

Protections for Board Members ©

Lisa Holton , Written by HNW for Community Foundations of America.

If you're like most people, you're joining a board because you envision you'll have fulfilling work, a chance to make a difference in society, and the opportunity to meet new people and make professional and personal contacts

But that's not always the reality. What happens if your organization has an executive director who cleans out the accounts and splits for Belize? As a director, you could face thousands even millions of dollars in potential personal loss in addition to months spent in depositions in court cases filed by angry donors, suppliers and service agencies.

While unlikely, this nightmare can happen. To protect yourself, you need to ask some very important questions about an organization's liability protection for directors and officers.

Every board should be able to provide prospective board members with proof of directors and officers' insurance coverage (called D&O for short), points out Janet Atkins, executive director of Goulston & Storrs Philanthropic Advisors, a division of the Boston law firm of the same name. the person who asks you to join a board probably won't have the insurance policy in his hand to show you, but it makes sense to actually see proof of insurance that will indemnify you in case of a suit," says Atkins. You should also ask for the name and number of the agent who handles the policy so that you can verify that the coverage is current.

D&O insurance, an attachment to general liability insurance, exists solely to protect directors and officers from personal liability if they are sued while acting on behalf of the organization, but it does not apply in cases of criminal conduct or gross negligence. Premiums for the insurance cost between a few hundred to several thousand dollars a year, depending on the size of the organization's assets.

Some boards may tell you that they limit liability through other means such as management policies and procedures, indemnification clauses in organization bylaws, state and federal laws, or basic liability insurance but these measures won't cover all aspects of personal liability or the costs involved if a board member is implicated in a legal suit.

In addition to verifying that a board has D&O insurance, you should ask these questions:

Who handles legal work for the organization? Have they had to handle a defense for the organization or its board on any legal matters?

Can you give me details about any legal matters that might have involved the organization? [You can do an Internet search on the organization's name to find out if they have been in the news regarding any legal issues.]

What will be my voting power on financial, staffing and policy issues? Some boards are structured with considerable power in the executive committee but limited power in the general board. It makes sense to know how powerful your vote might be in making decisions that could affect your future liability.

Once you're reassured a board will protect you, the decision about whether or not to join it will hinge on more positive issues. But by asking these tough questions at the outset, you'll also get an important clue as to how savvy the members of the organization are and whether you want to be among them.