Corporate Governance Essentials for Directors

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Legislation

- Directors should be familiar with the legislation that governs their corporation and the requirements to comply. Major changes are facing not-for-profit corporations, growing the need for directors to understand their legal obligations.

Directors Duties

1. **Duty to Act Honestly and Fairly**
   - Duty to behave honestly and fairly by sharing important information and preventing harm to the corporation.

2. **Duty of Loyalty**
   - Directors’ fiduciary obligations lay first and foremost to their organizations.

3. **Duty to Attend Meetings**
   - Potential to face liability if directors do not attend meetings.

4. **Duty to Prepare for Meetings**
   - Duty to be prepared for board meetings and informed of material information to make informed decisions. There is a need to satisfy the Business Judgment Rule.

5. **Access to Information**
   - Insist on access to all relevant information to be considered by the board.

6. **Inspection of Corporation Records**
   - Right to inspect corporate records and other documents related to the corporation.

7. **Integrity**
   - If there is any doubt regarding a proposed course of action, it should not be supported. Seek independent advice as soon as possible to clarify the issue.

8. **Relying on Co-directors**
   - Do not shirk responsibilities by leaving all tasks to others. Reliance on co-directors and officers should not be unquestioning.

9. **Reliance on Management**
   - Do not rely blindly on management as liability occurs where they knew or they ought to have known that something was not right.

10. **Reliance on Legal Advice**
    - If uncertain about the exercise of duties, consult with a lawyer.
Contentious Issues

1. Right to Attend Board Meetings
   - Directors have a right to attend and participate at all director’s meetings. Other persons may only be admitted with the consent of those present at the meeting.

2. No Attendance by Proxy
   - A director cannot attend a board meeting by proxy.

3. Who can Chair the Meeting
   - Someone must chair the meeting. If by-laws or articles do not provide for who is to chair, then the quorum of the board may elect a chair from the directors.

4. Conflict of Interest
   - If in a conflict situation, the director must disclose the conflict at the meeting and refrain from voting on any contract or proposed contract.

5. Dissent Votes
   - If a director disagrees with a decision of the board, the director should dissent and ensure that the dissent is recorded in the minutes.

6. Quorum Issues
   - Quorum must be kept throughout a meeting or the business conducted will not be lawful.

7. Minutes of Meetings
   - Before approval, minutes should be carefully reviewed for accuracy by the directors as they are admissible in court.

8. Election of Directors and Appointment of Officers
   - Directors are elected by the shareholders/members and, in most cases, officers are appointed by the directors.

9. Removal of Directors
   - Directors may only be removed by the shareholders/members, not by directors.

10. Removal of Officers
    - Officers, if appointed by the directors, may be removed by the directors at any time or if appointed by the members, may be removed by the members.

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