



## Glossary of Terms - Module 2: Ensuring Necessary Resources

**Accountability:** An organization's ability to answer questions regarding appropriate expenditure of funds and/or outcomes that demonstrate progress toward its mission. The acknowledgment and assumption of responsibility for policies and decisions, including the obligation to be answerable for resulting consequences.

**Advocacy:** Any action that speaks in favor of, argues for, recommends, supports, defends or pleads on behalf of others or a cause. Includes public education, regulatory work, litigation, work before administrative bodies, lobbying, and voter registration or education.

**Board:** Individuals who sit on the board are responsible for overseeing the organization's activities and meet periodically to discuss and vote on the affairs of the organization. The board should focus on the organization's mission, strategy, and goals.

**Board Member Agreement:** A verbal agreement or written statement of commitment to fulfill responsibilities as outlined in the board member description.

**Bylaws:** Legal operating guidelines for a board.

**Bylaws Amendment:** A formal change to the original bylaws of an organization; the bylaws themselves should outline amendment procedures.

**Chief Executive:** the chief professional officer of the organization, also called CEO or, in many nonprofits, executive director.

**Code of Conduct:** the formal or informal ethical standards expected of every member of a group, whether board, staff, board member of the profession.

**Confidentiality Clause:** a policy defining unauthorized and improper disclosures of confidential information.

**Conflict of Interest:** Any situation in which an individual or corporation (either private or governmental) is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit.

**Conflict of Interest Policy:** An organizational policy that (a) requires those with a conflict (or who think they may have a conflict) to disclose the conflict/potential conflict, and (b) prohibits interested Board members from voting on any matter in which there is a conflict.

**Consultant:** An expert providing professional advice for services.

**D&O (Directors and Officers) Insurance:** Insurance that protects board members and top staff personnel from personal liability created by board decisions or actions.

**Due Diligence:** An expectation that a board member exercises reasonable care and follows the business judgment rule when making decisions.



**Fiduciary:** A fiduciary is a person responsible for the oversight, administration, investment, or distribution of assets belonging to another person or to an organization. Fiduciary duty requires board members to stay objective, unselfish, responsible, honest, trustworthy, and efficient. Board members, as stewards of public trust, must always act for the good of the organization, rather than for the benefit of themselves. Board members need to exercise reasonable care in all decision making, without placing the organization under unnecessary risk.

**Form 990:** An annual information form submitted to the IRS, a public document listing information concerning an organization's finances and programs, as well as names of board and the highest paid staff leaders.

**Governance:** The legal authority of the board to establish policies that will affect the life and work of the organization and accountability for the outcome of decisions.

**Mission:** The fundamental purpose and reason for which an organization exists.

**Mission Statement:** a brief description of the organization's approach to solving the need it was created to address.

**Policy:** A written set of guidelines for action; creates limits on the range of acceptable options.

**Stakeholder:** A person, group, or organization that has interest or concern in an organization.

**Transparency:** A system of operation and communication that enables people to understand how the organization operates, makes decisions, and uses resources; an important aspect to ensure public trust.

**Vision:** A picture or dream of a desired future.

**Vision Statement:** A written description of what the organization intends to achieve at some point in the future, either in terms of the organization itself or in terms of the impact the organization will have had on the community.



# **BYLAWS: DOs and DON'TS**

## **DRAFTING AND AMENDING**

- ✓ Don't worry about drafting perfect bylaws the first time around. Start with very basic bylaws that cover major issues surrounding meetings and elections, and then slowly amend those bylaws over time.
- ✓ Note carefully when and how bylaws can be amended.
- ✓ Do review the bylaws periodically and ensure timely amendments when necessary.
- ✓ Don't feel obligated to make your bylaws public. Federal law does not require it.
- ✓ Have an attorney verify that the bylaws are in compliance with state statutes.

## **TERMINOLOGY**

- ✓ Don't use the term "ex officio" without specifying whether or not these members have a vote.
- ✓ Don't forget that certain terms may have different definitions in state law — and that state law always takes precedence. For example, nonprofits often have varying definitions of "membership." However, under state law, a "member" is typically defined as a person (or entity) who pays dues or has more than a nominal connection with the organization and, in return, receives certain membership rights (often the right to elect or remove officers).



## IMPORTANT CLAUSES

- ✓ Include a clause granting the board the ability to form committees and task forces as the need arises rather than naming all committees and their descriptions in the bylaws.
- ✓ If your board has an executive committee (not all boards should) and gives it the power to act on behalf of the board, the bylaws should define the limits of this authority.
- ✓ When addressing the size of the board, don't specify an exact number. A range allows for the most flexibility — e.g., “no fewer than five and no more than 15 members.”
- ✓ Address virtual voting in the bylaws. Keep in mind, most state laws do not allow for email voting, but often voting via telephone or video conference is permitted.
- ✓ Don't include a full conflict-of-interest policy in the bylaws. Instead, reference a standalone conflict-of-interest policy housed in a separate document that can be quickly amended by the board.
- ✓ Consider including a clause allowing board members to be removed both with and without cause. If your board does not want to provide for the removal of directors without cause, a common alternative is to simply have short terms of office, which will allow underperforming board members to quickly roll off the board.

### Resource:

*Better Bylaws: Creating Effective Rules for Your Nonprofit Board*



## D&O Insurance

### Why is D&O Insurance Important?

Even the most stringent risk management policies and procedures do not provide adequate protection against liability in legal actions. Various laws grant limited immunity to board members during service but these laws do not prevent lawsuits and they do not shield board members from allegations involving federal employment law. There are no laws protecting nonprofit organizations themselves from lawsuits.

Here are some common questions posed by board members concerning liability insurance and appropriate coverage for their nonprofit organizations.

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### **Our board is very focused on responsible governance. Doesn't our pro-active attitude protect us?**

Even if you have insurance, a lawsuit can be a significant burden on your staff time and morale. Responsible governance can minimize the chance of a lawsuit, however, it is impossible to anticipate every possible conflict situation. And it is wise to remember that lawsuits can be filed even against the most law-abiding citizens. The cost of defending even the most ridiculous lawsuits can be expensive.

### **Doesn't our indemnification policy guarantee that all of my expenses will be taken care of if I get sued?**

Indemnification means that the organization will rely on its own resources to pay board members' legal costs for claims that result from board service. However, the indemnification policy goes only as far as the organization's resources allow it. If there is no money to pay, there is not adequate protection. Today's legal costs can rise to quite astounding figures and the risk of losing most of the organization's assets is not very comforting. Many states permit indemnification only as provided in the organization's bylaws.

### **How much can I rely on the federal and state laws?**

State laws do not fully protect the individual's nor the organization's assets. Some state laws normally exclude staff and direct-service volunteers and cover only board members. Other state laws only provide protection if the nonprofit has liability insurance applicable to the claim. Also, no protection can be found from employment-related acts, such as harassment or discrimination, the most often cited basis for lawsuits that name board members and executives. Furthermore, no laws protect the organization itself.



## How does the Volunteer Protection Act cover me?

The [Volunteer Protection Act of 1997](#) was designed to enhance immunity from personal liability in an effort to encourage volunteerism. The Act takes effect when volunteers are acting within the scope of their organizational duties; they are properly licensed; the harm is not caused by willful or criminal misconduct nor gross negligence; and when operation of vehicles is not involved. It is important to note that the Act does not protect the organization itself, which still may be held liable for the actions of its volunteers. Neither does the Act protect a volunteer from being named as a defendant in a lawsuit.

## Isn't general liability insurance enough?

General liability policies cover negligent acts that result in property damage or personal or bodily injury. Harm resulting from executive decision making or related allegations of wrongful employment practices is not covered by the general liability policy.

## Why should my organization obtain D&O insurance?

For the most part, directors' and officers' (D&O) insurance does not overlap with your general policy; it is an extension. One important additional benefit concerns employment-related claims. A good D&O policy should also provide coverage for employment practices liabilities, such as allegations of wrongful acts. Also, this policy should provide that the insurance company pays all legal expenses and settlement costs on behalf of the individual board members and nonprofit itself without requiring any advance payment by the nonprofit or board members. The policy generally covers legal fees regardless whether the lawsuit is frivolous. Without this protection the organization may not be able to afford to defend itself and the board members.

Individual board members should also consider taking liability coverage from their personal carrier to provide added protection against loss of personal assets should the board's collective measures fail to deliver.

## How can we get the best policy for us?

Negotiate. If you end up choosing a standard policy, read it carefully to ensure that it covers your concerns. Each organization has specific requirements that need to be spelled out in the document.

- Pay attention not only to what is included but also what is not mentioned or is excluded in the policy. Some policies may not automatically include volunteers.
- Make sure all those you want to be covered are listed in the policy.



- Check the definition of a covered loss. Are attorneys' fees included as well as fines, penalties, or punitive damages? Some states do not allow insurers to cover punitive damages. Most states do not allow coverage of civil fines, especially ones from the IRS.
- Defense costs should be paid as they are incurred rather than on a reimbursement basis.
- Discuss the necessity to extend the coverage over past acts; most policies are claims-made-and-reported (responsibility over claims made and reported in the same year when the acts took place and while coverage was in place.)
- Calculate the needed policy limits and assess your deductibles.
- Deal with an insurer and broker who understands nonprofits.

### **Where can we purchase D&O insurance?**

Numerous national, state, or umbrella organizations provide members with advantageous risk-management alternatives. You can also contact your state association of nonprofits for more local references. The [Nonprofit Risk Management Center](#) and private agents or brokers familiar with nonprofits may also be able to guide you.

Resource:  
BoardSource





## **Case Study: Border Literacy**

Started in 2000 as an all-volunteer organization, Border Literacy's mission is to promote literacy in all its forms for all people in the region. Its annual expenses are close to \$40,000 and mostly spent on purchasing and distributing books. Financial support in the past couple of years has been fairly flat and comes mostly from a few large donors (\$20,000) and a fundraising event (\$20,000). They pay a bookkeeper but have no other staff nor do they have an office, or any other support enjoyed by larger organizations. The board has 8 members, most being reading volunteers for the organization, who are retired and have time for monthly board meetings and running the organization. With 20 volunteer readers who also distribute books, Border Literacy enjoys a positive image with local librarians, books store operators, and some teachers. Aside from that, few people know of their valuable but still fledgling work.

The Board Chair and co-founder, Wendy, is a lovely person who has been involved with Border Literacy since inception and is committed to the cause. Meeting facilitation is not one of her strong points and she is not trained in board governance or non-profit management. As a result, board meetings mostly consist of coordinating reading and book distribution events or planning logistics for the fund-raising event. They review the organization's bank records, file required paperwork, and have never gone in debt.

All board members want the organization to succeed. Most members feel the need to *pass-the-torch*, maybe hiring a part time Executive Director or at least an administrator.





The founding board members, especially Wendy, are having a hard time letting-go, but are slowly realizing that growth and impact requires new ideas and leadership.

A new board member, Karla, is beginning to realize that while great volunteers, most board members are not adding much strategic value to Border Literacy. She thinks that serious attention needs to be given to promoting digital literacy; her vision of literacy is beyond books and reading events. Karla wants to engage more committed volunteers to improve programs and new board members who share an expanded vision of literacy promotion. She knows that to innovate, Border Literacy needs to shift public perception of the organization and bring-in more resources; but to shift perception, Border Literacy needs to innovate first – or do they? Innovative programs, like those for digital literacy, would help with fundraising, as they make great stories and attract different donors. But all this will take more human and financial capital and the small board, who really enjoy reading books, like doing things the old way. Karla is frustrated and unsure what to do about an organization and literacy mission in which she is invested. In conversations, Wendy has told Karla that maybe Board Members can try to sell more tickets to the annual fundraiser and buy more books that deal with technology.

Karla has reached out for your assistance

Assume you are giving advice to Karla. Prepare a response.

1. What are the key challenges faced by Border Literacy?
2. Related to these challenges, what are 3 questions you would ask of the board to answer?