Top 10 Risks Facing Nonprofit Organizations

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Ask and You Shall Receive
By Melanie Lackner Heitman

I've been a movie fan since December 1971, when I saw a film on a big screen for the first time. Inventing and Reckoning. So I was immediately drawn to an article titled "The Rise of the Question," co-authored by successful movie producer Brian Grazer and featured in the May 2015 edition of Fast Company. Grazer is the co-producer of many memorable films, including Apollo 13, A Beautiful Mind, Splash and Parenthood.

In his "Big Idea" column, Grazer and co-author Charles Fishman debunk the myth that the essence of management is telling people what to do. Declaring "questions" as a great management tool, Grazer and Fishman write that, "asking questions creates a lot more engagement in the people with whom you work." They add: "It's a simple quality of human nature that people prefer to choose to do things rather than be ordered to do them."

Risk Questions from the Silver Screen

Grazer's insights from the movie business offer memorable remarks of wisdom for leaders responsible for risk assessment, risk management and risk communication.

Grazer and Fishman write that, "asking questions creates the space for people to raise issues they are worried about that, as a boss, or colleague, may not know about. Asking questions is agenda-setting different than the one set at agenda."
You don't get to

CHOOSE

the source or cause

of your next

CRISIS.

Remember Crisis
Management Truths

• Warning signs appear and are often ignored

• “The crisis you prepare for may not be the one you experience, but that preparation will improve your resilience, come what may”
Cultivate "Predictors of Strength"

- Create a flexible crisis management plan; identify the crisis team; decide on a crisis communications strategy
- Work on key relationships: trust, communications

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Unhappy Stakeholders
Who's unhappy?

Abusing Donor Intent
The Robertson Family's Epic Lawsuit Against Princeton University
Doug White

Compliant or Defiant?
Are volunteers ever unhappy?

• Provide ample opportunities to complain
• Listen carefully, take action, follow-up
• CLARITY - Err on the side of providing clear direction
• $$$ - exercise caution
• unpaid volunteer & paid staff roles are different roles
3 Unmanaged Conflict on the Board

Why We Need to Worry

- Factions pull the organization in different directions
- Valuable time and other resources are wasted
- Talented board and staff leaders walk away
Risk Tips

• Decide how conflict will be managed before it arises
  • HOW - "ouch"
  • WHO - accountability point person

• Incorporate board team-building activities at meetings/orientation to develop trusting relationships

• Differentiate between "dialogue" and "debate"

• Strive for a culture of candor
"The need to control is at the root of many workplace conflicts. Who should have that information? Who should be involved on that project? Recognize that power struggles exist."

Conflict in the Workplace: Can't We Just Put Everyone Into Time Out? Roberta Matuson, Fast Company

4 D&O Risk (Non-EPL Claims Alleging Wrongful Management Decisions)
What has changed?
Increase in activity leading to claims alleging wrongful management decisions, such as:

- Mergers
- Publishing the IP of others
- Competition between associations
- Opposition to rule-setting (e.g., amateur sports)
- Factions within religious denominations
- Legal & regulatory scrutiny & litigation by public officials representing tax payer interests

Risk Tips

- Schedule time for thoughtful questions and review; Critical decision? Be deliberate.

- Record the decision-making process (due diligence)

- Review and update the bylaws so they suit and support evolving governance requirements

- Engage the board in discussion about risks that arise from governance

- Adopt a COI policy that will surface, rather than mask, potential conflicts of interest
5 Tax Exempt Status

What's the Risk?

Six categories of danger for 501(c)(3) nonprofits:
- Private benefit/inurement
- Lobbying
- Political campaign activity
- Unrelated business income (UBI)
- Annual reporting obligation
- Operation in accord with stated exempt purpose(s)
Copyright and Trademark Violations

Understanding the Risk

DID YOU KNOW...
- Copyrights protect written and artistic expression.
- Trademarks protect names and symbols that identify the source of goods or services.
- Patents protect inventions.

copyright infringement = exploitation of a copyright owner’s rights without permission
Risk Tips

- Make certain that a copyright notice appears on all materials published by your nonprofit. Consider using the following notice: Copyright © [YEAR] by [Name of Nonprofit].

- Place your copyright notice in a prominent location on your publication.

- Consider registering your published materials with the U.S. Copyright Office.

- Obtain a signed work for hire agreement with independent contractors retained by your nonprofit to produce written material before work begins on the material.

- Clarify in your employee handbook or your personnel policies that works created by employees in the scope of their service to the nonprofit belong to the employing organization, which will hold the copyright.

- If you plan to provide permission for the use of your material, plan accordingly. Work with an attorney to create a licensing agreement that will enable the use of your material under conditions you establish, while protecting your rights as the owner of the material.

- If you believe your nonprofit’s rights have been infringed, consult legal counsel about the next steps, which could include the mailing of a cease and desist letter.

7 Conflicts of Interest

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Here's Why...

- Loyalty to personal business
- Opportunity for personal benefit
- Personal or professional relationship affects perspective and vote
- Conflicts: real or perceived?

Risk Tips

- Adopt a practical process for surfacing conflicts of interest
Careless Contracting

Reason to Worry?

- Unclear or poorly understood terms (e.g., penalty, nonperformance, cancellation, indemnification, insurance requirements, confidentiality)
- Harm to relationship with partner or client
- Liability for contract breach
- Cold feet - future contractual opportunities
Risk Tips

- Important relationship? Use a contract or MOU!
- Increase training for contract reviewers
- Clarify contracting authority
- Consider legal or independent review
- Pressure to sign? Step back

Two Must-Dos of Contract Review

1. READ IT!

2. If you don’t understand it, then don't sign it!
9 Breach of Privacy

Reason for concern?

- It's not easy: balancing the nonprofit's need to collect and maintain confidential information with your obligation to guard privacy

- Human errors and systems glitches caused nearly two-thirds of data breaches globally in 2012, while malicious or criminal attacks are the most costly

(source: 2013 Cost of a Data Breach: Global Analysis, Ponemon Institute and Symantec, June 2013)
Privacy Risk Assessment

- Do you know what kinds of personal information your nonprofit collects, keeps, and uses?
- Do you know how much of the personal information collected by your organization is stored online?
- Do you know which of that personal information your nonprofit discloses—intentionally or unintentionally?
- Do you know exactly what happens to information from internal and external sources that contains personal data about employees or clients?
- How secure is the collected information from external hacking, internal sabotage, and generally from those who aren’t in a need-to-know position within your nonprofit?
- Do you have a policy about the length of time that your organization retains personal information about employees and clients? If so, is that policy consistently followed?

Risk Tips

- **Privacy policies** - are your policies concerning the collection and storage of confidential information practical, up to date, and well understood? Policies concerning reporting of violations, intentional or otherwise?

- **Physical storage** - do privacy policies extend to physical as well as electronic files?

- **Boundary firewalls and internet gateways** – are devices in use that prevent unauthorized access to or from private networks? Were they set up properly?

- **Access control** – Have you taken steps to ensure that only those who should have access to systems to have access and at the appropriate level?

- **Malware protection** – Has virus and malware protection software been installed and is it up to date? Have patches supplied by vendors been applied?

- **Cyber Liability Coverage** - consider third party and first party coverages
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Here's Why...

- Unintentional Illegal Discrimination: Social media sites provide endless information about prospects and current staff. Beyond being entertained, bored or surprised, is there a tangible legal risk?

- Too Strict Social Media Policies May Violate the NLRA: The hard truth is that you can't prohibit employees from talking about work... in all cases.

- Don't Violate Employee Privacy: do your policies or practices cross the line?

- Social Media and Copyright Protection: tweet and publish with care.
Legislation that would make it explicitly illegal for employers to log in to social media accounts without permission has been introduced or is pending in 28 states, and six states have already enacted such laws.

**SOURCE:** National Conference of State Legislatures - [www.ncsl.org](http://www.ncsl.org)

**EXAMPLE**
No employer shall:
(i) require, request or cause an employee or applicant to disclose a user name, password or other means for access, or provide access through a user name or password, to a personal social media account;

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**Risk Tips**

- Adopt a clear, but not over-reaching social media policy & provide practical training
- Clarify content guidelines and user authority
- Proceed with caution before researching applicants online!

**RESOURCES:**

- “An Experiment in Hiring Discrimination via Online Social Networks,” the Social Science Research Network. (Carnegie Mellon University study)
- Legal Issues in Social Networking, Kathryn L. Ossian, Miller Canfield Paddock and Stone PLC
RESOLVE TO LEARN.
"Experience is inevitable... learning is not."
Paul J. H. Schoemaker

EMBRACE CONFLICT
“Conflict can be seen as a gift of energy, in which neither side loses and a new dance is created.”
Thomas Crum
INSPIRE practical CARING

1. Mutual trust
2. Active empathy
3. Access to help
4. Lenience in judgement

Mark Addleson, Beyond Management

Thank You!
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