

*Dear Tom,*

*I've been invited to join a board of directors. It's a strictly volunteer position, and doesn't pay anything. I'd love to do it, but I'm wondering about any risk to me. I heard of a non profit organization in the states that offered an open bar at a fundraiser, and one of the attendees drank too much, and crashed his car. I think he sued the organizers and the members of the board individually. I want to do good, but not put myself in harm's way. Would I have any personal liability as a board member?*

*St. Thomas Do-gooder*

Dear Do,

Over the past several years the number of nonprofits within our island community has grown as many assume the responsibility for social services previously delivered by government. The need for committed, enthusiastic, and capable volunteer board members has never been greater.

Nonprofit and corporate directors share a common concern: that of personal liability for serving on a board. At the end of litigation against nonprofits, nonprofit board members are rarely required to use personal funds to pay for harm committed by the board or organization, but the possibility remains.

One risk management strategy is to address the potential for personal liability by taking steps that substantially reduce the likelihood that a board member's personal assets will be exposed to loss. Conscientious performance is the standard. Strive to do everything right and be able to show how the board made its determination. The assumption in the law is not that you make the correct decision, but that you made the decision correctly. It's not a crime to be wrong, but did you ask the right questions and respond as a reasonable individual would? Board members are more at risk for taking no action than for taking the wrong action for the right reasons.

As counsel to many local non-profits, some key suggestions our firm gives for anyone joining a non-profit's board of directors are:

- 1) Attend meetings;
- 2) Read the minutes and make sure they reflect what actually happened at the meeting;
- 3) If someone objects make sure it is a part of the minutes and encourage discussion on difficult issues. It is your duty as a board member to do the best for the organization not for individuals;
- 4) Maintain up-to-date personnel manuals that are reviewed by legal counsel;
- 5) Maintain good financial records. Make sure accounts are reconciled and that all employment and income taxes are paid. Review financial statements and insist on understanding them; and
- 6) The Board should meet with its insurance agent to explain coverage - general liability, professional liability, workers compensation, asset protection, and directors and officers insurance.

These risk management tools can help limit board member liability and encourage volunteers to continue to do the good work within our island community.