



---

# Legal Issues for the Volunteer Leader

## Part I

August 24, 2024

Kimberly A. Pendo  
333 West Wacker Drive, Suite 810  
Chicago, Illinois 60606  
[kpendo@clpchicago.com](mailto:kpendo@clpchicago.com)  
(312) 929-1964

# “Searchin’ For Some Kind of Clue”

---

- Understand the organization’s legal status
  - Incorporated vs. Unincorporated
  - Not-for-profit vs. For-profit
  - Tax exempt vs. tax payor

# “Someone To Watch Over Me”

---

- Incorporation
- Benefits
  - Protects members from personal liability
  - May limit liability of officers and directors
    - Directors of not-for-profit corporations paid less than \$X are immune from liability “for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director unless the act or omission involved willful or wanton conduct.”

# “Tax Man”

---

- Understand the organization’s tax status
- Not-for-profit does not mean tax exempt
- Tax Exemption
  - Not automatic (must apply to and be approved by IRS)
    - 501(c)(6): trade and professional associations
    - 501(c)(3): educational, scientific or charitable organizations
  - Doesn’t mean never pay tax or file annual tax returns
- Understand “group tax exemption”

# “Why Can’t We Be Friends”

---

- Understand the hierarchy of governance documents
  - Corporate statute
  - Articles of Incorporation
  - Bylaws
  - Policies
- Recognize that changes in governance documents can have upward and downward impacts

# “Ain’t Misbehavin’”

---

- Ensure all annual corporate obligations are being met
  - Ensure entity is in good standing in state of incorporation
  - Register to do business in all states of operation
  - Register all assumed names
  - Make appropriate charitable registration/solicitation filings (if a 501(c)(3))
  - File all required annual reports

# “It’s Getting Better All The Time”

---

- Periodically review governance documents (e.g., bylaws, articles, policies) to:
  - Make sure organization is acting in compliance and is up-to-date with best practices
  - Conform with bylaws and policies to make sure up-to-date with organization’s current practice
  - Take advantage of updated laws
  - Modernize and streamline

# “Someone To Watch Over Me”

---

- Understand your organization’s organizational structure
- Maintain appropriate division of authority
  - Board of Directors
  - Officers
  - Committees
  - Members
  - Staff



# “Don’t Let It Bring You Down”

---

- Understand statutory requirements for board and member meetings and voting procedures
  - Recognize rules against proxy voting by directors
  - Follow requirements for taking board and member action without a meeting
- How to use the “executive session”
- Draft meeting minutes that include only action items, not extraneous discussions
- Hold meetings as required, with proper notice
- Understand implications of “ex officio” members of the Board

# “1, 2, 3”

---

- Understand the role and responsibilities of the Board
- Carry out directorial duties
- Fulfill fiduciary duties
  - Directors have three fiduciary duties:
    - Duty of Care
    - Duty of Loyalty
    - Duty of Obedience
- Serving on a board (or in a leadership capacity) is a team sport

# “That’s How Elementary It’s Going to Be”

---

## Duty of Care

- Requires competence in performing directorial functions
- Must use care “a reasonably prudent person would exercise in a like position and under similar circumstances” (business judgment rule)
- Requires that directors:
  - Act in good faith
  - Participate in meetings
  - Be prepared (*e.g.*, read reports)
  - Ask questions when necessary
  - Exercise independent judgment
- Allows directors to:
  - Delegate to staff and committees
  - Rely on the advice of third parties (*e.g.*, attorneys, accountants)

# “Like Taking Candy From a Baby”

---

## Duty of Loyalty

- Requires faithful pursuit of the interests of the organization (rather than the financial or other interests of the director, or another person or organization)
- May not use position, or information gained from participating on the board, to secure a personal benefit
- Must disclose actual, potential, or perceived conflicts of interest
- Must abstain from participating on such matters
- Must maintain confidentiality of board discussions

# It's So Easy"

---

## Duty of Obedience

- Requires faithful pursuit of organization's mission and decisions (within the bounds of the law)
- Must abide by the organization's rules and policies
- Must support, help implement, and avoid undermining the board's decisions

# Establish and Implement Appropriate Governance Policies

---

- Governance
  - Conflict of Interest
  - Whistleblower
  - Discipline
  - Authority to Speak
  - Board Review of 990
  - Authority of Board, Officers, Committees
  - Relationships with Others
- Finance
  - Investment
  - Audit
  - Internal Controls
- Management
  - Personnel
  - Social Media
  - AI
  - Record Retention
  - CEO Performance Review
  - Advertising/Exhibiting
- Risk Management
  - Antitrust
  - Trademark/Copyright
  - Speaker Releases/Author Agreements
  - Sponsorship/Endorsement
  - Insurance
  - Public Position

# “You Don’t Own Me”

---

- Establish and follow rules for creating, monitoring, and licensing trademarks and copyrights
- Beware of photos/clip art found on the internet

# “Gimme Shelter”

---

- Implement programs to manage risk and minimize exposure
- Obtain indemnification where possible and minimize indemnification of others
- Use releases, waivers and disclaimers where reasonable
- Comply with federal, state and local raffle, contest, and giveaway laws and regulations



# “Signed, Sealed, Delivered”

---

- Everything is negotiable
- Don't sign documents that you haven't read or don't understand
- Obtain legal review of important contracts before they are signed
- Confirm changes in writing
- Don't exceed your authority
- Make sure to have a strong Force Majeure Clause

# “Earth, Wind & Fire”

---

## What’s a Force Majeure Clause?

- Risk allocation
- Excuses performance
- Unforeseeable at the time of contracting
- Outside of control of party invoking

# “It’s Elementary”

---

## Basic Elements of a Force Majeure Clause

- List of triggering events
- Catch-all phrase
  - “any act or occurrence beyond the parties control including, but not limited to...”
- Standard for termination
  - Impossible
  - Illegal
  - Commercially impracticable (frustration of purpose)
  - Inadvisable
- Notification requirement

# “I’ve Been Everywhere”

---

## Tips & Tricks for Drafting

- Strictly construed
- Depend on the legal standards included in the provision
  - Don’t settle for illegal/impossible
  - Demand “impracticable” or “commercially impracticable”
- Remember – it’s about risk allocation
- Clauses should be broadly drafted
- Include other significant contingencies
- Specify the required impossibility standard to invoke the force majeure clause

# “50 Ways to Leave Your Lover”

---

## Force Majeure Events Include.....

- Facility was used within the past 60 days as an overflow health facility/homeless shelter
- Acts of G-d
- Terroristic acts or threats (domestic or foreign) affecting attendees or potential attendees travel to the meeting or presence at the meeting
- Hazardous weather (actual or forecasted)
- Government regulations, advisories, guidelines or quarantine restricting travel including stay at home orders
- Travel restrictions imposed by attendee’s employers
- Event preventing \_\_% of attendees from traveling

# “And the Beat Goes On”

---

- Strikes, labor disputes, picketing or work stoppages (actual or threatened) materially affecting the meeting
- War (declared or undeclared) or specific threat of war
- Government regulations by the US (or applicable foreign country) restricting travel including advisories, quarantines, or curfews or travel ban to a specific country or region(s) of a country
- Epidemic or disease in the city or region where the meeting is to be held or from where potential attendees would be traveling
- Any act or occurrence creating a significant risk to the health or safety of potential attendees

## And on....

---

- Damage or harm to the city or region materially affecting basic governmental services or functions
- Damage to the reputation of the facility or the city or region materially affecting the meeting sponsor's ability to attract attendees
- Cancellation or restriction of commercial travel to or from the meeting location

# “Bridge Over Troubled Waters”

---

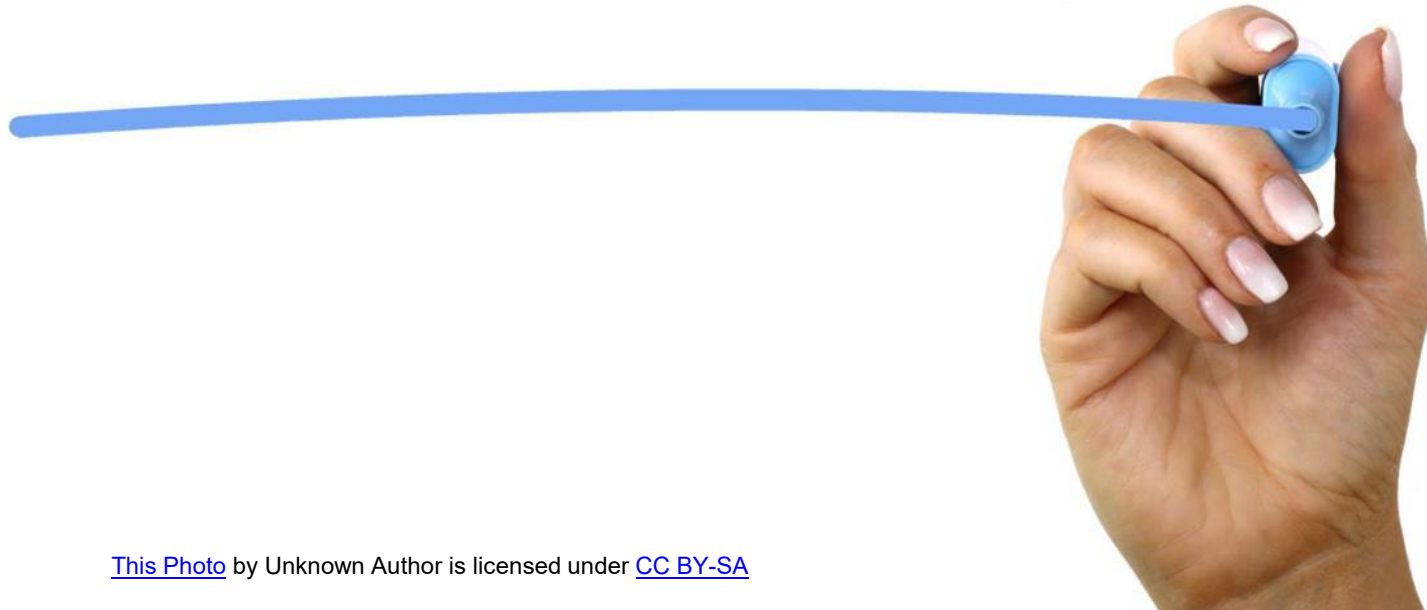
- Determine and follow the organization’s mission and purposes
- Establish policies and delegate implementation
- Disclose conflicts of interest
- Maintain confidentiality
- Attend board meetings regularly, read reports, and, as questions arise, make reasonable inquiry
- Manage the organization’s financial resources effectively
- Develop leadership and appoint board committees
- Seek outside professional advice where necessary
- Ensure effective organizational planning
- Determine mission related goals
- Select and support the CEO
- Enhance the organization’s public image
- Resolve issues that cannot be handled elsewhere
- Assess the CEO’s and the board’s performance (which may be different)



# “Dazed and Confused”

---

# QUESTIONS



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)