Fear Not: Understanding the Risk of Personal Liability



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The risk of personal criminal or civil liability on the part of individual public entity leadership members is small but difficult to quantify. And it is important to note that exercising poor judgment, relying on an expert whose advice is later determined to be faulty, or making a decision based on incomplete information rarely lead to personal liability. This means that entity leaders who act in good faith and with diligence and care, are unlikely to be held personally responsible for their actions on the entity's behalf.

There are, however, a number of specific situations that create or increase the exposure to personal liability. These include:

- Actions that intentionally cause injury, harm or damage to persons or property
- Personal participation in the tortious conduct of an entity's employees (tortious conduct is conduct that subjects the actor to civil liability under the law)
- The knowing approval of criminal acts or active involvement in criminal activities by the organization
- Personal involvement in a contract tainted by fraud

Personal Liability Risk Tips

Recognizing that a volunteer role doesn't necessarily mean "free," many prospective board members will inquire about their exposure to personal liability before agreeing to serve. And although the risk of personal liability is low, there are steps every board member can take to reduce the risk from low to negligible. Share these tips to help prospective and current leaders minimize their exposure to personal liability:

1. **Serve for the right purpose**: Never agree to serve on a public entity leadership council as a personal favor to a friend. The sense of satisfaction that service offers comes with a price tag. The cost of service includes the willingness to put personal interests aside while voting on issues before the board. Service also requires an investment of personal time and other resources to support the mission of the entity.
2. **Pause before accepting a leadership role**: Give careful thought prior to volunteering to serve as an officer or Committee Chair, recognizing that these important roles require additional time and focus in support of the organization's mission.
3. **Come to board and committee meetings fully prepared to share your questions and perspective**: Carefully review background material provided in advance of board meetings and prepare thoughtful questions for which you seek additional information or clarification. Remember that the legal

duty of care applicable to every member of the board requires the care and concern of an ordinarily prudent person. Ask: Would I be comfortable making this decision if it required the expenditure or commitment of personal funds? What additional information do I need to feel confident the board is making the best possible decision at this time?

4. **Vote "yes" only when you're confident it's the right thing to do**: Never vote "yes" on a matter before the board if you are unclear about the implications of the decision, if you believe that a "yes" vote is not in the best interests of the entity, or if you are convinced that further study or reflection is needed on the issue before the board.
5. **Be courageous**: Always vote "no" (versus abstaining) if you disagree with the proposed action before the board. Take the opportunity to explain why you are voting "no" during the comments or questions period.
6. **Listen to the small voice telling you to speak up**: Never tacitly or openly endorse an action you believe is wrong. Always speak up if you believe the organization, or any of its paid or volunteer leaders, are acting in a way that is illegal, unethical, fraudulent or violates regulatory requirements to which the entity must adhere. Speak up if you believe a conflict of interest should be disclosed and discussed prior to a vote on a matter before the board.

As guardians of an entity's mission as well as its assets, the board has a special responsibility to deliberate and act with care. Doing so not only increases the quality of the decisions made by the board, it also reduces the organization's exposure to legal claims. Armed with the resolve to be adequately prepared for committee and board meetings and the courage to speak up, every member of the board can also reduce the less likely, but still present risk of personal liability.

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