



Getting On Board: Questions to Ask as a Nonprofit Board Member

**Rachel Epps Spears & Robyn Miller
Pro Bono Partnership of Atlanta**

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Mission of Pro Bono Partnership of Atlanta:

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit organization.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- Host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website

Introduction

- Nonprofit board members can help keep the organization out of trouble by being aware of legal compliance issues in several areas:
 - ✓ Employment
 - ✓ IRS
 - ✓ Insurance and Risk Management
 - ✓ Corporate Governance
 - ✓ State Taxes
 - ✓ Fundraising

Employment

➤ Has an expert reviewed our worker classifications?

- ✓ Volunteer vs. Employee
- ✓ Employee vs. Contractor
- ✓ Exempt vs. Non-exempt
- ✓ Additional Resource:

http://www.pbpatl.org/images/stories/pdf/Worker_Classification.pdf

Employment

- Do your non-exempt employees keep accurate time sheets?
 - ✓ Overtime pay required for more than 40 hours a week
 - ✓ Salaried employees can be non-exempt
 - ✓ No penalty for failure to track hours, but employee's testimony will be used to determine FLSA compliance
 - ✓ Additional Resource:
<http://www.pbpatl.org/images/stories/pdf/FLSA.pdf>

Employment

- Has an attorney reviewed your employee handbook?
 - ✓ Employment-at-Will
 - ✓ Standards & Rules of Conduct
 - ✓ Be consistent
 - ✓ Be careful about including policies that are not required by law
 - ✓ Additional resource:
<http://www.pbpatl.org/images/stories/pdf/EmploymentLawTable.pdf>

IRS

➤ Are we paying all necessary payroll taxes?

- ✓ All institutions must withhold Federal Income Tax (FITW) and Social Security and Medicare taxes (FICA) for employees
- ✓ Employees and Board Members may be personally liable for these taxes, penalties and interest.

- ✓ Additional Resource:

<http://www.pbpatl.org/images/stories/Taxesfortaxexemptarticleandchart1.pdf>

➤ Unemployment Insurance

- ✓ Additional Resource:

http://www.pbpatl.org/images/stories/pdf/Unemployment_Insurance_for_Nonprofits.pdf

IRS

- Are we current on our Form 990 filings?
 - ✓ Board members should review the Form 990 annually to make sure they are familiar with the financial information and disclosures contained in the return
 - ✓ Variations in activities and certain changes to the organization's structure (including changes to the governing documents and mission) need to be disclosed to the IRS
 - ✓ Additional Resource:
<http://www.pbpatl.org/images/stories/pdf/ProBonoSinglePages.pdf>

IRS

➤ Are we completing the proper form?

- ✓ Form 990
- ✓ Form 990-EZ (short form)
 - Exempt organizations with gross receipts < \$200,000, and total assets < \$500,000 at the end of the year
- ✓ Form 990-N (e-Postcard)
 - Exempt organizations with gross receipts normally ≤ \$50,000
- ✓ Form 990-T
 - Exempt organizations with more than \$1,000 in gross income from an unrelated business activity
- ✓ Additional Resource:
<http://www.irs.gov/charities/article/0,,id=184445,00.html>

Insurance and Risk Management

- Do we have the insurance that we need at appropriate levels?
 - ✓ Categories of Coverage:
 - Property & Casualty
 - Directors & Officers
 - Workers' Compensation
 - ✓ Important to find a knowledgeable insurance broker
 - ✓ Additional Resource:
http://www.pbpatl.org/index.php?option=com_content&view=article&id=120&Itemid=75

Insurance and Risk Management

- Do we perform background checks where necessary?
 - ✓ Need signed release and consent form
 - ✓ Important when working with vulnerable populations
 - ✓ Additional Resource:
http://www.pbpatl.org/images/stories/pdf/bm_nov_2009/BackgroundScreeningUpdated.pdf

Insurance and Risk Management

- Do we have participants and volunteers sign liability waivers where necessary?
 - ✓ Generally enforceable in GA, waivers help protect organization from lawsuits and set expectations of participants
 - ✓ Should be clear, conspicuous, and unambiguous
 - ✓ Additional Resources:
 - http://www.pbpatl.org/index.php?option=com_content&view=article&id=151&Itemid=75
 - http://www.pbpatl.org/images/stories/DCBar_Alert--Waivers_of_Liability_for_Volunteers1.pdf

Corporate Governance

- Are we following our conflict of interest (“COI”) policy?
 - ✓ A good conflict of interest policy:
 - Requires directors & staff to act solely in the interests of the charity without regard for personal interests
 - Includes written procedures for determining whether a COI exists, and
 - Lays out what to do in the event a COI is identified
 - ✓ The COI policy should be monitored through frequent (annually at the very least) certification and disclosure forms
 - ✓ The Form 990 asks whether the organization has a policy and whether it follows that policy
 - ✓ Additional Resources:
 - <http://www.pbpatl.org/images/stories/pdf/conflictinterest.pdf>
 - <http://www.pbpatl.org/images/stories/pdf/CorporateGovernance.pdf>
 - <http://www.pbpatl.org/images/stories/pdf/ProBonoSinglePages.pdf>

Corporate Governance

- Do we have financial policies with appropriate internal controls?
 - ✓ Proper segregation of duties
 - No financial transaction is handled by only one person from beginning to end
 - ✓ Additional Resource:
http://www.pbpatl.org/index.php?option=com_content&view=article&id=184%3Agood-financial-policies-for-nonprofits-102&catid=40&Itemid=75

Corporate Governance

- Do we have procedures to review executive compensation?
 - ✓ A charity may not pay more than reasonable compensation for services rendered
 - ✓ Persons who are knowledgeable in compensation matters and who have no financial interest at stake should determine compensation

- ✓ Additional Resources:

<http://www2.guidestar.org/rxa/news/articles/2007/irs-increases-enforcement-focus-on-nonprofit-executive-compensation.aspx?articleId=1111>

State Taxes

- Have we applied for and received income tax exemption from the State of Georgia?
 - ✓ Call *Tax Payer Services Division – Tax Exempt Organizations* to determine whether organization has requested and received state exemption
 - ✓ If received 501(c)(3) before January 1, 2008, must file Form 3605 in addition to accompanying materials
 - ✓ Additional Resource:
<http://www.pbpatl.org/images/stories/pdf/StateTaxExemptionsRevised.pdf>

State Taxes

- Do we collect and pay sales tax or have we received an exemption from the Georgia Department of Revenue?
 - ✓ Only exempt if both:
 - (1) the organization or transaction fits one of the state sales tax exemption categories; and
 - (2) the organization obtains an exemption determination letter from the Georgia Department of Revenue
 - ✓ Additional Resource:
http://www.pbpatl.org/images/stories/pdf/salesandusetaxmemo_2.pdf

Fundraising

➤ Are we registered for charitable solicitation in Georgia?

✓ Who must register?

- Charitable Organizations that Solicit Funds in Georgia
- Paid Solicitor's, Their Agents & Fundraising Counsel

✓ Commercial Co-Venture Activities

✓ Internet Solicitation

✓ Other states have their own laws

✓ Additional Resource:

http://www.pbpatl.org/index.php?option=com_content&view=article&id=96&Itemid=75

Fundraising

- Do we have a raffle license if we conduct raffles?
 - ✓ If not, it's illegal gambling
 - ✓ Must apply for license from county sheriff's office
 - ✓ Must be in existence for more than two years
 - ✓ Additional Resource:
<http://www.pbpatl.org/images/stories/pdf/Raffles.pdf>

Fundraising

- Do we provide proper acknowledgments to donors?
 - ✓ Requirements vary depending on type of donation:
 - Monetary Contributions
 - In-Kind Contributions
 - Quid pro quo contributions
 - Donated Services
 - ✓ Additional Resources:
 - <http://www.pbpatl.org/images/stories/pdf/AcknowledgementGuideFinal1.pdf>
 - http://www.pbpatl.org/index.php?option=com_content&view=article&id=96%3Acharitable-solicitation-webinar&catid=40&Itemid=95



For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

Phone: 404-407-5088

Fax: 404-853-8806

Info@pbpatl.org

www.pbpatl.org