The Non-Profit General Counsel: The Next Frontier for Entertainment Lawyers

Thursday, October 6, 2016
2:30pm-4:00pm

Moderator

- **Casey Gill Summar**, Executive Director, Arts & Business Council of Greater Nashville; Chair, Forum Volunteer Lawyers for the Arts Division (Nashville, TN)

Speakers/Panelist

- **Lauri S. Thompson**, Shareholder, Greenberg Traurig (Las Vegas, NV)
- **Mark Tratos**, Founding Shareholder, Greenberg Traurig (Las Vegas, NV)
- **Daphnée Saget Woodley**, General Counsel, Vice President & Assistant Secretary, Jazz at Lincoln Center (New York, NY)
Program Description
There are many legal roles in arts and entertainment nonprofits ranging from serving on a board to outside counsel to executive director, president and/or general counsel. Come learn about the most prevalent legal issues and how to juggle many hats in the nonprofit world. Our panelists will also cover the ins and outs of nonprofit board service, a board member’s fiduciary role, conflicts of interest policies, board governance and structure, directors and officers insurance, and ethical challenges. Performing pro bono work is a popular in road to nonprofit client development and management roles. Learn about opportunities to handle (and limit) pro bono engagements and to separate legal counseling from active board participation and hear about unique career paths to leadership within both small and large impactful nonprofit institutions and organizations.

Introduction
Our goal with this panel is to give attendees a feel for the nature of the legal issues in the nonprofit (particularly arts/entertainment) sector. As this is a broad overview, the materials include a variety of sample forms and tools that you might find useful serving as either in-house or outside general counsel to a nonprofit organization.
American Bar Association  
Forum on the Entertainment and Sports Industries  

2016 Annual Meeting  
Las Vegas, NV  

The Non-Profit General Counsel:  
The Next Frontier for Entertainment Lawyers  

Thursday, October 6, 2016  
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Nonprofit Board Meeting Agenda

VOLUNTEER LAWYERS & PROFESSIONALS FOR THE ARTS
SAMPLE BOARD MEETING AGENDA

Agendas are a great tool to create an efficient and productive board meeting. Provided below is a sample board meeting agenda. An agenda states what activities will take place during the meeting and should be utilized to provide direction and structure. There are many important reasons to have a well thought out and structured agenda. The agenda forces the meeting leader or group to outline what objectives need to be accomplished by providing a blueprint for the meeting to follow. The agenda also lets people know what to expect in the meeting and allows them to prepare as necessary. After creating an effective agenda, the key is to stick to the order and time constraints you have created. As you’ll see in the sample below, it can be helpful to estimate the amount of time needed for each item on the agenda, identify who will be presenting the information, and note if the item requires approval by the board.

BROADWAY DANCE TROUPE OF TENNESSEE, INC.
Excellence in Dance, Education and Performance

QUARTERLY BOARD MEETING
SEPTEMBER 15, 2014, 3:30p.m.

AGENDA

I. :01 Call to Order
   Bill Sport

II. :02 Approval of Minutes from June 15, 2014 Meeting
    Bill Sport
    Approval Required

III. :05 Celebration of Accomplishments
     Joy Kite

IV. :05 Executive Director’s Report
     Erik Coleman

V. :20 Committee Reports:
   • Advocacy Committee (handout)
     Susan Reicht
   • Event Committee
     Oliver Cheeky
   • Finance Committee (handouts)
     Joy Kite
   • Education Committee
     Mike Mitchell

VI. :05 Governance
    • Renewal of terms (Cheeky, Mitchell and Reicht)
      Approval Required
     Bill Sport

VII. :20 Strategic Discussion
     • Statewide expansion
     All

VIII. :3 Adjournment: Next meeting: December 16, 2014
      Bill Sport
Your organization must take minutes during your board meetings to document the key discussions and actions. Provided below are sample board meeting minutes to use as a guide. Keep in mind that meeting minutes can be very important for organizational as well as legal reasons. Minutes can be requested by auditors, courts, and government entities to demonstrate the actions of the board. In maintaining minutes, try to strike a balance of including all the key components without unnecessary details. They should cover the substance of the meeting and note any specific votes or actions that took place, but they should not read like a transcript or “play-by-play” of the meeting. Because minutes are part of the organization’s public record, a good rule of thumb when deciding what should be documented in the minutes is to only provide information that you wouldn’t mind reading about in the newspaper (while of course being truthful!).

The sample provided is a narrative style of minutes, but there are many other effective ways to take minutes. For example, you could use a bullet-point style. Be creative and find what works best for your organization. At the minimum you must include the name of the organization, date and time of meeting, who called it to order, who attended and whether there was a quorum, all motions made, any conflicts of interest or abstentions from voting, when the meeting ended, and who prepared the minutes.
Minutes of the Meeting of the Board of Directors
September 15, 2014

Present: 
Members: Joy Kite, Bill Sport, Mike Mitchell, Susan Reicht, Oliver Cheeky, Michael Beal
Participating via conference call: Cathy Allhouse and Doug Griffey
Guest: Robert Marley, Chair, TN Dance Foundation
Staff: Erik Coleman, Lisa Pinch and Terry Barnum

Absent: Members: Josh Arnold, Kay Young

Quorum Present? Yes

Call to Order
Chairman Bill Sport called the quarterly meeting of the Board of Directors of the Broadway Dance Troupe of Tennessee (“BDTT”) to order at 3:37 p.m.

Approval of Minutes from June 15, 2014 Board Meeting
Mr. Mitchell moved for approval of the minutes from the June 15, 2014 board meeting which were circulated to the board in advance. The motion was seconded by Mr. Beal and unanimously approved.

Celebration of Accomplishments
Ms. Kite opened the meeting by taking a moment to celebrate the accomplishments of the past quarter. BDTT received a grant of $20,000 from the Metro Arts Commission to create a new original program for 2015. Additionally, the summer Dancing in the Park performance series attracted the largest audience since BDTT’s inception.

Executive Director’s Report
Mr. Coleman presented the Executive Director’s Report. He noted an increase in the number of dancers participating in BDTT’s education programs, with over 300 children going through the summer program. BDTT staff are currently preparing for a series of free holiday performances.

Advocacy Committee Report
Ms. Reicht provided an update on activities of Advocacy Committee, which meets regularly to increase BDTT’s efforts to advocate for increased support of the arts. Ms. Reicht and the other committee members met with four council members and discussed the impact BDTT has on the local community, particularly in their districts. They also noticed increased attendance by council members at the summer performances. The advocacy committee circulated a list of talking points for board members to keep in mind when they contact their representatives. The handout was circulated and the board members discussed how to use it most effectively.

Event Committee Report
Mr. Cheeky reported that the committee’s main focus has been on locating a space to hold the annual Dance with the Moon Performance. The committee has narrowed it down to two possible venues, both of which are available for $2,500. The board approved the cost of the venue and authorized the Event Committee to secure whichever venue it felt was most appropriate.

Finance Committee Report
Ms. Kite presented the financial report reflecting BDTT’s year-to-date expenses and revenues.
Currently the organization is on target to meet its fundraising goals. Ms. Kite noted that the performance expenses appear below budget right now because all of the invoices for the summer performances have not yet been received and paid. After payment of these invoices, expenses will be very close to the budget, estimated around $400 less than projected.

Education Committee Report
Mr. Mitchell reviewed the feedback from the summer children’s classes which was overwhelmingly positive. It is the committee’s recommendation to continue similar programs year round. The board engaged in a discussion about how to continue and sustain the children’s classes. Some suggestions included partnerships with local schools and churches to provide a venue and charging minimal fees to generate some earned income. The Education Committee will research these and other options and present recommendations to the board at the next quarterly meeting.

Governance
Mr. Sport then turned to governance and board development. Three board members’ terms are expiring: Cheeky, Mitchell and Reicht. Mr. Beal moved that Mr. Cheeky, Mr. Mitchell and Ms. Reicht be reelected to the Board, each for a two-year term ending in September 2014. The motion was seconded by Ms. Allhouse and unanimously approved.

Reelection of Oliver Cheeky, Mike Mitchell and Susan Reicht as Board Members.

RESOLVED, that Oliver Cheeky, Mike Mitchell and Susan Reicht each be reelected to the Board for a two-year term ending in September 2014.

Strategic Discussion
Based on BDTT’s success in the Nashville area, the organization is considering expanding statewide by opening branches in Knoxville and Memphis. The board had a robust discussion about the pros and cons of expansion. Ms. Kite suggested created a board taskforce to research this issue in greater detail and make a presentation to the board at the December meeting. Issues the taskforce will consider include: 1) the financial impact of expansion including additional staff and resources needed; 2) the reputation impact of expansion including positive and negative implications for the brand; and 3) the timing of an expansion, if recommended. Ms. Kite, Mr. Sport and Mr. Cheeky volunteered to serve on this taskforce.

The next quarterly board meeting will be held December 15, 2014. There being no other business the meeting adjourned at 4:40 p.m.

Submitted by: Michael Beal, Secretary
CHARTER OF BROADWAY DANCE TROUPE OF TENNESSEE

The undersigned persons, having capacity to contract and acting as the incorporators of a corporation organized under the Tennessee Nonprofit Corporation Act, as amended, adopt the following Charter for such corporation:

1. The name of the corporation shall be “Broadway Dance Troupe of Tennessee.”

2. The duration of the corporation is perpetual.

3. The street address of the registered office, the zip code of such office and the county in which the office is located is: 123 Broadway, Nashville, Davidson County, Tennessee 37201. The name of the registered agent at that office is Alma Artist.

[Comment: State the name and address of a person who can be relied upon to forward official mail. This address can be a person at the principal office of the corporation, a board member or legal counsel. It must be a street address. The corporation may change its registered agent and this address when it files its annual report with the Secretary of State.]

4. The street address of the principal office of the corporation in the State of Tennessee is: 123 Broadway, Nashville, Davidson County, Tennessee 37201.

5. The name of the incorporator is Alma Artist, whose address is 123 Broadway, Nashville, Davidson County, Tennessee 37201.

[Comment: The incorporator can be one or more persons. Consider who might be appropriate to recognize as a matter of organizational history or development. Incorporators have little formal authority beyond holding an organizational meeting and appointing the first board of directors (which can also be done in writing). The incorporator can be legal counsel, but it is sometimes useful to use this as an opportunity to recognize someone, or to present a name that funders and others recognize and respect.]

6. The incorporator shall elect the initial Board of Directors and shall take such other appropriate action incident to the organization of the Corporation.

7. The corporation is a nonprofit corporation.

8. The corporation is a public benefit corporation.

[Comment: Corporations can be mutual or public benefit. This is a term of art, required to be answered by the Tennessee Nonprofit Corporation Act. Mutual benefit corporations will not usually qualify as exempt under Section 501(c)(3).]

9. The corporation is not a religious organization.

[Comment: The TN Secretary of State requires a statement indicating whether the corporation is or is not a religious organization.]
10. The corporation shall have members.
[Comment: “Members” here is a term of art. A corporation can have a membership, who may pay dues and have some designated authority, without having statutory members. In this provision, “members” means a group of people who have the authority to elect the board and whose approval is required before the corporation may amend its charter and bylaws, before it may dissolve, and before it may take some other important actions. This is a complicated idea for many new groups, because a corporation can have “members” without having legal members. In general, organizations that exist to carry out a function may not wish to have statutory members.]

11. The corporation is organized exclusively for the following religious, charitable, scientific, literary and/or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding section of any future federal tax code (the “Code”):
   a. to conduct classes, workshops, and public performances throughout the state to foster understanding and support for the art of dance; and
   b. to engage in other activities in furtherance of such purposes, and exercise any and all powers, rights, and privileges as may be authorized by the Charter of this Corporation and that are permitted to be carried on by an entity either (i) exempt from Federal income taxation under Section 501(c)(3) of the Code, or (ii) to which contributions are deductible under Section 170(c)(2) of the Code.

[Comment: This statement is not required to gain nonprofit status from the State of Tennessee, but is required by the IRS for tax exempt status and strongly recommended. This statement should not be detailed but should offer a useful description of the purpose. It is not a plan for action but is more than a mission statement. This provision should be a practical statement that will help board members and others to understand the present intent of the organization, providing some limiting guidance without being so narrow as to require frequent amendment.]

12. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered, to make reimbursement of reasonable expenses incurred, and to make payments and distributions in furtherance of the purposes set forth in the purpose clause above. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

13. Upon the dissolution of the corporation, after paying or making provision for the payment of all of the liabilities and obligations of the corporation, the assets of the corporation shall be distributed pursuant to a plan of distribution adopted by the board of directors, to such organization(s) organized and operated exclusively for religious, charitable, educational and scientific purposes as shall at the time qualify as an organization(s) exempt from federal income taxation under Section 501(c)(3) of the Code, or to the federal government, or to a state or local government for a public purpose, as determined by the board of directors. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.
Comment: The IRS requires that charters include the language in paragraph 12 in substantially this form as a condition for recognition of tax exempt status. This paragraph is not in the form for incorporation provided by the Tennessee Secretary of State. Organizations should be warned against using the Secretary’s form without first seeking legal advice.

14. Subject to paragraphs 11 and 12, full control and management over the activities and affairs of the Corporation shall be vested in the Board of Directors. The number and terms of directors of the Corporation shall be fixed by, or in the manner provided in, the Bylaws of the Corporation.

15. The fiscal year of the corporation shall commence on July 1 of each year and end on June 30 of each year, except as the board in its discretion shall otherwise determine.

Comment: This provision is only required if the corporation does not use a January-December fiscal year. In this case, the TN Secretary of State requires that the charter include the fiscal year end (otherwise it will default to December for their filing purposes).

16. A director of the Corporation shall not be personally liable to the Corporation for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith, or that involve intentional misconduct or a knowing violation of law, (iii) for unlawful distributions under T.C.A. § 48-58-302, (iv) receipt of a financial benefit to which the director is not entitled, or (v) an intentional infliction of harm. If the Tennessee Nonprofit Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of directors of the Corporation shall be eliminated or limited to the fullest extent permitted by the Tennessee Nonprofit Corporation Act, as so amended.

Comment: This provision gives board members the maximum protection against personal liability to the corporation offered by state law.

Dated this _____ day of _______________________, 2016.

INCORPORATOR:

[Comment: There is no prohibition against including other provisions in the charter. However, this charter is intended to be as short as possible and still include the required and most useful provisions. More detailed provisions about the organization and decision making should usually be in the bylaws. If an issue is critical to the organization, or if the founders want to make something as hard to change as possible (such as requiring certain categories of persons to be designated as board members), it may be included in the charter.]
CORPORATE BYLAWS
OF
BROADWAY DANCE TROUPE OF TENNESSEE

ARTICLE I
CORPORATION

SECTION 1.1. Corporate Offices. The corporation shall have and continuously maintain in the State of Tennessee a registered office and registered agent whose office address is identical with such registered office. The corporation shall have a principal office at such place as shall be designated by the board of directors and may have other offices within or without the State of Tennessee as the board of directors may from time to time determine.

SECTION 1.2. Members. The corporation shall not have any members, voting or otherwise.

[Comment: If the corporation will have statutory members, Section 1.2 would be replaced by a separate article describing the admission, authority, and activities of members.]

[Comment: The bylaws and charter should work hand-in-hand. These sample bylaws are drafted to work with the sample charter on the previous page. Therefore, this Article I does not include sections that would be duplicative of those contained in the charter, such as Corporate Name, Corporate Purposes, Corporate Dissolution, etc.]

ARTICLE II
BOARD OF DIRECTORS

SECTION 2.1. General Powers. The business and affairs of the corporation shall be managed by its board of directors.

[Comment: T.C.A. § 48-58-101 requires that every nonprofit corporation have a board of directors. It further requires that the board shall manage the affairs of the corporation and provide authority for the exercise of all corporate powers except where noted otherwise.]

SECTION 2.2. Number and Composition; Initial Board. The number of members of the board of directors shall be not less than three (3) nor more than thirty (30). The initial board shall consist of five (5) directors. Successors to the initial board of directors shall be elected as set forth in Section 2.3. The specific number of directors shall be set and established from time to time by resolution of the board adopted by the affirmative vote of the majority of the members of the board then in office; provided, however, that the number of directors shall not be less than the number authorized by this Section 2.2.

[Comment: T.C.A. § 48-58-103 requires a minimum of three board members at all times, but does not set a cap for the total number of board members.]

SECTION 2.3.
**Election and Term.** Each member of the board of directors, other than the initial members of the board of directors as designated in Section 2.2, shall be nominated and elected by the members of the board of directors then serving as provided in Section 2.5 of these bylaws. During the first year, directors shall be elected for terms of either one (1) or two (2) years, in order properly to stagger the terms thereafter and permit expiration of terms immediately following the annual meeting. Following the first year, each newly-elected director shall serve for a term of two (2) years, or until a successor is selected. Terms shall be established so that no more than one-half (1/2) of the board will expire at the same time. A director who shall be elected to the board to fill any vacancy on the board shall serve for the remainder of the unexpired term that such director is filling. Notwithstanding that a director may be elected for a designated term, a director shall continue to serve as a director until his successor has been nominated and elected pursuant to the provisions of these bylaws.

[Comment: T.C.A. § 48-58-105 limits the maximum length of a director’s term to five (5) years.]

**SECTION 2.4. Qualifications of Board Members.** To be eligible for board membership election, a candidate shall be a natural person who, at the time of election, shall be at least twenty-one (21) years of age who shall, in the determination of the board, (1) exemplify qualities of honesty, integrity, and sound moral character and (2) be committed to support and uphold the purposes, mission, and general policies of the corporation and have a willingness and ability to devote necessary time to board activities.

[Comment: Section 2.4 provides a board with maximum flexibility over qualifications of board members as allowed by T.C.A. § 48-58-102. Some boards will require more restrictions. For example, a statewide organization may want to require that an equal number of board members come from each region of the state.]

**SECTION 2.5. Method of Election; Vacancies.** The board of directors shall nominate and elect members of the board, fill vacancies on the board as often as vacancies occur, whether such vacancies are due to expansion, resignation, expiration of term, death, or for any other reason, and designate the term of service of each elected member of the board consistent with these bylaws. In the event only one candidate is nominated to fill any vacant seat, the candidate so nominated shall be elected by a vote of a majority of the directors then in office. In the event two (2) or more candidates are nominated to fill any vacant seat, the candidate with the greatest number of votes cast by the directors then in office shall be elected to such seat.

**SECTION 2.6. Resignation and Removal.** Any director may resign at any time by giving written notice of such resignation to the board of directors. Any board member may be removed (1) with cause by the affirmative vote of a majority of the directors then in office or (2) without cause by the affirmative vote of a two-thirds majority of the directors then in office.

[Comment: Section 2.6 makes it relatively easy to remove a director with cause. A common alternative is to allow for removal of a board member who has not attended three or more consecutive meetings by majority vote, but require a two-thirds majority for removal of a director for any other cause.]

**SECTION 2.7. Quorum and Voting Requirements.** A quorum of the board shall consist of a majority of the directors in office immediately before a meeting begins. If a quorum is present when a vote is taken, then, except as provided otherwise herein, in the charter or by applicable law, the affirmative vote of a majority of directors present is the act of the board.
ARTICLE III
MEETINGS OF THE BOARD OF DIRECTORS

SECTION 3.1.
Regular Meetings of the Board. The board shall hold regular meetings at least once annually at such place as may be designated from time to time by the board, for the purpose of transacting such business as may be required or permitted pursuant to the corporation’s charter, these bylaws or as may otherwise be properly presented to the board. The frequency, date, and time for regular meetings shall be established and be subject to change as determined by the board of directors.

[Comment: Section 3.1 mandates only the annual meeting required by law, but allows for more meetings. While a board should meet more often, the flexibility prevents it from having to amend the bylaws for every change in meeting frequency, e.g. going from monthly meetings to quarterly meetings.]

SECTION 3.2.
Special Meetings of the Board. Special meetings of the board may be called by the board chairman or the President, or upon receipt of the written request of a majority of the directors in office.

SECTION 3.3.
Notice of Board Meeting. Regular meetings of the board may be held without notice. Written notice of all special board meetings shall be by any reasonable means, including first class mail, facsimile transmission, electronic mail or hand delivery. Unless properly waived, notice shall be given to each director at least twenty-four (24) hours before the time of each special meeting. Any notice of a special meeting of the board that is not given at least three (3) days before the meeting shall be given by facsimile transmission, electronic mail, telephonic notice, or hand delivery to each director. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 3.4.
Action by Written Consent. Any action required or permitted to be taken by the directors of the corporation may be taken without a meeting, provided that no director gives written notice of objection. In such case, the affirmative vote of the number of directors that would be necessary to authorize such action at a meeting shall be considered the action of the board. The action taken shall be set forth in writing and shall be signed by each director, indicating each director’s vote or abstention on the action.

SECTION 3.5.
Meeting by Telephone or Video Conference. All members of the board or of any committee of the board may participate in and act at any meeting of such board or committee by means of conference telephone, video, or other similar communication equipment so long as all persons participating in the meeting can simultaneously hear each other. Participation in such a meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

[Comment: Section 3.5 incorporates the statutory requirement for participation in a meeting from T.C.A. § 48-58-201(c): “any means of communication by which all directors participating may simultaneously hear each other during the meeting.” This has not been interpreted to allow for a board meeting via e-
mail, list-serve or instant messaging. However, an action by written consent as in Section 3.4 could be taken electronically.]

SECTION 3.6.  
**Advisory Directors.** The board of directors may, in its discretion, from time to time designate persons as advisory members of the board of directors for such term or terms as the board shall determine, who shall be entitled to attend all meetings of the board and express their views, but who shall not be entitled to vote on matters coming before the board of directors.

ARTICLE IV  
BOARD COMMITTEES

SECTION 4.1.  
**General Committees.** Committees of the board may be standing or special as designated by the board from time to time and shall be authorized or established by the board. Committees may be created or terminated at any time by resolution of the board. Except as provided by state law, members of any standing or special committee may be members of the board or other natural persons, and they shall serve at the pleasure of the board. Subject to limitations imposed by applicable law, such committees shall have such authority as shall be delegated by the board.

[Comment: Some organizations choose to make certain key committees, such as Finance and Governance, a part of their organizational structure and include the committee responsibilities in their bylaws.]

SECTION 4.2.  
**Executive Committee.** An Executive Committee may be established, whose members shall be appointed or elected from the board of directors. Members of the Executive Committee, at the discretion of the board, may be authorized to address and act on issues and concerns of the corporation. Specific authorizations will be established by the board.

SECTION 4.3.  
**Appointment.** Committees may be appointed by the board for such tasks as circumstances warrant. A committee shall limit its activities to the accomplishment of the tasks for which it is appointed and shall have no power to act except as specifically conferred by action of the board. The board shall appoint a member of the committee to serve as chairman.

SECTION 4.4.  
**General Committee Procedures.** Each committee shall record minutes of its deliberations, recommendations, and conclusions and shall promptly deliver a copy of such minutes to the Secretary of the corporation. Reasonable notice of the meetings of any committee shall be given to the members thereof. The committee chairman may invite to any committee meeting such individuals as he or she may select who may be helpful to the deliberations of the committee. A majority of the members of each committee shall constitute a quorum for the transaction of business and the act of a majority of the members of any committee present at a meeting at which a quorum is present shall be the action of the committee. Each committee may operate through the establishment of one or more subcommittees to be composed of such members of the committee and to have such duties and responsibilities as shall be delegated to the subcommittee by the committee. Each committee may adopt rules for its own operations and that of its subcommittees not inconsistent with these bylaws, the policies of the board, the charter of the corporation, or state law.
ARTICLE V
OFFICERS OF THE CORPORATION

SECTION 5.1.
Designation of Corporate Officers. The officers of the corporation shall be a president, a secretary, and a treasurer each of whom shall be elected by the board of directors. The board may also elect a vice-president and such other assistant officers as the board of directors may from time to time deem necessary or appropriate.

SECTION 5.2.
Term and Removal. An officer may be elected or appointed for a designated term or for an unspecified term but shall continue to hold office until a successor shall have been duly elected or appointed in accordance with these bylaws. Any two (2) or more offices may be held by the same person except the offices of president and secretary. Any officer may be removed from office at any time with or without cause by action of the board of directors.

SECTION 5.3.
Duties of the President. The president shall be the chief executive officer of the corporation, shall be responsible for implementing and carrying out corporate policies established by the board of directors of the corporation and advising the board on and making recommendations to the board regarding the formation of such policies, and shall be responsible for representing the corporation in its relationships with any affiliated entities. The president shall carry out such duties as shall be necessary to ensure that this corporation carries out all policies established by the board of directors of this corporation in a manner that is not inconsistent with the mission or purposes of the corporation. The president shall have such other duties and authority that such position customarily requires, including those duties assigned from time to time by the board of directors.

SECTION 5.4.
Duties of the Vice-President. In the absence of the president or in the event of his or her death, inability, or refusal to act, the vice-president shall perform the duties of the president, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. Any vice-president shall perform such other duties as may from time to time be assigned to him or her by the president or by the board of directors.

SECTION 5.5.
Duties of the Secretary. The secretary shall act as a secretary of the corporation and the board, shall send appropriate notices or waivers of notice regarding board meetings, shall prepare agendas and other materials for all meetings of the board, shall act as official custodian of all records, reports, and minutes of the corporation, the board and all committees, shall be responsible for the keeping and reporting of adequate records of all meetings of the board, shall certify as to actions taken by the board, shall authenticate records of the corporation, and shall perform such other duties as are customarily performed by or required of corporate secretaries.

SECTION 5.6.
Duties of Treasurer. The treasurer shall have charge and custody of, and be responsible for, all funds and securities of the corporation; receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the directives of the board of directors, taking proper vouchers for such disbursements, and render to the board of directors, an accounting of all the transactions of the treasurer and of the financial condition of the corporation; and in general perform all duties incident to the office of treasurer and such other duties as may from time to time be assigned to him or her by the president or by the board of directors.
SECTION 5.7. Salaries and Expenses. The officers of the corporation shall be entitled to reasonable compensation, as may be set by the board of directors from time to time, for services rendered to the corporation. Reasonable expenses incurred by all of the officers of the corporation in the course of coordinating the affairs of the corporation shall be reimbursed by the corporation upon proper substantiation. No officer shall be prevented from receiving reasonable compensation by reason of the fact that he also is a member of the board of directors.

ARTICLE VI
FISCAL MATTERS

SECTION 6.1. Fiscal Year. The fiscal year of the corporation shall commence on January 1 of each year and shall end on December 31 of each year, except as the board in its discretion shall otherwise determine.

SECTION 6.2. Contracts. The President and his express designees shall be authorized to execute contracts on behalf of the corporation. In addition, the board may authorize other officers or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, with such authority being either general or confined to specific instances.

SECTION 6.3. Loans and Indebtedness. No loans shall be contracted on behalf of the corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the board. Such authority may be general or confined to specific instances. No loan shall be granted to an officer or director of the corporation.

SECTION 6.4. Checks, Drafts, Etc. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation or to the corporation shall be signed or endorsed by such officer or officers or agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board.

SECTION 6.5. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as shall be approved by the board.

SECTION 6.6. Maintenance of Records. The corporation shall keep correct and complete books and records of account and other records of the activities of the corporation as may be appropriate. All such records shall be open to inspection upon the demand of any member of the board of directors.

SECTION 6.7. Gifts. The board may accept on behalf of the corporation any contribution, gift, bequest or devise for the general or any special purposes of the corporation.
SECTION 6.8.  
Investment Authority. The board of directors shall be authorized to retain assets distributed to the corporation, even though such assets may constitute an over-concentration in one or more similar investments. Further, the board of directors shall have the authority to make investments in unproductive property, or to hold unproductive property to the extent necessary until it can be converted into productive property at an appropriate time, provided the retention of such property is in the best interest of the corporation and does not in any way jeopardize the tax-exempt status of the corporation.

ARTICLE VII  
INDEMNIFICATION

SECTION 7.1.  
Indemnification of Directors and Officers. The corporation shall provide indemnification to the full extent permitted by Tennessee law for any director or officer, or his executor or administrator, for the defense of any action, subject to the following conditions: (i) the action was instituted by reason of the fact that such person is or was a director or officer of the corporation; and (ii) the director or officer conducted himself or herself in good faith, and he or she reasonably believed (A) in the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interest; (B) in all other cases, that his or her conduct was at least not opposed to the best interests of the corporation; and (C) in the case of any criminal proceeding, that he or she had no reasonable cause to believe his or her conduct was unlawful. It is the policy of this corporation to safeguard its directors and officers from expense and liability for actions they take in good faith in furtherance of the interest of the corporation.

[Comment: Section 7.1 is a relatively simple and direct indemnification provision that tracks the language of T.C.A. § 48-58-502. Some organizations may elect to have more detail, particularly regarding procedures for advancing expenses.]

SECTION 7.2.  
Insurance. The corporation may also provide insurance against liabilities and expenses incurred by its directors, officers, employees and agents to the full extent permitted by Tennessee law.  
[Comment: While they are more commonly drafted and adopted separately, the bylaws could also include other organizational policies, such as conflict of interest or nondiscrimination.]

ARTICLE VIII  
AMENDMENTS

These bylaws may be amended by the affirmative vote of a majority of the members of the board then in office at any regular meeting or any special meeting of the board.

CERTIFICATE

The undersigned hereby certifies that the foregoing Corporate Bylaws of Broadway Dance Troupe of Tennessee, Inc. were duly adopted by action of the corporation effective as of ______________________, 2013.

________________________________________
President
Nonprofit Conflict of Interest Policy

[Corporation Name]
Conflict of Interest Policy

Article I
Purpose

The purpose of the conflict of interest policy is to protect the interest of [insert Corporation name here] (“the Organization”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II
Definitions

1. Interested Person. Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
   a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
   b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
   c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

3. Compensation. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

4. Conflict of Interest. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Article III
Procedures

1. Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
3. Procedures for Addressing the Conflict of Interest

a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization’s best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

a. If the governing board or committee has reasonable cause to believe an interested person has failed to disclose actual or possible conflicts of interest, it shall inform the interested person of the basis for such belief and afford the interested person an opportunity to explain the alleged failure to disclose.

b. If, after hearing the interested person’s response and after making further investigation as warranted by the circumstances, the governing board or committee determines the interested person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV

Records of Proceedings

The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board’s or committee’s decision as to whether a conflict of interest in fact existed.

2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.
Article V
Compensation

1. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member’s compensation.

2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member’s compensation.

3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Article VI
Annual Statements

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement that affirms such person:

1. Has received a copy of the conflicts of interest policy,

2. Has read and understands the policy,

3. Has agreed to comply with the policy, and

4. Understands the Organization is charitable, and in order to maintain its federal tax exemption, it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

Article VII
Periodic Reviews

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm’s length bargaining.

2. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization’s written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Article VIII
Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.
Nonprofit Board Member Job Description

[Insert Organization’s Name]
Board Member Responsibilities

Individual Responsibilities:
- Attend board meetings ([number] per year), and participate fully—ask questions and share ideas
- Serve on committees and accept special assignments, as possible
- Make decisions on organization policies and objectives based on a careful review of all relevant information
- Understand the organization’s mission, goals, services, policies, and programs, and keep up to date on developments in the organization’s field
- Inform others about the organization and be a spokesperson in the community
- Offer advice, resources and encouragement to the staff
- Make a personal financial contribution to the organization according to your means
- Solicit funds and open doors for others to raise funds
- Suggest nominees to the board who can make significant contributions to the organization
- Follow conflict-of-interest and other organization policies

Personal Characteristics of Board Members:

Ability to:
- listen, analyze, think clearly and creatively, work well with individuals and groups

Willingness to:
- prepare for and attend board and committee meetings, ask questions, take responsibility and follow through on a given assignment, contribute personal and financial resources in a generous way according to personal circumstances, open doors in the community, evaluate oneself
- develop certain skills if you do not already possess them, such as to: cultivate and solicit funds, cultivate and recruit board members and other volunteers, read and understand financial statements, learn more about the substantive program area of the organization

Possess:
- honesty; sensitivity to and tolerance of differing views; a friendly, responsive, and patient approach; community-building skills; personal integrity; a developed sense of values; concern for the organization’s development; a sense of humor

Legal Responsibilities of the Board:
- Duty of care: the level of competence that is expected of a board member, commonly expressed as the duty of “care that an ordinarily prudent person would exercise in a like position and under similar circumstances.” This means that a board member has the duty to exercise reasonable care when he or she makes a decision as a steward of the organization.
- Duty of loyalty: the standard of faithfulness that is expected of a board member, requiring undivided allegiance when making decisions affecting the organization. This means that a board member can never use information obtained as a member for personal gain, but must act in the best interests of the organization.
- Duty of obedience: requires board members to be faithful to the organization’s mission. They are not permitted to act in a way that is inconsistent with the central goals of the organization or
Nonprofit Directors & Officers Insurance FAQs

Q. Do all nonprofit organizations need Directors and Officers Liability Insurance?

A. Unlike general liability insurance—which any organization that has a physical office would be foolish not to have—many nonprofits are uncertain whether they need Directors and Officers (D&O) coverage. When a person becomes a board member of a nonprofit organization, she assumes a level of responsibility for the organization (“duty of care”), and exposes herself to claims for not running and managing it in a proper way. Whether or not your organization needs D&O insurance depends on the likelihood that one of your board members will be the target of such a claim.

Claims generally fall into two categories: bodily injury (physical harm) and non-bodily injury (non-physical harm, like discrimination or termination). Bodily injury claims are covered by general liability insurance. D&O insurance only covers the latter group, non-bodily injury claims. These include primarily employment-related claims and mismanagement of funds. While there are very few reported cases of these types of lawsuits against directors of nonprofits and there is little likelihood of success, the organization will still be forced to pay to defend against the claim. A D&O insurance policy will pay for the defense of the lawsuit.

Generally, there are two types of lawsuits in which a claim might be brought against a board member: derivative lawsuits and direct or third-party lawsuits. Derivative lawsuits are claims against a board member on behalf of the corporation seeking to remedy harm to the corporation, rather than to an individual. The types of people who can bring derivative suits are board members, corporate members, or the state. Because the law limits who can bring these suits, few derivative claims are ever made. Direct or third-party lawsuits are brought by an employee or by a person not connected with the corporation who asserts a claim against it or its board on account of some non-bodily injury.

Employment practices like termination and discrimination make up the majority of these types of claims. Even if the organization has a small, friendly staff, keep in mind that when employees feel they have been wronged and are angry, they may file a claim even if it is baseless. Though most of the cases brought against a board are likely to be thrown out, the organization will still be responsible for the legal fees if a claim is filed, and D&O insurance will pay these. Otherwise, the fees must be paid by the organization.

Q. If we decide to purchase D&O insurance, what questions should we ask?

A. If an organization determines it has some significant risk and chooses to purchase D&O insurance, it should be aware that D&O policies vary greatly. When shopping for a policy there are three major items to keep foremost in mind: who is covered (and who is not), what types of lawsuits are excluded from coverage, and is the underwriter a reputable company with a good payment history?

Who is covered? All policies, obviously, include an organization’s directors and officers. Officers include the executive director and possibly a few “key” employees. However, many policies don’t include staff and volunteers or the entity itself. If a claim is filed against a board member, in many cases it will also be filed against the nonprofit. Furthermore, many nonprofits have volunteers other than board members serving on committees.

What is excluded? Many D&O policies exclude employment related claims (which are the majority of claims brought against a board) and non-pecuniary actions. A non-pecuniary claim is one where a
plaintiff is not asking for monetary damages, but is ideological in nature, i.e.: a suit against the board for not fulfilling its mission. These types of suits, although rare, are usually lengthy and costly in legal fees.

Ultimately, whether or not to purchase D&O insurance is a risk management decision that should be made by the board after evaluating all its options. If you have additional questions, feel free to contact Volunteer Lawyers & Professionals for the Arts at (615) 460-8274 or vlpa@abcnashville.org.