

A DAY IN THE LIFE OF A CORPORATE OFFICER: A GENERAL DISCUSSION OF HOW OFFICERS AND DIRECTORS RUN CORPORATIONS

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NOTE: I wrote this paper in 1996 to help new officers and directors of volunteer organizations like the Jaycees understand what they are supposed to do. I made it applicable to for-profit corporations also. I have used it to educate my clients ever since. Please be aware that 1) The general principals are correct, but I have not updated it since 1996. That means some of the citations and details may be out-of-date. 2) I am making this information available as a public service, and NOT as legal advice .

Congratulations! You have just started a business, or become an officer or director in a nonprofit organization. If this is your first time, you will gradually see how meetings are conducted and how decisions are made. If you have done this before, you know how those things work, but you could benefit from a comprehensive overview of the process and the obligations involved. This paper will provide a general overview of the relationship between a corporation and its officers and directors. We will discuss the persons and entities involved, the process of doing business, some of the duties involved, and some of the peculiarities of nonprofit groups. The information will be useful to anyone involved in a business or nonprofit group, especially Presidents and new directors or officers. If some of the information seems basic to you, please be patient and read on: there is certainly some information in this paper that will be new and useful.

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One last thing before we get into the meat of this letter: This letter is not intended to provide anyone with legal advice. There is some discussion of matters relating to the law (which is based mainly on general principles and a little on Texas law), but this is only a general introduction to the subject of how corporations do business. This paper does not deal with any specifics of laws of states other than Texas, does not deal in any depth with tax issues, and certainly does not contain a complete list of all duties involved in business transactions. If you want legal advice, hire your own lawyer, tell him your whole story, and let him research that specific question.

LIMITED LIABILITY

Most people incorporate their businesses to take advantage of **limited liability**. People incorporate nonprofit organizations for the same reason. This means that if a corporation becomes liable for some action it has taken or which has been taken in its behalf, anyone suing the corporation can only reach its assets, and not the property owned by the individual shareholders or members. In contrast, if a sole proprietor (a business owner who has not incorporated) runs into trouble, he or she is fully liable. A partnership is even more dangerous: each partner is fully liable for the torts committed by the other partner when acting on behalf of the partnership, in addition to those torts he or she commits (a limited partnership is different).

The best way to describe limited liability is by comparing a corporation to an insurance policy:

- ▶ It's like a liability policy that covers many types of liability arising out of your business.
- ▶ It has no policy limits on the amount of liability it covers - it either covers you or it does not, regardless of the amount of the claim.
- ▶ If you remain current on your taxes, forms, minutes, and other formalities, it never expires.
- ▶ You have to pay a one time "premium" (the filing fees and costs of drafting the documents), but don't

- ▶ have to pay them again unless you want to change something major.
- ▶ Like any other policy, it doesn't cover everything and there are "exclusions." Some banks and other businesses will require a personal guarantee before loaning money or extending credit to a corporation. In rare instances a Plaintiff can get around the corporate shield ("piercing the corporate veil"). In some cases a shareholder may be personally liable through some other theory. But it does provide additional protection.

If you are not incorporated, your only protections from this liability are the **exemptions**. These laws allow you to keep certain property even if you have judgments against you or you declare bankruptcy. The best-known exemption is the homestead exemption, which protects your home. Other exemptions protect you from losing some basic items of personal property which are considered to be the basic essentials. If you are relying on the exemptions for protection, chances are you are in bankruptcy court. Remember, you start a business because you want to build a better life. Most people sleep a lot better if they take advantage of all the protection the law offers.

CORPORATIONS, SHAREHOLDERS, OFFICERS, AND DIRECTORS

A **corporation** is nothing less than an artificial person created by law. It has its own brain--the Board of Directors and officers. It has its own arms and legs--its agents and employees (or members and volunteers) and its own purpose for existence (its charter and Bylaws). It can own property, sue and be sued, make decisions, commit crimes, and die.

It is easy to form a corporation. All you have to do is file **Articles of Incorporation** (also known as the **charter**) with the Secretary of State, and pay the filing fee (which is cheaper for nonprofit corporations). The charter is a simple document that lets the government know what the general purpose of your corporation is and who is involved in forming and running it. After incorporating, you will need to do a few other things in order to get organized, including holding organizational meetings, adopting **Bylaws**, and electing officers and directors. The Bylaws are the rules governing the operations of the corporation, and are a great deal more detailed than the charter. There are rules governing notice of meetings, the powers of the officers, election and removal of officers and directors, and much more. Of course, the law specifies many of the rules governing corporations, but you have a great deal of discretion in the procedures of running your business, as specified in your bylaws. An attorney who helps incorporate a business should give you specific instructions on the procedures of organizing and running a corporation, or confirm that the incorporators have a CPA who will be responsible for doing so.

Some business organizations, such as sole proprietorships and general partnerships, are mentioned in this paper only for comparing with corporations. There are other business organizations, such as limited partnerships, limited liability companies, and foundations, which are beyond the scope of this paper.

For-profit corporations are owned by their shareholders but operated by their officers and directors. Their purpose is to generate a profit, to be distributed to the shareholders in proportion to the shares owned. **Closely held** corporations are owned and operated by a few shareholders, and their stock is not generally traded on the marketplace. An example of this is the mom-and-pop store which becomes incorporated. Many of the formalities can be relaxed for closely held corporations, which reduces the cost of doing business. In order to steer clear of expensive and burdensome regulations, shareholders of closely held corporations are often prohibited from transferring their shares except under certain circumstances. On the other hand, the stock of some corporations is **publicly traded**. Many of the shareholders have never met the officers and directors who manage their companies. In those cases, the formalities can be quite important, and it is necessary to be more precise in defining the limits of actions of the officers and directors.

A **nonprofit corporation** is an organization incorporated for reasons other than generating a profit. These reasons do not necessarily need to be charitable: there are trade associations, chambers of commerce, recreational clubs, and other organizations that organize in this way. Unfortunately, you cannot qualify for this status if you organize a business venture that simply fails to make a profit.

Some nonprofit groups are not incorporated; they are called **unincorporated nonprofit associations**. It is extremely dangerous to do business as a nonprofit association in most states, and members of an unincorporated nonprofit association would probably be shocked and horrified if they knew the extent of their exposure. The legal liabilities facing a member of such an association are analogous to those facing a member of a partnership. Every member of a nonprofit association may be held individually liable for obligations incurred by any other member when carrying out the activities of the association. In effect, each member has empowered all the other members to enter into agreements and has agreed to be responsible for torts committed by all other members, when carrying out the business of the association. There are a few nonprofit associations that may get by without incorporating, such as clubs whose activities are limited to holding occasional meetings, but the vast majority of organizations need to be incorporated.

Corporations are owned by **shareholders**, but managed by officers and directors. Members of nonprofit groups generally take the role of shareholders, but do not technically own the organization. Shareholders may or may not have the right to vote; shareholders with that right are holders of common stock, and shareholders without that right are holders of preferred stock (which means they get paid before holders of common stock). Shareholders often serve as officers or directors. A shareholder who becomes an officer or director takes on additional duties toward the corporation (and thus to all the shareholders). **Directors** are generally elected by the shareholders (or members) to participate in a committee called the Board of Directors, which generally makes the business decisions for the company. The directors usually do not have any rights to act individually; the powers of the Board may only be exercised by the group acting collectively. Depending on the size and complexity of the corporation, the Board may meet regularly and make all decisions of any consequence, or it may meet infrequently and leave most decisions to the officers. The **officers** of a corporation are usually elected by the Board or the shareholders (or members), and are usually members of the Board. Officers do have the right to act individually, with their specific rights and responsibilities defined by the Bylaws or by the customary powers of that officer. For instance, the President of the company can generally make purchases of supplies and equipment on behalf of the company, hire and fire employees, and commit to agreements with customers or clients. A Secretary can create and maintain records of the company, and allow outside persons access to those records for legitimate purposes. A Treasurer can open and maintain bank accounts, handle some tax issues, and sign financial documents for the company. The customary powers granted to corporate officers will apply to your officers, unless you change them by incorporating different rights and responsibilities into the bylaws.

DOING BUSINESS

Since a corporation is a **separate entity**, it can own its own assets and incur its own liabilities. It needs to keep its assets separate from those of other people and entities (especially its officers and directors), and should therefore have its own bank account. The corporation's Bylaws will determine who is authorized to sign on its behalf, but usually the signature of two or more officers is required. That requirement protects the corporation and the officers, and for that same reason, most or all of the corporation's transactions should be handled through the checking account.

Once your corporation is formed, you will find that many businesses will require you to waive some of this protection by providing a **personal guarantee** from the President or shareholders before credit is extended. This means that in addition to requiring the corporation to agree to be responsible for the debt, they are also asking that one or more principals of the business agree to be personally responsible. In fact, companies that do tens of millions of dollars of business per year are routinely required to provide a personal guarantee, even after operating successfully for many years. Here is an example of a provision in a contract requiring a personal guarantee:

 / S /
Individually and for the Alpha Corporation

Even though some businesses require a personal guarantee, incorporating will still protect you from tort claimants and businesses which do not insist on such a guarantee. You can basically slam the window shut

on most forms of vulnerability by incorporating.

Whenever someone signs on behalf of the corporation (other than on documents such as checks that are obviously executed on behalf of the corporation), if the person does not intend to provide a personal guarantee, that person needs to make sure that there is a notation that makes it clear that the person is signing for the corporation and not for him or herself. If this is not made clear, the person may end up being held personally responsible for the obligation. Here are some examples of signatures executed only on behalf of the corporation:

/ S /
for the Alpha Corporation

/ S /
Alpha Corporation, by John Doe

/ S /
President, Alpha Corporation

How does a corporation make decisions? The Bylaws of your corporation will determine how the decisionmaking powers are distributed. The shareholders have quite a bit of latitude in organizing their corporation, but most corporations specify that the Board makes the significant decisions at regular Board meetings. If the organizers feel that certain formalities are necessary, the Bylaws can require advance notice of all meetings, by telephone or in writing. They can require the notice of the meeting to list the matters to be decided at the meeting. They can require a certain fraction of the directors (a quorum) to be present in order to do business. In general, if you make the notice requirements more stringent, you can relax the quorum requirement (if everyone knows of the time and place of the meeting, as well as its subject matter, they can show up if they want to be heard). If your notice requirements are stringent enough, you may reduce or eliminate the quorum requirement. Most groups strike a balance between efficiency and procedural limitations. If the shareholders don't want the Board's hands tied by all these procedural requirements, the Bylaws can be drafted to allow great flexibility. Meetings can be held by phone, for instance. Corporations also usually allow directors who did not receive proper notice to waive it, if they would still like to hold a meeting and take action. If there are only a few people with an interest in your corporation, and if they all trust each other, you don't want to impose a great deal of formalities on yourself. You can arrange your Bylaws to grant you flexibility and get on with business. But if there are more people involved, if there is a great deal of turnover, or if you don't all trust each other, then you can require additional formalities to ensure that things are handled fairly.

Most corporations make significant decisions at Board meetings, and they use the latest edition of **Robert's Rules of Order** to determine the procedures used at those meetings. Robert's Rules is a system of procedures by which a group (such as a Board) can consider taking action. These procedures are also known as parliamentary procedure. A complete explanation of this system is beyond the scope of this paper, but I will give you a brief summary of how it works. An issue is introduced to the group as a **motion** (the main issue being considered at any given time is called the main motion). There are other motions that are used to control the consideration of the main motion. These other motions all have particular procedural purposes, such as amending the main motion, referring the issue to a committee, and ending debate. Once discussion has ended and all these other motions are resolved, the group votes on the main motion, then the group moves on to other matters or adjourns. All this sounds really boring, and it truly can be. For that reason, these procedures are often relaxed when considering issues that are not hotly contested. But in the few occasions when an issue is disputed, Robert's Rules can literally determine who prevails. Just how important are these Rules? If football games used Robert's Rules, the team with the superior command of the Rules could change the number of points awarded when each team scores, have a touchdown scored by the other team reversed and subtracted from its score, or suspend any of the rules for the duration of the game. That team could literally call an end to the game when it was in the lead. Robert's Rules are much more exciting when they are used to outmaneuver someone in order to determine the outcome on important issues. A wise director will learn enough about parliamentary procedure to ensure that he or she is not on the wrong side of this situation.

Of course, the process of conducting Board meetings is intended to facilitate the sharing of relevant information. When a person comes to a meeting as a proponent of certain action, he or she is expected to do enough research to field questions and hopefully convince the other Board members to follow the suggested course of action. When a person opposes such a proposal, he or she will have to provide information to the other Board members in order to convince them not to adopt the proposal. When a committee has been appointed to investigate, the same process will occur in the meetings of that committee, and in turn the Board will to a degree rely on the recommendation of the committee. But the system created by Robert's Rules is an adversarial system. This means that the rules are intended to be used by the participants to promote their agendas.

In the exercise of your business judgement, you may conclude that you disagree with the actions of the Board. In this case, your proper response is to vote against the action. In other cases, you may not feel you have enough information on which to base a vote or that you are unable to be objective; in these cases you may simply abstain from the vote. In extraordinary cases, you may also need to express your disagreement in writing, perhaps by filing a written **dissent** with the corporate secretary. If you do not do so, you may be held responsible for the actions of the Board because of your inaction. You may also discover information that you are required to provide to the other Board members or even to the shareholders. Remember: as an officer or director, your primary duty is to protect the corporation.

Corporations also hold shareholders' meetings, often annually. Shareholders generally have the right to elect directors, but do not have the right to participate in the company's day-to-day decisionmaking. There are some decisions which the shareholders have the right to make, generally relating to fundamental, life-and-death changes such as approving a merger or dissolution or selling all or most of the corporation's assets.

It is generally necessary for corporations to record what happens in shareholders' and Board meetings; these notes are normally kept by the corporate secretary and are called **minutes**. These records are extremely important, which is why the Board will normally go over the minutes from the last meeting to make sure the Secretary recorded what actually happened. They can also be useful if you want to check on issues which have been discussed in the past. Generally, for-profit corporations must hold at least one shareholders' meeting and one board meeting each year. You can accomplish the same thing without holding an actual meeting, by completing a **unanimous written consent**. It is also vital to keep the Secretary of State informed of any changes to your registered agent or registered address, and they do charge a filing fee. If you don't keep them updated, you can miss important notifications, and can even get served with notice of a lawsuit without knowing it.

Corporations must also generally certain documents with the government each year. Texas requires for-profit corporations to file a **franchise tax report**, even if no tax is due, and a **public information report** that lists the officers and directors. If you don't file these documents each year, the State begins a process to "remind" you, and eventually revokes the corporate charter. The federal government requires corporations to file separate **income tax returns** also, each year. So you either have to spend some time or some money getting these things done.

Although your Bylaws may be very specific in limiting just who has actual authority to incur obligations for the corporation, the people who do business with your corporation may not know of these limitations. For this reason, the courts have developed a theory called **apparent authority**. If your corporation allows a person to incur obligations on its behalf, it may appear to outside persons and organizations that this person has the power to make those decisions on behalf of the corporation. In this case, a court may rule that even though a person did not have the actual authority to enter into agreements on its behalf, the corporation is still responsible because it allowed the person to do so and thus created the appearance that the person had the authority to bind the corporation. For this reason, it is absolutely essential to be aggressive in enforcing the limits of authority which are imposed by the Bylaws. Depending on the circumstances, it may be necessary to privately censure any person who has exceeded his or her authority, to make a record of such censure, or even to contact persons and entities with which the corporation does business, to give them notice of the precise limits of authority.

Occasionally, the officers, directors, and other persons associated with a corporation may run into legal problems. Depending on the type of problem, corporations are usually permitted to indemnify those persons from liabilities arising out of the activities of the corporation, or to purchase insurance which will provide such indemnification. In some situations (at least in Texas), corporations are required to indemnify those persons. Since the laws relating to indemnification are fairly complex, it is not possible to present a full explanation here. But in general, the more innocent the person is of intentional wrongdoing, and the more closely related the person's actions are to furthering the business of the corporation, the more likely it is that the corporation will have to absorb any liability arising out of the person's actions. In the case of nonprofit corporations, since the persons involved are often volunteers who contribute their time and money without receiving compensation, the group will often go out of its way to protect these people from any legal liability.

There is one case where the corporation will not be quite as understanding: when an officer or director betrays the corporation and breaches the duties owed to it. This is called a **breach of fiduciary duty**.

DUTIES TO OTHER OWNERS

When you become an officer or director of a corporation, you become a **fiduciary** of the corporation. This means that you must act primarily for its benefit, in carrying out your duties as an officer or director. A fiduciary relationship involves a very high degree of trust and confidence. Although you may be personally interested mainly in your shares and the income they generate for you, once you become an officer or director, you have committed to work for the good of the corporation as a whole. If your performance is not satisfactory, you may run into problems, either with the corporation itself or with one or more of the shareholders. As a fiduciary, you owe two duties to the corporation: the duty of care and the duty of loyalty.

If you have other shareholders, they normally have the right to look at the corporation's books and records. They also must be notified of any shareholders' meetings. Consider the costs and benefits carefully before allowing anyone else to own a piece of your business. For a lot of people, it's their life savings.

The **duty of care** requires officers and directors to exercise their best judgement in handling the affairs of the corporation, as they would in their own affairs. Put another way, you breach this duty if you are **negligent**, and thus you are responsible for any resulting damages suffered by the corporation. If you were deciding on your own behalf whether to become involved in a new business venture, you would research the proposal in order to find out whether it was likely to earn you money. If you were weighing the relative advantages of associating with various suppliers, you would investigate the reputation of the companies, the quality of their products, and their prices, among other things. If you were considering spending a large sum of your own money on a new piece of equipment, you would want to know whether you could afford it, in addition to investigating whether the equipment was a quality investment. You owe a duty to the corporation to take this same care before making decisions on its behalf.

What legal requirements are placed on you in order to fulfill this duty? Not very many. The **business judgement rule** generally gives considerable deference to officers and directors, as long as they make at least some effort to check things out and make a decent decision. Judges and legislators have over the years decided that corporate officers and directors owe their best efforts to their corporations, but they do not automatically put their own assets up as collateral to guarantee success. In order to claim the protection of this rule, you must be an **active** and **informed** participant. The instances in which a person has been found to have breached this duty, and has been held legally responsible, are very rare and usually involve either serious neglect or outrageous mismanagement. If you make little or no effort to investigate, or if you negligently fail to act, you will breach this duty. If you waste assets, make decisions arbitrarily or recklessly, or get the corporation into no-win situations, you will breach this duty. But the law generally gives wide discretion to corporate officers and directors, so that they can take chances and be innovative. The system is set up to allow officers and directors to fail, as long as they act in good faith. This makes it difficult to breach the duty of care, as long as you do your homework.

There is a second requirement placed on you by law: the **duty of loyalty**. When people use the term

"fiduciary duties", this is the duty they usually mean. It is a much more stringent duty than the duty of care, and the consequences of breaching it are severe. On the other hand, it is fairly easy to steer clear of any problems with this duty. The duty of loyalty generally requires you to avoid placing your interests above those of the corporation, when interacting with it. If you keep your own affairs totally separate from the corporation's, and don't do anything that is obviously wrong (like stealing and misusing property), then you will probably not run into any problems with this duty. If you try to personally benefit from your position as an officer or director, or if you fail to keep your own affairs separate from those of the corporation, then you may have to answer for your actions.

The most common problems with the duty of loyalty occur when someone engages in **self-dealing**, which is often called a conflict of interest. Self-dealing simply means you are involved on both sides of a transaction, thus dealing with yourself. Do not forget that you must look at each transaction separately, to see if it involves self-dealing. Here are some examples:

1. Selling your own products or services to the company, while you are serving as an officer or director;
2. Serving on the Boards of two companies who do business together;
3. Seeking reimbursement for expenses incurred while doing corporate business.

Self-dealing is not totally illegal, it just requires special handling in order to avoid any problems.

Here is an illustration of why self-dealing can create problems. Imagine that the president of a corporation is ordering supplies. He has several possible sources, including himself, since he owns a separate business that sells those same supplies. Can we really trust his judgement if he selects himself as the supplier? What if he agrees to pay a high price for his products? He may claim that they are the best available, and that they are worth more than the alternatives, but we cannot trust him to be objective. The law provides a procedure for handling a transaction involving self-dealing, which protects all the participants. What if the person in the example brought the transaction before the Board, provided complete information regarding all the options, and then allowed the rest of the Board to make the decision without himself voting on the issue? We would probably trust the rest of the Board to make the right decision, assuming that none of them was involved as the president was, and assuming that there was no behind-the-scenes armtwisting going on. This is the easiest way to handle a self-dealing situation: the **interested** person should bring the situation to the attention of the rest of the Board, fully disclose all the circumstances, then abstain from the vote and allow the **disinterested** Board members to make the decision. There are other procedures available also, but most of them are more expensive and inconvenient.

If a person engages in self-dealing without using the proper procedures, the consequences are more serious. The corporation itself (and the individual shareholders in some cases) can scrutinize the deal after the fact to determine if it was **fair** to the corporation in all respects. This is often done in the courts, which is bad news. The worst news is that the burden of proving the fairness of the transaction is on the interested person.

There is another situation where an officer or director may breach his fiduciary duty toward the corporation, by taking advantage of a business opportunity that rightfully belongs to the corporation. This is called the **corporate opportunity doctrine**. If an officer or director discovers a business opportunity in the same line of work as the corporation's, then the corporation has the first right to consider pursuing that opportunity. If the corporation does not choose to pursue it, after being provided with all relevant information, then the individual may.

You can generally rely on your own common sense to steer you in the right direction. I know for a fact that most of the persons with whom I have dealt, in for-profit and nonprofit groups, had never received a detailed description of their fiduciary duties. Yet they still usually knew when something didn't smell right. It

may take you a while to master the details of Robert's Rules or of corporate recordkeeping, but you can usually trust your nose to tell you when someone is pulling a fast one.

NONPROFIT CORPORATIONS

Nonprofit corporations are generally treated the same as other corporations, but receive many additional advantages, including a cheaper filing fee, exemptions from many taxes, and protection from some liabilities (discussed later). Nonprofit corporations are also governed by a charter and Bylaws (sometimes called a Constitution), and managed by officers and directors. Rather than having shareholders, nonprofit corporations have **members** who are interested in the organization and who participate in its activities. Some nonprofit organizations which are organized for exclusively religious, charitable, educational, or similar purposes, are known as **501(c)(3) organizations** or **charities**. They qualify for special treatment by the IRS. Persons who contribute money to these organizations may deduct them as charitable contributions. Since nonprofit corporations are intended to serve the general public, or otherwise benefit general classes of people, the law generally expects them to be accountable for their activities. Texas nonprofit corporations are also required to make their records, books, and annual financial reports available for public inspection and copying during normal business hours. This is obviously quite different from the approved practice for a for-profit corporation, which is allowed to keep trade secrets and not required to share all of this information with the public. But this is in keeping with nature of a nonprofit organization, because the community supports the organization financially and therefore has a right to see where its money is going.

Corporations need to keep certain **records**, in order to keep track of their income and expenditures and their assets and liabilities. There are very few records which the law actually requires you to keep, so I am not going to provide a list of those. Rather, I am going to list the documents that are essential if this organization is anything more than a hobby. These include:

1. Correct and complete books and records of account. These may be kept on a cash basis, and should be retained for seven years. If you purchase any fixed assets, then the records regarding those transactions should be kept permanently. Bank statements should be kept for three years, and records of any money received for seven years.
2. Minutes of proceedings of the members, Board of Directors, and Committees to which any authority has been delegated.
3. A record of the names and addresses of members entitled to vote.
4. Annual financial reports, which conform to the accounting standards promulgated by the American Institute of Certified Public Accountants. These must include a statement of support, revenue, expenses and changes in fund balances, statement of functional expenses, and balance sheets for all funds. These must be kept for three years, following the fiscal year in question.

It has always surprised me that the Board meetings of nonprofit groups are often more heated than those of for-profit corporations. After all, it's not their personal money on the line. But people feel very strongly about the volunteer activities in which they participate. It is very important for these groups to remember how these confrontations will look to outsiders or new members. There are some excellent methods of avoiding these boardroom battles, and these apply equally well to for-profit organizations. If you are a strong proponent of some contemplated action, it makes sense to get all your ducks in a row before the meeting. Do your homework, then call the other Board members and share your information with them. You will increase your chances of success and make the meeting appear more cordial and professional to outsiders. Also, don't forget that everyone is a volunteer. Although you may disagree with the position a person takes on this issue, you have to agree that the organization benefits from the person's work and participation.

Leaders of nonprofit groups are often reluctant to make many demands on their Board members, under the rationale that they are all volunteers and thus they shouldn't be subjected to pressure. True, the

members are all volunteers, but once you accept a position as an officer or director, you have committed to fulfilling your job description and thus given the other members a right to rely on you. I have always taken the position that an office is an honor to be earned after it is bestowed. The first element of any officer's job description is to train his or her successor. Otherwise, everything you learn during your term is lost forever to the organization when your term ends.

If your group pays \$600.00 or more in a single year for services, to one person or company which is not incorporated, then you need to provide a **Form 1099** to that person, with a copy to the I.R.S. This is not necessary for any payments other than those for services, and is not necessary to reflect payments to corporations. Finally, you are only required to file one such form at the end of the year for each person or entity that has received more than \$600.00.

In Texas, there are other benefits which are bestowed on charitable corporations. The **Charitable Immunity and Liability Act** (CILA) limits the liability of the corporation, in any civil action, to \$500,000.00 for each person, \$1,000,000.00 for each single occurrence of injury or death, and \$100,000.00 for each single occurrence for damage or destruction of property, **IF** the organization has liability insurance coverage in at least those amounts. It also limits liability of volunteers and employees of charitable corporations for the same types of acts, if this person was acting in the course and scope of his or her duties or functions as an officer, director, or trustee within the organization. There are other limitations, including the fact that these persons are still somewhat liable for injuries involving the use of motor-driven equipment, but CILA is still great protection for nonprofit corporations and members.

You will recall the previous mention of the dangers of operating as an unincorporated association. In Texas, the Legislature has adopted a new law that may change all this. This law is called the **Texas Uniform Unincorporated Nonprofit Association Act (TUUNAA)**. TUUNAA basically grants the same protections extended to members of nonprofit corporations, to members of nonprofit organizations which are not incorporated. These include the right to sue and be sued, to own property, and (most importantly) **limited liability**. TUUNAA is certainly a laudable measure, but I am not yet willing to advise my nonprofit clients to rely on it. There are several reasons for this:

1. The statute does not specify any procedure for invoking the protections of TUUNAA, so there is a danger of slipping up and losing the protection;
2. TUUNAA has not yet been tested in the appellate courts, and there is a slim chance it will be limited or invalidated;
3. The way the statute is written, you must assert your status as an unincorporated nonprofit association as a defense after being sued; therefore, you will still probably get sued, and you will need to hire a lawyer to invoke TUUNAA;
4. If your group experiences any problems in other states or with persons or organizations in other states, they may file suit in a state other than Texas. The courts of those other states may not extend the protections of TUUNAA;
4. It is inexpensive and easy to incorporate.

TUUNAA may be a great thing for organizations that are not organized professionally, but if yours is well-run, there is no excuse for failing to incorporate. Remember: if problems crop up, your most dedicated volunteers may pay dearly for taking a chance on TUUNAA.

These are just a few of the laws and regulations that apply to nonprofit organizations. It would be a good idea to form a relationship with an attorney who is knowledgeable in this area and who is willing to provide economical representation to your organization.

CONCLUSION

Becoming an officer or director is really exciting, but you don't want it to get too exciting. Learn the basics of how corporations do business, and you will have a skill that is useful no matter what ambitions you have.

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