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WADING ONTO THE BOARD OF A NONPROFIT CORPORATION



By William P. Brogley, William P. Brogley Law Offices

If you are a business owner, or one of the otherwise active members of the community, I believe there is a ninety-percent probability you will end up on the board of a nonprofit corporation. This is good. It is good for you and great for your community. Some will serve small entities of little geographic reach, while others will help govern and direct organizations serving the reach of the Commonwealth and beyond. My recommendation, if I may offer, is that you do not jump in, but wade in; approach the opportunity with professional care and, more importantly, personal consideration.

Governing boards of any type are interesting, but nonprofits are a bit unique. Many board members approach their participation as a volunteer who, by providing any time and effort, is therefore an asset the corporation did not previously have. This approach confuses the line between "board member" and volunteer. If you want to volunteer, join a committee or commit to specific events or services. If you are willing to govern and take personal responsibility, join the board.

Nonprofit corporations operating in Pennsylvania are governed by the Nonprofit Corporation Law, 15 Pa.C.S. §§ 5101-6162. Without laying out the law, board members have a fiduciary responsibility and must act, in a way they believe reasonable, in the best interest of the corporation. As a decision maker, you must attend the meetings, you must analyze the finances, contracts, business dealings. You must use independent judgment. If you fail at these responsibilities, you may face individual liability.

Your fiduciary responsibility also means that must not be involved in self-dealing, or conflicts of interest. This is probably apparent to most of you reading this, but if you have sat on a nonprofit board, undoubtedly one of the members has a spouse or close friend who can provide the service without the bid. Get the bid. If you profit from a corporate opportunity, you may be liable for the profits. Board members need to address all conflicts of interest. If there may be a conflict, bring it to the board's attention and abstain from voting on the matter. Make this announcement and decision part of the minutes. Avoid personal liability.

If you are approached to join a board, investigate the board and the corporation first. This is not a monumental task, simply an evening of due diligence. Ask to see the Articles of Incorporation, the Bylaws and financials for at least the past two years.

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A TriCounty Chamber Story...

We're fully on board (with the TriCounty Area Chamber of Commerce). I truly live and breathe it. I give back and help as much as I can. And I would suggest to anybody who is not a chamber member, they should join. TriCounty Area Chamber of Commerce is a great place to network and build relationships. You're going to get to know everybody in the community, which you need to do if you're going to live and work in this community.

**- Baran Schultz, Owner,
Schultz Technology**



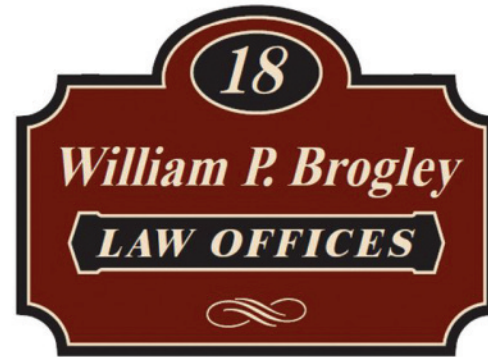
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WADING ONTO THE BOARD OF A NONPROFIT

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Review minutes for the last 12 to 24 meetings. Reviewing the meeting minutes may give you a flavor for how the board is or has been operating. Be very weary of a board who passes every motion unanimously. It is a clear indication that there is little debate or descent. And for the love of house and home, ask to see the Directors and Officers Policy.

As a board member, you may have personal liability for decisions of the board. Who would bring an action? Think donors, employees, vendors, Pennsylvania's Attorney General, your local municipality. Take, for example, a situation where a donor makes a ten-million-dollar bequest for the purposes of building and maintaining a recreation center. Those funds are donated for a specific purpose. As a board, you cannot transfer or otherwise divert that asset "from the purposes for which they were donated, granted, devised or otherwise vested in the corporation without an order from Orphan's Court. 15 Pa.C.S. § 5547. If such a transfer is made without court approval, it may be time for the donor, the Attorney General, or someone else with standing to file suit.

Other examples can be found in specific public charities, such as a library or volunteer fire station. The sale of property acquired by these entities through public grants or private donations may rightfully be challenged if those funds will no longer be used for their original purpose.

These suits happen. But they are very easy to avoid.

Take your board position seriously. Show up. If you do not agree on a motion of the board, put it on the record. Abstaining from a vote is acquiescing to the board decision. If you do not agree with a contract, put it on the record. Make sure the corporation maintains governing rules that are regularly reviewed. If you or the board are not sure of your own evaluation of a matter, seek professional advice. Whether it be from a lawyer, a finance professional, an architect, general contractor, or any entity upon which you can reasonably rely, you will have most likely performed your duty.

Now get on board and do it well.

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