

prudently selected and the directors have relied reasonably upon such officers, employees, or agents.

Adoption of appropriate monitoring and control procedures

It is the board's responsibility to oversee implementation of a compliance program that helps assure the corporation's compliance with legal requirements applicable to the nonprofit corporation. Compliance programs are extremely important for mitigating risks of legal and operational problems for the nonprofit corporation. These programs also are important in the event there is ever a problem that arises for the corporation. Under the Federal Sentencing Guidelines, a corporation can receive significant fine reductions if it has an effective compliance program in place.

As part of their oversight responsibilities, directors and prospective directors of nonprofit corporations should be aware of the kind of legal claims and operational risks to which their corporation may be vulnerable, based on, among other things, trends in government enforcement actions or private litigation involving similar organizations. Directors should regularly evaluate whether the corporation has appropriate policies and procedures in place to ensure that the corporation complies with applicable laws.¹⁵ (For a more detailed discussion of how a board can become aware of the legal environment of its corporation, see *Chapter 12, The Legal Environment of the Nonprofit Corporation*.)

Evidencing specific delegations of authority to officers

While in the for-profit world, a corporation's board often makes clear written delegations of authority to the chief executive and other officers, this is often not the case in the nonprofit world. The board may wish to adopt bylaw provisions, or a general resolution or policy, setting forth the scope of management authority delegated to the chief executive (who may then be free to subdelegate portions of this authority). Formalizing the scope of delegated authority may be particularly useful in small nonprofit corporations, where lines of responsibility may be easily blurred. For example, a bylaw provision addressing the responsibility of an executive officer may specify that the officer has authority to execute contracts on behalf of the corporation within the scope of the corporation's ordinary conduct of business, and otherwise as specified by board resolution.

Directors with multiple "hats"

When a member of the board occupies both the role of a director and that of an officer, employee, or other agent, corporate law treats that person, while acting in his or her capacity as an agent, just as the law would treat such a person who is not serving on the board. It is therefore essential that this person (and the other directors) always be aware of which "hat" the director is wearing at any particular time.