

OREGON NONPROFIT CORPORATION ACT

65.357 General standards for directors. (1) A director shall discharge the duties of a director, including the director's duties as a member of a committee:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(c) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable to the corporation, any member or any other person for any action taken or not taken as a director, if the director acted in compliance with this section. The liability of a director for monetary damages to the corporation and its members may be eliminated or limited in the corporation's articles to the extent provided in ORS 65.047 (2)(c).

(5) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or admin-

istered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property. [1989 c.1010 §88]

65.361 Director conflict of interest.

(1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction is fair to the corporation at the time it was entered into or is approved as provided in subsection (2) or (3) of this section.

(2) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be approved:

(a) By the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest are disclosed or known to the board of directors or committee of the board of directors; or

(b) By obtaining approval of the:

(A) Attorney General; or

(B) The circuit court in an action in which the Attorney General is joined as party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved:

(a) In advance by the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors; or

(b) If the material facts of the transactions and the director's interest were disclosed or known to the members and they authorized, approved or ratified the transaction.

(4) For the purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) Another entity of which the director is a director, officer or trustee is a party to

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the transaction, and the transaction is or should be considered by the board of directors of the corporation.

(5) For purposes of subsections (2) and (3) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction. A transaction may not be authorized, approved or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction votes to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) or (3)(a) of this section if the transaction is otherwise approved as provided in subsection (2) or (3) of this section.

(6) For purposes of subsection (3)(b) of this section, a conflict of interest transaction is authorized, approved or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (4) of this section may be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (3)(b) of this section. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws or a resolution of the board may impose additional requirements on conflict of interest transactions. [1989 c.1010 §89]

65.367 Liability for unlawful distributions. (1) Unless a director complies with the applicable standards of conduct described in ORS 65.357, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(2) A director held liable for an unlawful distribution under subsection (1) of this section is entitled to contribution:

(a) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in ORS 65.357; and

(b) From each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter or the articles of incorporation. [1989 c.1010 §91]

65.369 Liability of qualified directors. (1) The civil liability of a qualified director for the performance or nonperformance of the director's duties shall be limited to gross negligence or intentional misconduct.

(2) This section does not affect the civil liability of the entity which a qualified director serves.

(3) For the purposes of this section, "qualified director" means a person who serves without compensation for personal services as:

(a) A member of a board or commission of the state or a governmental subdivision for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of the board or commission but, notwithstanding ORS 30.265 (2), the entity is not thereby rendered immune from liability;

(b) An officer, director or member of an executive board for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit corporation, unincorporated association or nonprofit cooperative corporation that has as its primary purpose:

- (A) Religion;
- (B) Charity;
- (C) Benevolence;

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(D) Providing goods or services at no charge to the general public;

(E) Education;

(F) Scientific activity;

(G) Medical or hospital services at reduced costs; or

(H) Engaging in activities of the nature specified in section 501 of the Internal Revenue Code of 1986, as amended;

(c) A director for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of an organization which acts as an advocate for its members and which has as its members individuals or organizations that are:

(A) Members of a particular trade or industry; or

(B) Members of the business community of a particular municipality or area of the state; or

(d) An officer, director or member of an executive board for the purpose of setting policy and controlling or otherwise overseeing the activities or functional responsibilities of a nonprofit corporation, unincorporated association or nonprofit cooperative corporation composed of owners or lessees of units or interests in any condominium submitted to the provisions of ORS 100.005 to 100.625, any planned community as defined in ORS 94.550, any timeshare property as defined in ORS 94.803, any residential cooperative community or any other residential or commercial common interest real estate community.

(4) An otherwise qualified director shall not be considered to be compensated for personal services if the director receives payment only for actual expenses incurred in attending meetings or performing a director's duties or receives a stipend which is paid only to compensate the director for average expenses incurred over the course of a year. [1989 c.1010 §§92,92a; 1991 c.64 §4; 1991 c.81 §1; 1991 c.231 §5; 1999 c.677 §64]

(Officers)

65.371 Required officers. (1) A corporation shall have a president, a secretary and such other officers as are elected or appointed by the board or by any other person as may be authorized in the articles or bylaws, provided that the articles of incorporation or bylaws may designate other titles in lieu of president and secretary.

(2) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) The same individual may simultaneously hold more than one office in a corporation. [1989 c.1010 §93; 1991 c.231 §7]

65.374 Duties and authority of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers. [1989 c.1010 §94]

65.377 Standards of conduct for officers. (1) An officer shall discharge the officer's duties:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of an officer, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

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(c) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable to the corporation, any member or other person for any action taken or not taken as an officer if the officer acted in compliance with this section. The liability of the officer for monetary damages to the corporation and its members may be eliminated or limited in the corporation's articles to the extent provided in ORS 65.047 (2)(c). [1989 c.1010 §95]