

How To Become Personally Liable For Debts Of Your Charitable Corporation

1. Illegal Acts: Take an illegal action in the name of the company, such as:

- ☐ violate the securities laws in the name of the company by approving the sale of unregistered securities
- ☐ misrepresent facts in a securities transaction, or
- ☐ make unauthorized guarantees in the sale of the securities
- ☐ wrongfully discharge employee in violation of public policy
- ☐ authorize or permit infringement of copyrights of others
- ☐ approve destruction of documents in violation of Sarbanes Oxley
- ☐ violate Section 1107 Retaliation Against Whistle blowers reporting a federal crime
- ☐ approve use of dangerous cribs in corporation's nursery
- ☐ approve corporate actions violating US or State Constitution

2. Loans to Insiders: Approve a loan of corporate funds to a fellow director or officer of the corporation and then fail to collect the debt in violation of bylaws or state law.

3. Contract: Take actions on behalf of the Corporation which exceed the scope of authority granted to you by the board or by the Bylaws or sign documents in your personal capacity without reflecting the proper corporate form

4. Trust: Violate the terms of an express trust from a donor to the Corporation

5. Breach of fiduciary duty of Loyalty:

- ☐ Approve an unfair contract between the Corporation and an "interested person"
- ☐ Fail to disclose conflicts of interest
- ☐ Fail to follow the conflict of interest policy
- ☐ Fail to follow the Whistle Blower Policy

6. Breach Duty of Care: Breach your fiduciary duty of care by:

- ☐ failing to attend board meetings
- ☐ failing to question irregularities
- ☐ failing to record a formal dissent to questionable actions by the board
- ☐ allowing or creating a "deepening insolvency"

7. Negligence/Gross Negligence: Be negligent or grossly negligent in failing to exercise due care in:

- ☐ supervising church hiring and firing practices
- ☐ copyright infringement
- ☐ allowing dangerous cribs in corporation's nursery, or
- ☐ operation of church vehicles

8. Employment: Fail to supervise management resulting in:

- ☐ wrongfully discharge employee in violation of public policy
- ☐ violate one of the 172 laws governing employees or
- ☐ violate their Constitutional rights

9. Destroy Corporate Shield: Fail to Follow the Doctrine of Corporate Formalities:

- ☐ fail to keep minutes of corporate minutes
- ☐ fail to follow bylaws and articles
- ☐ allow co-mingling of corporate and personal funds or
- ☐ fail to make annual filings as required by state or federal law

10. Violate IRS Laws: Fail to supervise or to confirm supervision of collection of payroll withholding taxes in violation of Section 6672 of the Internal Revenue Code.

- ☐ Approve Excess Salaries
- ☐ Approve unreasonable Expenditures
- ☐ Fail to File form 990 or other filings



New Board Member Checklist

Before going on a charitable board, a prospective board member should obtain a "New Board Member Packet" which should include:

Basic Corporate Documents

- ☐ Articles of Incorporation and amendments, if any
- ☐ Bylaws and amendments, if any
- ☐ Minutes of last annual director's meeting and of last 6 regular meetings containing:
 - term of office for all officers and directors
 - expiration dates of director's terms
 - proof of compliance with notice and with quorum requirements
- ☐ Confirmation from State Authority that corporation is in good standing
- ☐ Consider obtaining a litigation search if there are any red flags
- ☐ Basic Policies:
 - Conflict of Interest Policy and form for annual certification by all members confirming no violations
 - Whistle Blower Policy
 - Record Retention Policy
 - Social Media Policy
 - Prohibition against texting
- ☐ Confirmation of Background Checks on any employees with access to minors

Financial Items

- ☐ Inquire if the organization is certified as a member of the Evangelical Council on Financial Accountability
- ☐ Copy of last two audits, especially the footnotes to the audits
- ☐ Copy of latest Form 990

Insurance

- ☐ Are there surety bonds for those handling checkbook and cash?
- ☐ Certificate of Insurance for general liability insurance confirming:
 - Dates of current coverage
 - Amount of coverage of at least \$1 million and preferably \$3 million
 - No exclusions or limitations for sexual molestation claims
 - Employment Practices Liability Insurance endorsement ("EPLI")
 - Digital Media endorsement
- ☐ Directors and Officers Insurance ("D & O")
 - minimum \$1 million coverage and preferably \$3 million limit
 - endorsed so that defense costs are in addition to stated coverage
- ☐ Is Insurance Coverage subject to competitive bids and review by a broker?



Board Basics Training:

- ☐ "Guide to Corporate Meetings and Minutes"
- ☐ The National Center for Nonprofit Boards on "Ten Basic Responsibilities of Nonprofit Boards"

