

Saturday, September 15, 2018

Renew Board of Directors

Dear Fellow Members,

I am writing to you this day to lay out my concerns regarding past and ongoing board actions.

Nonprofit corporations are created under state law and board members must be aware of the legal fiduciary duties related to their work:

**Duty of Care: (C.R.S § 7-128-401) Each board member has a legal responsibility to participate actively in making decisions on behalf of the organization and to exercise his or her best judgment while doing so.**

Board members owe a legal duty to responsibly manage their not-for-profit organizations' charitable assets. The board should oversee the audit engagement, meet with the auditor at its conclusion, and supervise the completion of all corrective tasks identified in the auditor's management letter.

*\*The board has shown little to no knowledge of organization financial, including budgets, grant requirements and human resources requirements. Payroll taxes and sales taxes have not been paid in a timely manner. 2016 audit concerns have yet to be addressed. Board members have little or no participation in fundraising efforts. Form 990 for fiscal year ending Sept 30<sup>th</sup>, 2017 was due February 15<sup>th</sup> and even with an extension would have been due by August 15<sup>th</sup>. As a new board member, I was given a draft copy but when asked about the filing of it, was told "It has been taken care of" by a fellow board member but no proof was provided, or a date given as to when that took place.*

Boards have a legal responsibility to ensure that no harm comes to an organization. The IRS, the state Attorney General, and donors likewise all hold board members accountable for the nonprofit's well-being. When complaint is received regarding an Executive Director it must be taken seriously and the board must take immediate action and launch a thorough investigation and follow up... even if the complaint is found to be unsubstantiated.

*\*At least two other complaints were made to the Board of Directors regarding the former ED in the past, I am unaware of the investigation process but was made aware of direct retaliation taken against the reporting parties by the former ED and the board failed to take action.*

One of a board's most important duties is to hire, supervise, evaluate and support a competent Executive Director.

*\*I personally asked to have access to the former ED's personnel file including all evaluations and corrective actions prior to terminating the ED. That was never provided. I was told by the former ED prior to being appointed to the board that she was rarely if ever properly reviewed or evaluated and was giving herself raises and increased PTO including being paid for two jobs as a full-time exempt employee. Former ED's hours were grossly overstated and her family members were allowed on premises consistently and regularly for many hours per day nearly every day, creating an uncomfortable and at times hostile work environment with a severe lack of confidentiality for both staff and clients.*

While as a matter of board governance directors should not directly supervise an organization's employees, with the exception of the CEO, they nevertheless should hold the executive director accountable for complying with employment laws and treating employees fairly. There are significant consequences for violating the Fair Labor Standards Act (FLSA) by incorrectly paying wages or overtime. Board members could be personally liable for failing to pay the wages and benefits of employees, and for failing to withhold, escrow and pay over to state and federal authorities withholding taxes on employees' wages.

*\*Renew has not paid employees for all hours worked and has been unpunctual in paying payroll taxes resulting in considerable late fees.*

A nonprofit must comply with specific conditions placed upon donations (C.R.S.§15111031109: C.R.S.§616111(1)(i))

*\* Designated grant funds were being moved from one program to cover deficiencies in others.*

**Duty of Loyalty — Each board member must put the interests of the organization before their personal and professional interests when acting on behalf of the organization in a decision-making capacity. The organization's needs come first.**

Every board in the state of Colorado should have a conflict of interest policy that includes a disclosure form, which is signed by all board members annually, and procedures for managing conflicts of interest. The IRS inquires about this policy on both the Form 1023 (application for recognition of 501(c)(3) status) and on the Form 990.

*\*A conflict of interest is a transaction or arrangement that might benefit the private interest of an officer, board member, or employee. Conflicts of interest in a board of directors can take several forms. Related parties on the board, board members related to employees, certain transactions, and dual-capacity individuals all present a conflict of interest. Our own funders have stated that they are very concerned about conflicts of interest regarding the police department and board/staff relationships.*

**Duty of Obedience: Requires board members to follow the governing documents of the organization, laws applicable to the organization, and restrictions imposed by donors and ensure that the organization seeks to satisfy all reporting and regulatory requirements. In short, the duty of obedience requires that directors see that the corporation's purposes are adhered to and that charitable assets are not diverted to non-charitable uses.**

Updates on key strategic issues or next steps to be reported on, emerging risks and issues directors need to be made aware of, key adverse events (including impacts on people etc.) Board meetings should encourage open discussion regarding all decisions required with their supporting documents and allow the time to do so in order not to lose the necessary board interaction and debate required for proper decision-making.

*\*Current board policy is for board meetings not to exceed 1 hour in length.*

Board members must stay informed. The law will not excuse a director's culpability based merely on his or her absence from board meetings. Minutes of each board and committee meeting should clearly express the board's or committee's intentions. For significant board actions, written resolutions should

be prepared, signed by the secretary, and maintained with the organization's official minutes. Board Members should also be familiar with their organization's bylaws, other corporate documents, official policies, and reporting obligations. All organization documents should be reviewed and updated regularly.

*\*Renew's Bylaws are outdated and contradictory. There is no recent strategic plan, policies appear to not be approved by the board, a draft budget was presented in the board packet to the board on 12/17 but no budget was ever approved this year. It was stated in a meeting that at least one of the board members had not even been accessing their board information including all financials, director reports, minutes and agendas.*

*\*The bylaws don't currently have a strong term limit policy. This has supported/created a mostly passive board of directors who appear to be just going through the motions of governance. Rubber stamping decisions, content with the status quo, complacent, and comfortable in the role of an advisor without the engagement and involvement necessary to effectively lead our organization.*

A Colorado nonprofit corporation must keep minutes of all board of directors' meetings, along with a record of any actions taken by the board without a meeting, as permanent records of the corporation (C.R.S. § 7-136-101; 990). Minutes of board meetings and records of actions taken without a meeting should be recorded contemporaneously and should include the date, time, attendees, motions, votes, and the name of the presiding officer. The minutes should be signed by the elected secretary.

Any action required or permitted by law to be taken at a board of directors' meeting may be taken without a meeting if a notice that meets certain criteria is transmitted in writing to each member of the board. The number of votes required to take action must equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted. If the nonprofit receives a written demand by a director that such action not be taken without a meeting, the nonprofit must hold a meeting to vote on the action (C.R.S. § 7-128-202).

#### **Boards may act outside meeting only by unanimous written consent**

*\*On September 11, 2018 the Safehouse Manager was instructed by Renew Board President to "Let (name protected) go. You can say "lay off" instead of terminate if that feels better". She was then given a letter to give to present to our employee at 5:00 when she came in for her shift that evening. The letter stated that it was because of the ongoing civil complaint issue between Renew and said employee. It was signed by the "Renew Board of Directors". I, as a board member, was not aware of this action nor was I ever consulted, and a conversation never took place at an official board meeting nor minutes recorded of this action to be taken. I learned about these actions after the fact from staff members involved and was given a copy of the letter at that time. To this date I have not seen or heard anything regarding the aforementioned action taken from any fellow member of my board. This inappropriate action has put us all at risk and has already caused serious ramifications for our agency and our mission. **Retaliation is any adverse action that an organization takes against an employee because he or she filed a complaint about harassment or discrimination. Adverse action can include actions such as firing the employee, giving them negative evaluations, disciplining or demoting them, reassigning them or reducing their pay.***

*Not fulfilling duties and responsibilities, as well as the visible actions they take, qualifies as misconduct. The following list are areas that fall under fiduciary duties where board member misconduct has occurred:*

- *Reviewing financial statements*
- *Whistleblower policies*
- *Overseeing audits*
- *Failure to set reasonable compensation for the executive director and to review their performance*
- *Failure to lead by planning, strategizing and overseeing key staff*
- *Avoiding hard questions and giving in to groupthink*
- *Not knowing and understanding federal, state and local laws*
- *Non-profit organization directors not knowing the laws for the type of non-profit organization they run*
- *Having ex parte discussions outside the boardroom*
- *Failure to cultivate diversity and independence on the board; lax board director recruitment*
- *Failure to know penalties for overpaying key employees or insiders*
- *Failing to document actions*
- *Having or allowing conflicts of interest*
- *Failing to hold executives accountable, or to restrict access to information during an investigation*
- *Inconsistency in filing disclosures*

In closing, I would like to encourage each of you to take a good look deep in your hearts at your level of commitment to the Renew Organization and our mission of providing assistance to victims of domestic violence, sexual assault, and adult survivors of child sexual abuse. I ask that if you don't feel that you are up for the challenge then to please consider stepping down from your obligations. I currently have 6 strong members of the community who are willing to be appointed to the Renew Board of Directors immediately in order to lead this organization into the future with the knowledge, energy, enthusiasm and passion for our mission.

Some options for graceful and respectful exits, if you choose to do so, are to consider appointing our interested prospective board members and then submitting your resignations in person at the board meeting this Tuesday, September 18<sup>th</sup> or to submit your proxy vote to appoint these interested persons and then submit your resignation in writing afterwards.

According to our current bylaws; Any board member may vote by proxy if said proxy is in writing, signed by the Board member giving the proxy, but the proxy is limited to specific issues addressed in the proxy and must be submitted to the secretary before the beginning of the meeting in which the proxy is to be exercised.

Respectfully,

Dena Guttridge  
Member; Renew Board of Directors