

# Avoiding Pitfalls with Risk Management

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## Overview

It is a common after a problem arises for those involved to ask themselves, "How could this have been avoided?" Quite often the answer lies in them ignoring the information available to them, when the act or activity was planned or occurred. Had their focus have been sharper, they would have identified and assessed the risk/opportunity and determined how to mitigate it. Stated otherwise, they could have avoided the pitfall by using risk management techniques.

Note that in the prior sentence we use the term "risk/opportunity." That term reflects the current view that risk management is no longer devoted solely to the potential for loss, but also to the positive consequences of uncertainty (opportunity). Risk and opportunity are the flip sides of the same coin.

### I. Stages of Risk Management

- A. Identify potential risk/opportunity
- B. Assess the potential severity of the risk or potential benefit of the opportunity
- C. Consider the options available to manage the risk/opportunity
- D. Develop and implement a plan to manage the risk/opportunity

### II. The Toolbox

A small deck of documents needs to be easily accessible to senior leadership and management to serve as the foundation for risk management because they provide at a moment's notice answers to basic questions. These tools are resources which the organization already created to guide its operations and are its institutional memory and history. All of the tools should be readily available at board meetings, and in paper or electronic form for ease of access.

If your organization utilizes these documents on a regular basis in its daily operations, they become the tools in risk management.

#### A. Articles of Incorporation

- Amend if your exempt purposes change
- Easy to amend, but members must otherwise approve
- Strategic planning may require it
- Merger
- Consider amendment permitting the board to change the bylaws
- Review annually

## B. Bylaws

- The house rules that must be followed
- Statutes serve as default
- Change as needed and easier to do than amendment articles
- Due process procedure for members is often missing
- Due process procedure for board of directors especially missed meetings
- Prevent actions exceeding authority

## C. FORM 990 and/or 990T, and IRS Determination Letter

- All three must be in print form and available immediately upon request at the front desk for review
  - Penalty for violation is a fine you don't want to pay
  - Don't get on the IRS audit list
  - Don't risk losing your exempt status

## D. Other Policy Documents

- Strategic Plan together with progress measurement
- Policies required by Sarbanes-Oxley
  - Whistleblower Policy
  - File Destruction Policy
- Personnel Policies
  - The best defense to an employment/wage and hour claim is a good, personnel policy document
  - Free Speech Is Not as Broad as Some Believe
    - Reasonable policies
    - Safe Spaces and hostile environments
    - Same-sex harassment
    - Doing what's requested isn't necessarily bullying
  - Best practice when there is a complaint: get it in writing, investigate, document and report findings back to both sides
- Insurance coverage must meet your exposure to risk
- HIPAA policies
- Licensure documents

- Minutes of meetings kept current
- Disaster and Succession Plans
- All other board-approved policies.

### III. Board and Staff Roles in Risk Management

For risk management to flourish the board of directors and staff must be in harmony and read from the same page. That said, board and staff roles in risk management are distinct, as each has a different focus.

A. The business and affairs of every corporation shall be managed by or under the direction of a board of directors.<sup>1</sup>

- Boards don't manage the day-to-day operations, but exercise ultimate oversight over the staff who implement board policies.

B. The board's role.

- Review and approve the mission statement
- Approve and oversee the strategic plan and maintain strategic oversight of operational matters
- Select, evaluate, and determine the level of compensation of the CEO
- Evaluate the performance and establish the compensation of senior staff
- Provide for management succession
- Oversee the financial reporting and audit process, internal controls, and legal compliance
  - Be sure the audit committee reports to the full board
  - Review the FORM 990
- Hold management accountable for its performance
- Provide oversight of the financial stability of the association and
- Provide oversight and protection of the brand of the association.

C. Benefits of a more-focused B:

- The directors satisfy their duty of care
- Meetings can be shorter with mostly "go" or "no go decisions"
- Keeps directors from going rogue

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<sup>1</sup> K.S.A. 17-6301

#### D. Staff Role in Risk Management:

- Keep the board informed at all times with the good, the bad and the ugly no matter what are the circumstances
- Implement board policies and suggest amendments to them or the need for new policies
- Advise the board of opportunities and risks
- Create the environment for risk assessment
- Report progress to the board on the strategic plan and other board initiatives.

### IV. Risk Management Process

#### A. Identify the potential risk or opportunity.

- The risk is identified by focusing on events, which if triggered, cause a problem or offer an opportunity for the organization. For example, the risk may be based on fear of losing funding for the organization or a key program or project, loss of membership, damage to facilities from man-made or natural events; or an opportunity to acquire adjacent real estate for future expansion, a grant opportunity, or merger with another organization.

#### B. Determine the severity or the risk or potential for the opportunity.

- How likely is the triggering event to occur? What will be the impact of the event potentially on finances, staff, members and stakeholders? Is it so important to the organization's plans and future that the risk be taken?
- Consult legal, accounting, insurance, professional advisors

#### C. Options to manage the risk.

- Avoid the risk/opportunity absolutely by letting the opportunity pass or terminating the threat
- Transfer or share the risk/opportunity, such as relying on insurance, engaging a partner, finding outside funding

#### D. Design and implement the plan to manage the risk/opportunity

- Reduce the decision to a written plan that is precise yet easily understood
- Determine timelines, "go/no go" mileposts
- Assign responsibilities and reporting requirements
- Evaluate the progress on the plan.