

The Role of the Board

January 27, 2023

Elizabeth Voudouris

President & CEO

Business Volunteers Unlimited

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Agenda

- 8:00 *Welcome*
Breakout rooms led by panelists & BVU staff
Attendee introductions – name, work, board affiliation, questions
- 8:20 *Overview: Role of the Board*
Elizabeth Voudouris, President & CEO, BVU
- 9:00 *Legal Responsibilities of Nonprofit Boards of Directors*
Alex Campbell, Partner, Schneider Smeltz Spieth Bell, LLP
- 9:25 *Panel: The Role of the Board*
Alex Campbell, Partner, Schneider Smeltz Spieth Bell, LLP
Tracy Dowe, City President & Middle Market Team Leader, Fifth Third Bank
Jazmin Long, President & CEO, Birthing Beautiful Communities
- 10:25 *Closing Remarks*
Elizabeth Voudouris



1

HOW BVU WORKS





CONNECT

SKILL • BOARD • VOLUNTEER

Businesses connect to nonprofits
and their community.

EDUCATE

Two sectors learning from
one another through
seminars, summits, and
networking events.

CONSULT

Nonprofit Excellence
and Business Community
Engagement fostered
by BVU experts.



How BVU Engages Professionals

Board CONNECT

- ▶ Recommends and prepares candidates for board positions
- ▶ Based on needs expressed by nonprofit organizations, and interests and abilities of individual candidates

Skill CONNECT

- ▶ Engage skilled professionals to help nonprofit organizations address specific operational or functional issues
- ▶ Greatest demand from nonprofits in the areas of human resources, marketing, finance, legal, IT, business planning, facility management and process improvement
- ▶ Get involved either on an individual basis or with a group to tackle a larger and/or multifaceted project

Volunteer CONNECT

- ▶ Team Volunteer Projects
- ▶ Volunteer Center opportunities

How BVU Serves Nonprofits

CONNECT

- ▶ BVU refers business professionals to serve on nonprofit boards, committees, and young professional groups through the Board Matching and Linking New Leaders programs.
- ▶ BVU is committed to strengthening diversity, equity and inclusion on nonprofit boards.

CONSULT

- ▶ Nonprofit Consulting Center - BVU staff provides: Governance consulting; Leadership Succession and Executive Transition consulting; Strategic Planning consulting; and merger feasibility consulting.
- ▶ Skill CONNECT – matching business professionals to nonprofits where they use their professional expertise to deliver on high-priority projects.

EDUCATE

- ▶ Over 30 trainings and networking events that address nonprofit governance and management topics.
- ▶ Resources on the nonprofit sector, volunteerism, and corporate community involvement.

2

Sector Trends



1

Nonprofit sector Trends

NATIONAL*:

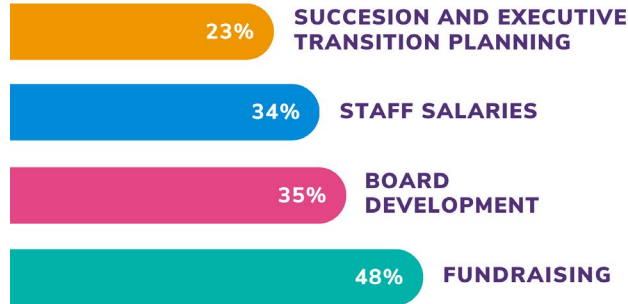
- Limited resources
- Increasing demand
- Workforce shortage (impact – delayed or loss of important services)
- Diversity, equity, inclusion & accessibility
- Need for advocacy/awareness
- Cyber security

LOCAL:

- BVU's Nonprofit Stability Index – issued twice a year – is designed to collect and share real-time data on the health of the nonprofit sector in Northeast Ohio.

**National Council of Nonprofits*

BIGGEST NONPROFIT "PAIN POINTS"



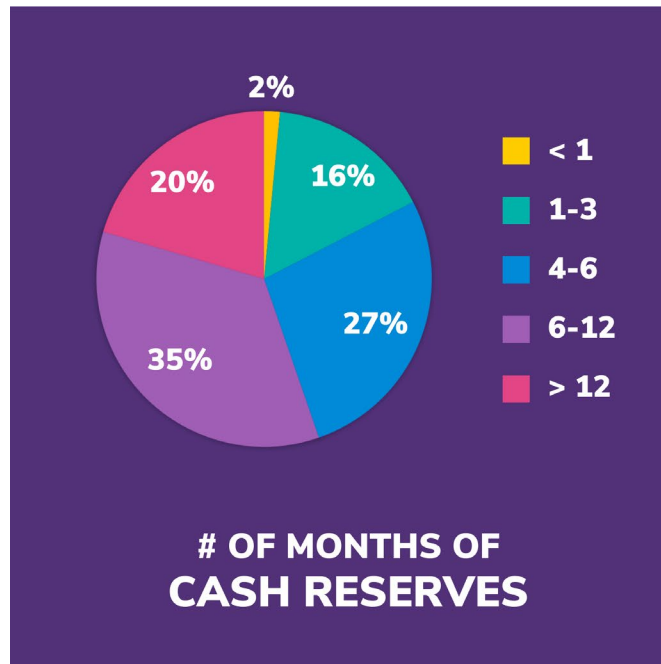
NONPROFITS SEEK SUPPORT FROM FOUNDATIONS IN THESE AREAS

- UNRESTRICTED SUPPORT
- COMMITMENT TO STAFF RAISES
- STRATEGIC GUIDANCE
- BOARD MEMBER RECOMMENDATIONS
- FUNDRAISING + CAPITAL REQUESTS
- TECHNOLOGY + INFRASTRUCTURE
- LESS REPORTING REQUIREMENTS



bvU NONPROFIT STABILITY INDEX

End of 2022 Results
144 responses collected Oct-Dec



WORKFORCE CHALLENGES

- 79% OF NONPROFITS ARE CURRENTLY UNDERSTAFFED
- 42% HAVE OPEN POSITIONS THAT HAVE BEEN DIFFICULT TO FILL
- 3rd BIGGEST NONPROFIT PAIN POINT IS STAFF SALARIES
- #1 TYPE OF RESTRICTED SUPPORT NEEDED FROM FOUNDATIONS IS COMMITMENT TO STAFF RAISES

88%

BELIEVE THEIR BOARD IS AN **ASSET** TO THEIR ORGANIZATION

83%

CONSIDER **APPRECIATION** KEY TO STAFF, BOARD, AND VOLUNTEER **RETENTION**

2

Proliferation of Nonprofit Organizations

Over 1.8 million active nonprofit organizations

- 10% of workforce (behind manufacturing and retail)
- 5.6% of GDP

Nonprofits in Ohio: 116,704

- Employs 12.2% of the state's workforce

Nonprofits by county*:

Cuyahoga	16,769
Summit	4,94
Lorain	2,193
Lake	1,692

3

Strategic and Financial Pressures

- Increasing demand
- Shrinking resources
 - Total number of donors decreased 7% in 2022
 - Number of unique volunteers decreased 19% since 2019 *(Independent Sector 1/23)*
- Reduction in government funding
- 501-C3 “nonprofit” is tax status, not business model

Financial Models

FOR PROFIT:

- Customer buys product
- Price includes cost of doing business
- Overhead and profits seen as necessary
- On average, successful for-profit companies allocate 25% of budget to overhead.*
- **Success=financial results**

NONPROFIT:

- Client pays partial or nothing
- Rely on 3rd party to cover cost (donors and funders)
- Overhead and profits seen as unrelated to achieving mission
- **Success=mission impact**

4

Strategic Alliances

- Economies of scale
- Avoid duplication
- Sustainability
- **68%** collaborate to provide programs

5

Increased Scrutiny and Transparency

- 56% of Americans trust nonprofits to “do what is right” *(Independent Sector 1/23)*
- Outcome metrics
- 990
- Executive Compensation

Funding Trends - Charitable contributions are significant source of revenue

67% \$326.87 billion

Giving by Individuals

↑ increased 4.9% over 2020

19% \$90.88 billion

Giving by Foundations

↑ increased 3.4% over 2020

9% \$46.01 billion

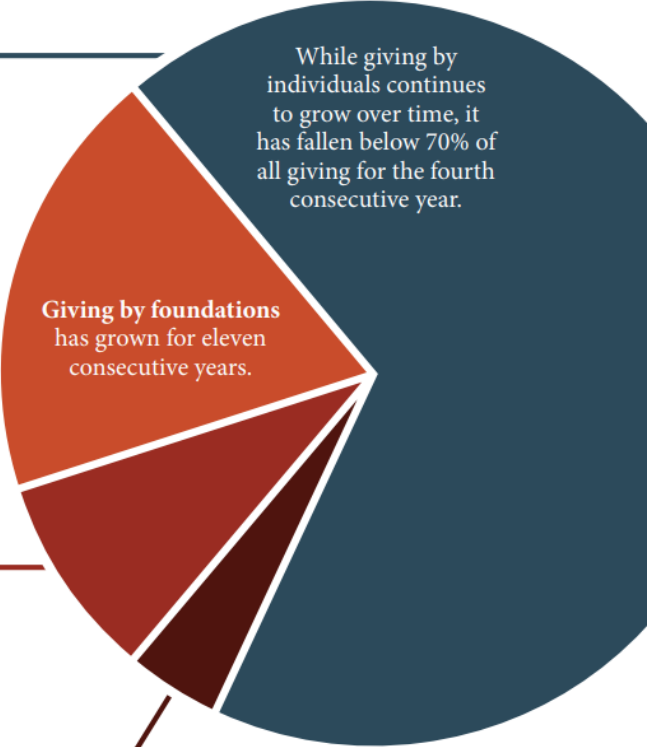
Giving by Bequest

↓ decreased 7.3% over 2020

4% \$21.08 billion

Giving by Corporations

↑ increased 23.8% over 2020



*All figures on this infographic are reported in current dollars unless otherwise noted.

\$484.85 billion

In 2021, Americans gave \$484.85 billion to charity, a 4.0% increase over 2020. Adjusted for inflation, total giving remained relatively flat, with -0.7% growth.

SOURCE: Giving USA 2022

3

The Role of the Board of Directors

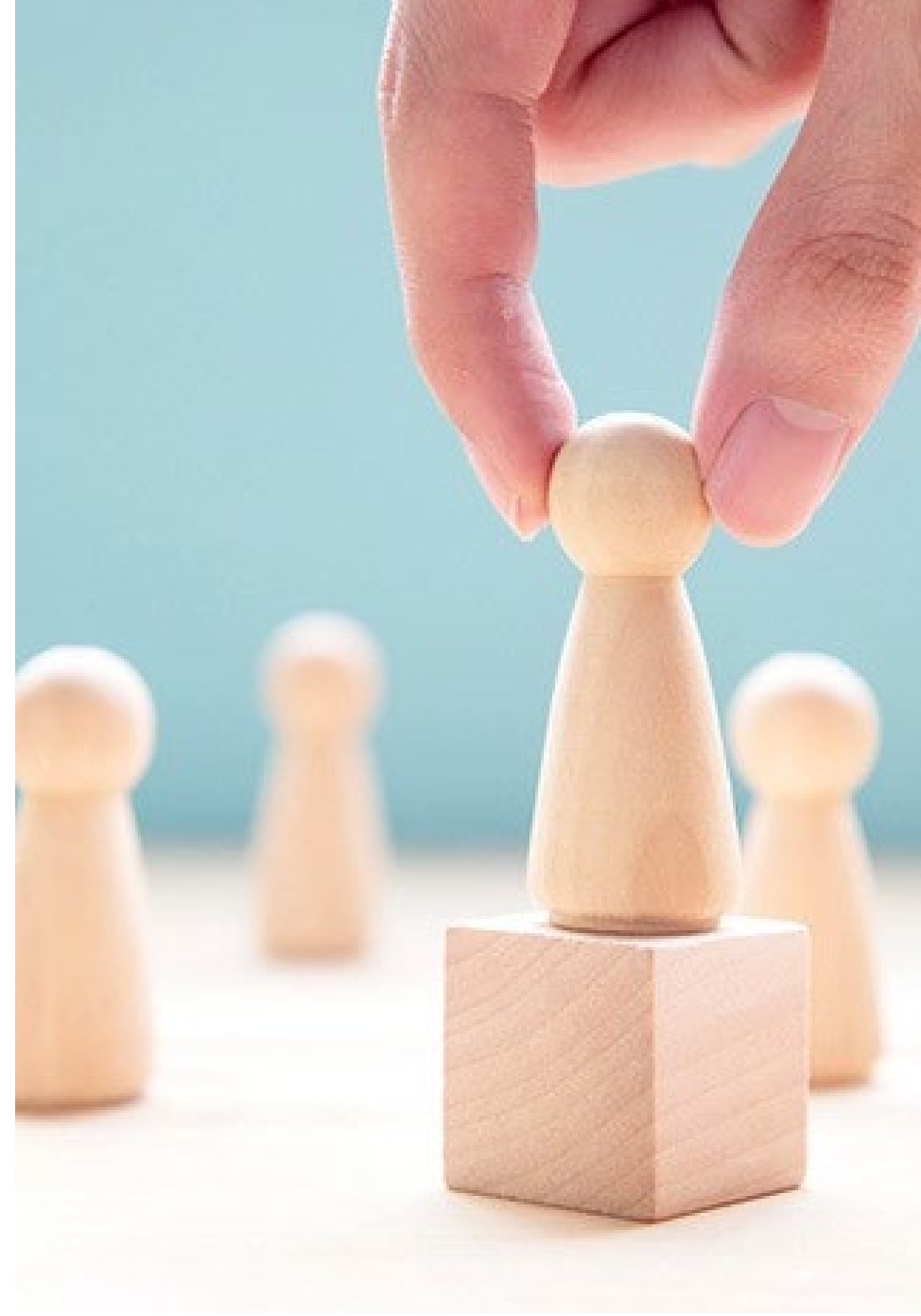


Authority

The board of directors bears the primary responsibility for ensuring that a charitable organization fulfills its obligations to the law, its donors, its staff and volunteers, its clients, and the public at large.

Basic authority (§1702.30(A), O.R.C.):

“all of the authority of a corporation shall be exercised by or under the direction of its directors.”



The Board Functions as a Team

The role of the board refers to the board as a whole, a unit, a team. Individual board members do not have authority or individual rights

Accountability and responsibility rests with the full board...

Not the Chair

Not the CEO

Not individual board members



1

Determine mission, vision and strategic direction

- Scan internal and external environment
- Ensure effective planning - review & modify strategic plan
- Monitor performance based on key milestones and success factors
- Ask “naïve” questions that others might want to ask

2

Establish and strengthen community relations

- Enhance the public standing of your organization
- Ambassadors – represent the organization outside the board room
- Talking points/elevator speech
- Do not discuss board business outside board room

3 Select and support the chief executive

- Partnership based on TRUST
- CEO performance evaluation and process to set compensation (990 requirement)
- Succession plan
- Open doors

4 Develop funding resources

- Ensure adequate resources
- Individual, annual, financial contribution
- Donor identification
- Donor cultivation

5

Provide financial oversight

- Adequate accounting skills
- Annual budget
- Regular financial statements and cash flow reports
- Annual audit
- Investment policies

6

Ensure legal and ethical integrity

- Duties of care, loyalty and obedience
- Board has the authority as a group, not as individual members
- 96% of nonprofits carry Directors and Officers Liability Insurance for their boards

7

Develop the board

- Ensure a competent board
- Governance Committee
- Adopt best practices
- Review and update bylaws periodically

There Is a Great Difference

Between **Sitting** on a Board
and **Serving** on a Board.



4

Best Practices of Governance



1

Ensure essential practices & compliance

- Strategic plan
- Budget approval & financial oversight & audit/review form 990
- Chief executive evaluation & succession plan
- Strategic board recruitment & succession planning
- Policies – whistleblower, Conflict of interest, document retention, etc.

2

Strengthen board member engagement

- Clarify expectations and accountability (81% have written job descriptions for board members; 52% conduct annual assessment)*
- Prioritize meeting attendance
- Orientation
- Engage new board members on at least one committee right away
- Buddy system

*excerpt from BoardSource's Leading with Intent.

(2019)



Sample Statement of Expectations for Board of Directors of a Nonprofit Organization

The following responsibilities are specific to the Organization and are articulated for the purpose of complementing or clarifying certain aspects of the traditional governing responsibilities of board members.

1. **Commit to the mission and goals of the Organization.**
2. **Attend meetings of the Board of Directors:** (four) meetings are scheduled each year. Board members are encouraged to attend all (four) meetings (they are scheduled a year in advance). Minimum attendance expected of each individual Board member is 75%.
3. **Serve on at least one committee and attend committee meetings:** Board members are encouraged to attend all meetings of the committees on which they serve. However, attendance at 50% of the meetings is expected at a minimum.
4. **Prepare for meetings in advance:** The Organization commits to sending materials in advance; board members commit to reading and considering materials in advance of meetings.
5. **Contribute expertise and participate in strategic development of board and organization.**
6. **Attend the Organization's special events, including...**
7. **Make a personal contribution to the Organization:** Every member of the Board of Directors is expected to make a personally significant financial contribution on an annual basis, in addition to in-kind contributions of time and resources.
8. **Develop funding support:** Assist the Organization board and staff in its fund development efforts by arranging introductions, signing letters to friends and associates and otherwise opening doors to funding sources. Each board member who represents a business is asked to seek organizational support at the highest possible level of sponsorship.
9. **Represent the Organization:** Be familiar with and speak in support of the Organization and allow his/her name to be used in support of its mission.
10. **Disclose any potential conflict of interest with the Organization.**
11. **Refrain from discussing or sharing confidential board business with non-board members.**

I understand that as a member of the Board of Directors of the Organization, I will be held accountable to the expectations above on an annual basis.

3

Build constructive partnership with the CEO

- Annual compensation and evaluation process – 80%*
- Open and honest communication
- Annual one-on-one meeting

4

Structure effective meetings

- Set dates early; begin and end ON TIME
- Engaged board members do their HOMEWORK BEFORE board meetings
- Board portal
- Consent agenda – 57%*
- Dashboard report – 44%*
- Executive Session – 61%*



Financials

	2022 YTD	2022 BTD	% Achieved	Variance	Budget 2022	YTD 2021
Government						
Fundraising						
Foundations						
Fees						
Total Revenues						
Total Expenses						
Net Operating						

Fund Development

Foundations			
Annual Fund			
Special Events			

Board Development

Needs	Status
Annual Contributions	
Attendance	

Program (Numbers Served)

	2022 YTD	2022 BTD	2021 YTD	Variance

5

Ensure relevant board and committee structure

- Average number of committees – 4.8*
- Average number of board meetings/year – 6*
- Executive Committee – 78%*

6

Seek competent and diverse board composition

- Average board size – 15 members*
- Race/ethnicity – 84% Caucasian*
- Age – 17% under 40 years old*
- Average board tenure – 6 years (2 three-year terms)*

Why is Diversity Important in the Nonprofit Board Room?



**Better
decision-
making**

Diverse perspectives are better qualified to identify the full range of risk and opportunity



**More
responsive**

Diverse boards reflect the communities they serve, which improves the ability to comprehend and respond to environmental and external changes and trends



**Stronger
access**

To resources that are important to achieving the mission diverse connections with policy makers, donors and collaborative partners



**Better
pipeline**

Boards that are not diverse risk becoming stagnant



**Mission
alignment**

Diversity is part of the organization's mission and essential to develop and deliver programs that support the mission

**excerpt from BoardSource's Board Governance Index: Is Your Board "Normal"?,
(by Ruth McCambridge, January 2015)*

7

Effective communication and deliberation

- Create culture of trust, transparency and inquiry
- Ensure that board functions in all three modes:
 - **Fiduciary:** Legal responsibility for oversight and stewardship
 - **Strategic:** Ensure a winning strategy; decisions about resources and programs
 - **Generative:** Serve as source of leadership & deeper inquiry; explore root causes, values, optional courses and new ideas

8

Succession plan for the chief executive and the board chair

- 34% have a written CEO Succession Plan
- Qualities to seek in a board chair:
 - Ability to build constructive partnership with CEO
 - Fosters trust
 - Resolves conflicts, builds consensus
 - Frames and discusses strategic questions
 - Establishes clear expectations for board members



**“ Board members should not feel like
“docile mushrooms
(warm and in the dark).” ”**

**McFarlan and Epstein
Nonprofit Boards: A Guide, 2009**

Resources for Board Members

**Business Volunteers
Unlimited (BVU)**

www.bvuvolunteers.org

BoardSource

www.boardsource.org

Independent Sector

www.independentsector.org

**Nonprofit Finance
Fund**

nonprofitfinancefund.org

Board Service Readiness? YES/NO

1. I am interested in advancing a cause that I feel excited about.
2. I am curious to learn about issues facing our community.
3. I am interested in learning about leadership in a new environment.
4. I am interested in meeting people outside my usual professional and social circle.
5. I am comfortable making a personal contribution to a nonprofit organization.
6. I can imagine asking others to contribute financially to a cause that I am passionate about.
7. I have enough autonomy in my schedule to accommodate board and committee meetings.
8. I am patient and collegial when working as part of a team.
9. I can commit the time necessary to be an exceptional board member.

*excerpt from BoardSource

Sample Questions to Explore Board Opportunity

Meeting with the chief executive and board chair to discuss:

- ✓ Mission and scope of programs
- ✓ Revenue structure and key funding sources
- ✓ Key challenges facing the organization in next 3 years
- ✓ Key opportunities for organization growth
- ✓ Strategic plan
- ✓ Relationship between chief executive and board
- ✓ Role of the board
- ✓ Expectations of individual board members (\$, time, events)
- ✓ D&O insurance
- ✓ Tour of facilities



The Legal Responsibilities of Nonprofit Board of Directors

Business Volunteers Unlimited
The Role of the Board
January 27, 2023



Schneider Smeltz Spieth Bell LLP

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Overview of Presentation

- What are the directors' legal (aka "fiduciary") duties?
 - Duty of Care
 - Duty of Loyalty
 - Duty of Compliance
 - Duty to Maintain Accounts
- What liabilities may directors face? How can these risks be managed?

Sources of Legal Duties

- ❑ State: Chapter 1702 of Ohio Revised Code (Nonprofit Corporation Law)
 - Note that nonprofits can also be unincorporated associations (Chapter 1745), trusts, limited liability companies, or partnerships
- ❑ State: Chapters 109, 1715, and 1716 of Ohio Revised Code
- ❑ Federal: Sections 501 and 509 of the Internal Revenue Code
- ❑ Federal: Sections 4940-4948 of the Internal Revenue Code (private foundations)

*note that this is not intended to be a comprehensive list!

Sources of Legal Duties: State Law

- **Directors' Authority:** “Except where the law, the articles, or the regulations require that the action be otherwise authorized or taken, *all of the authority of a corporation shall be exercised by* or under the direction of *its directors.*” R.C. 1702.30(A)

Note: Prior to 2000, the statute referred to “directors” as “trustees”

Sources of Legal Duties: State Law

- The **Directors** are responsible for the actions of the corporation.
 - Not the CEO or Executive Director
 - Not the Chairperson
 - No one individual director

The Duties of a Director

DUTY OF CARE



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Duty of Care

- A director must discharge his or her duties in *good faith* with the care that an *ordinarily prudent person* in a like position would use *under similar circumstances*.

(Ohio Revised Code § 1702.30(B))

Duty of Care

- Conduct themselves with the level of care, skill, and diligence exercised by *prudent people in handling their own affairs*

(Ohio Attorney General definition)

Duty of Care

Dos and Don'ts:

- **Do** be informed and involved
- **Do** actively participate in discussions and meetings
- **Do** rely on dependable sources of information
- **Do** hold staff and other board members accountable
- **Don't** be afraid to ask questions

The Duties of a Director

DUTY OF LOYALTY



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Duty of Loyalty

- A director must discharge his or her duties in a manner the director *reasonably believes to be in or not opposed to the best interests* of the corporation.

(Ohio Revised Code § 1702.30(B))

Duty of Loyalty

- Trustees or board members always *must act fairly and in the best interest of the organization* without concern for their own interests.

(Ohio Attorney General definition)

Duty of Loyalty

Federal tax concerns

- IRC Section 4941 - prohibits self dealing by private foundations
- IRC Section 501(c)(3) - prohibits private inurement
- IRC Section 4958 - imposes tax on excess benefit transactions; requires reasonable compensation

Duty of Loyalty

PLAIN ENGLISH:

- Directors must put the interests of the organization over:
 - their own interests;
 - the interests of family members; and
 - other businesses or organizations that they might be involved in.

Duty of Loyalty

Dos and Don'ts:

- **Do** establish and follow written policy for dealing with conflict of interest situations (see IRS model)
- **Do** use caution when entering into any business relationship between the organization and a board member or officer
- **Do** disclose any financial interest and abstain from discussions and votes on transactions
- **Don't** divert opportunities available to the charity for personal gain

The Duties of a Director

DUTY OF COMPLIANCE



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Duty of Compliance

- Directors have a duty to be *faithful to the organization's mission* and to *follow the organizations' bylaws and other governing documents*, as well as laws related to nonprofits.

Duty of Compliance

Dos and Don'ts:

- **Do** annually review the organization's bylaws, mission, and major policies
- **Do** have a committee to review compliance with the organization's policies
- If your local agency is accountable to a national organization, **do** be sure that your own governing documents and procedures comply with the national organization's requirements.

Duty of Compliance

Dos and Don'ts (cont'd):

- **Do** be familiar with state and federal laws applying to nonprofits, including rules on registration (OH AG/SOS, IRS, etc.) and HR (e.g., employee vs. independent contractor)
- **Do** develop a strategic plan to set the nonprofit's goals, address weakness, and recognize strengths (the strategic plan should set the framework for board meeting agendas and set priorities for committees)

The Duties of a Director

DUTY TO MANAGE ACCOUNTS



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Duty to Manage Accounts

- Directors have a duty to ensure the nonprofit's financial stability and accountability.

Duty to Manage Accounts

Dos and Don'ts:

- **Do** develop policies and procedures that protect the nonprofit's business interests and operations (e.g., gift acceptance policy, whistleblower policy, document retention policy, etc.)
- **Do** develop annual budgets that provide clear direction for all organizational spending
- **Do** ensure maintenance of accurate records of all income, expenditures, transactions, and activities throughout the year

Risk Management for Directors



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Liability for Violation of Fiduciary Responsibilities

- A director is liable in damages for any act that the director takes or fails to take as director **only** if it is proved, by *clear and convincing evidence*:
 - that the act or omission was one undertaken with *a deliberate intent to cause injury to the corporation* or
 - was one undertaken with *a reckless disregard for the best interests* of the corporation.

Ohio Revised Code § 1702.30(D)(1)

Liability for Violation of Fiduciary Responsibilities

Protecting against liability:

- **Business Judgment Rule** - Directors generally OK if they act in a manner that the director reasonable believes is in the best interest of the corporation, using care that an ordinarily prudent person would use under similar circumstances.

Ohio Revised Code § 1702.30(D)

Liability for Violation of Fiduciary Responsibilities

Protecting against liability:

- Directors are entitled to rely upon information, opinions, reports or statements prepared:
 - by directors, officers, or employees who the director reasonably believes are reliable and competent or
 - by counsel, public accountants or others as to matters that the director reasonably believes are within their professional or expert competence

Liability for Violation of Fiduciary Responsibilities

Protections for Volunteers

- Ohio law also contains protections for uncompensated volunteers, including directors, from liability for personal injuries
 - No liability unless willful or wanton misconduct or intentionally tortious conduct
 - Not liable for others unless volunteer authorizes, approves, or actively participates in injury-causing action or ratifies action later

Ohio Revised Code § 2305.38

- See also: Federal Volunteer Protection Act of 1997

Directors and Officers Liability Insurance

- Get Directors and Officers (D&O) liability insurance in addition to general liability policy
 - Protection against common claims
 - Coverage of defense costs and indemnification
(re: indemnification, review bylaws/regulations for corporation's policy)

Best Practices for Protecting Directors from Liability

- ✓ Conduct “legal audit” and keep rechecking
- ✓ Rely on counsel and other experts
- ✓ Regular training and new board member orientation
- ✓ Draw on a broad range of skills (legal, accounting, industry specific, etc.)

QUESTIONS

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Panel Discussion



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**JAZMIN LONG,
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CREATING
LGBTQ+
INCLUSIVE
WORKPLACES



AMANDA COLE
EXECUTIVE DIRECTOR
PLEXUS

bvU NONPROFIT
LEADERS'
BREAKFAST

JAN 31 | 9AM
VIRTUAL

Nonprofit Leaders' Breakfast: January 31

Join us for a series of learning opportunities with nonprofit leaders. Our first session is ***Creating LGBTQ+ Inclusive Workplaces.***

Attendees will develop skills to better respond to workplace situations and interactions as well as build knowledge on the LGBTQ+ consumer and employee market.

Members: Free

Nonmembers: \$25

Event Sponsor



Raising Results LLC

Ask the Expert: February 13-16

(Registration Closes Feb 3)

Ask the Expert is a recurring offering of the BVU Skill CONNECT program.

- Nonprofit partners and skills-based volunteers meet one-on-one for 60-minute virtual sessions
- Topics include HR, Marketing, Finance, Technology, and more.
- Choose from over 20 sessions!

Free to all nonprofits

ask the EXPERT



Thank you

BVU connects businesses and nonprofits, creating connections to better our community.



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BUSINESS ENGAGEMENT
NONPROFIT EXCELLENCE