

THE 15 MOST COMMON ERRORS MADE BY NONPROFIT ORGANIZATIONS



Jacqueline Motyl, Esq.



jmotyl@foxrothschild.com

610.458.1420

BOARD DUTIES



1. **Ensure Legal & Ethical Integrity**
2. **Build a Competent Board**
3. **Determine Mission & Purpose; Ensure Effective Planning; Monitor & Strengthen Programs & Services**
4. **Protect Assets & Provide Financial Oversight**
5. **Ensure Adequate Financial Resources**
6. **Enhance the Organization's Public Standing**
7. **Select, Support & Evaluate the Chief Executive**

FORMATION



1. **Failing to incorporate your entity as a nonprofit corporation**
2. **Failing to file as the right type of nonprofit corporation**
(member v. non-member)
3. **Failing to file for an exemption**
(private foundation v. public charity)



GOVERNANCE



4. **Failing to differentiate between “Ordinary Decisions”** (approval by board upon majority vote) and **“Fundamental Decisions”** (approval by board upon super-majority vote of all directors in office)
5. **Failing to adopt a signatory and disbursement policy**
6. **Failing to include liability limitation and indemnification provisions in the articles and bylaws**
7. **Failing to ensure proper voting methods are used**



FUNDRAISING AND RESTRICTED ASSETS



- 8. Failing to properly register to fundraise
(including commercial co-ventures)**
- 9. Failing to issue written acknowledgements to donors**
- 10. Failing to identify
donor designated funds,
board restricted funds and
unrestricted funds**
- 11. Failing to use unrestricted funds for the purposes set
forth in the entity's governing documents**

TAX REPORTING



12. Failing to file annual Form 990 returns

13. Failing to establish the presumption of reasonableness

The Rebuttable Presumption of Reasonableness procedures consist of three steps:

1. The compensation arrangements are approved in advance by an authorized body of the organization composed entirely of individuals who **do not have a conflict of interest** with respect to the compensation arrangement;
2. The authorized body obtained and relied upon appropriate **comparability data** prior to making its determination; and
3. The authorized body **adequately documented the basis for its determination** concurrently with making that determination.

RISK



14. Failing to minimize your liability exposure arising out of your operations, real estate activities, related businesses and unrelated businesses

15. Failing to obtain proper insurance (general, directors & officers)

