Protecting the Fiduciaries: Board Liability and Protections

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What's the Big Deal – Why Should You Be Concerned

- Non-profits are becoming targets due to their size
- Fiduciaries (directors, officers, trustees) have - as the term implies – fiduciary duties
- Litigation costs are expensive
- Want to encourage people to serve

Legal Risks for Fiduciaries

- Governance Liability
  - Breach of Fiduciary Duties
    - Duty of Care
    - Duty of Loyalty
    - Duty of Obedience
- Other Fiduciary Liabilities (ERISA, Restricted Funds)
- Federal Excise Taxes (Particularly for Private Foundations)
  - Intermediate Sanctions
  - Self-Dealing
  - Jeopardizing Investments
  - Taxable Expenditures

Legal Risks for Fiduciaries

- Employment Claims
  - Wrongful termination
  - Sexual harassment
  - Discrimination; EEOC Claims
  - Breach of Contract
- Defamation, Libel and Slander
- Tortious Interference
- Negligence
  - Negligence in hiring

Protections for Fiduciaries

- Good Governance
- Statutory Protections
- Indemnification
- Insurance

Protections - Good Governance

- One of the best ways for board members and officers to protect themselves from liability is to practice good governance
- Boards should be active and engaged and understand the duties, responsibilities, and time commitment that goes with serving as a fiduciary
  - Board members should review organization's governance documents and policies
  - Attend and participate in meetings
- Board selection, officer appointment
  - Select members who have time, expertise, and understand responsibility
- Board Education

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