are contacted for comment, refer the inquiry to the Board Chair or President, or to whomever has been designated.
- Do not initiate contact or respond to any questions from any other party (including the party bringing the lawsuit) without first consulting defense counsel.

WHEN ALL ELSE FAILS!

What Is a Business Continuity (Contingency) Plan?

- A course of action that will be taken if an unexpected event occurs that could disrupt the business. Such event may include a natural disaster, major technical issue, loss of a key person, or other unforeseen disruption.
- A contingency plan identifies potential risks to your business and outlines steps your management team and employees can take if confronted with one of those risks.
- It helps protect the health and safety of your workers after an event has occurred, while also minimizing business interruptions that can result in financial losses.
- Management should prepare the Business Continuity Plan. The Board should be aware and understand its parameters especially about emergency needs should a key member of Administration need temporary replacement.

RECAP -

- Your responsibility as a Director for –
 - Legal structure
 - Insurance
 - Employee management
 - Litigation management
 - Continuity Planning

Limited – it is not your job to handle the details of these matters – that is left to management!

**BE AWARE AND HOLD MANAGEMENT ACCOUNTABLE
BY SEEKING INFORMATION AND ASKING GOOD
QUESTIONS AT BOARD MEETINGS.**

OVERSIGHT BUT NOT MANAGEMENT.

For additional information on risk issues:



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