



WIKIMEDIA
FOUNDATION

**A Primer for the Nonprofit Board
Trustee:
Duties, Risks, and Safeguards**

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Agenda

- Responsibilities and Duties of a Director
- Fiduciary Duties of a Director
- Business Judgment Rule
- Protections for Directors (3 I's)
- Expenditure Responsibility
- Procedural Requirements for Board

What are the responsibilities of a Director?

- The directors have ultimate responsibility for overseeing the affairs of the company.
- They must comply with their legal duties or be liable to:
 - Donors
 - The public (state AG/IRS)
 - 3rd parties

Directors' Duties in General

- Monitoring and directing the activities of the company's management
- Approving major decisions made by the company
- Adopting broad policies to be followed in the conduct of its business, and
- Appointing corporate officers, (Executive Director, Chief Financial Officer, Secretary), to whom they delegate the day-to-day responsibility of managing the corporation in compliance with policies adopted by the directors.

Directors' Fiduciary Duties



A corporate director must act: “In good faith; with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner [the director] reasonably believes to be in the best interests of the corporation.”

FLA. STAT. § 617.0830(1), *see also* FLA. STAT. § 607.0830(1)

Due Care

Formalities: follow corporate formalities and act with appropriate care

Information: for important matters, review all materials made available to you, in advance of meetings, ask questions

Reliance: you are entitled to rely on corporate records and information presented by staff, advisors, and experts

Adherence to Law: you must comply with federal & state laws, by-laws, charters, resolutions and other policies and guidelines

Loyalty

Broad encompassing duty due to special position held to protect interests of the Foundation and refraining from conduct that could harm the Foundation.

Conflict of Interest: avoid any form of conflict of interest between your duties as a director and any self-interest. Follow the conflict of interest policy and comply with the pledge of personal commitment.

Duty to Disclose and Abstain: disclose any personal circumstance that is a potential or actual conflict of interest and abstain from discussions or decisions, if necessary.

Duty of Confidentiality and Non-disclosure: To ensure open and honest discussions, contents of board meetings are considered confidential and should not be shared publically, unless there has been board agreement to do so.

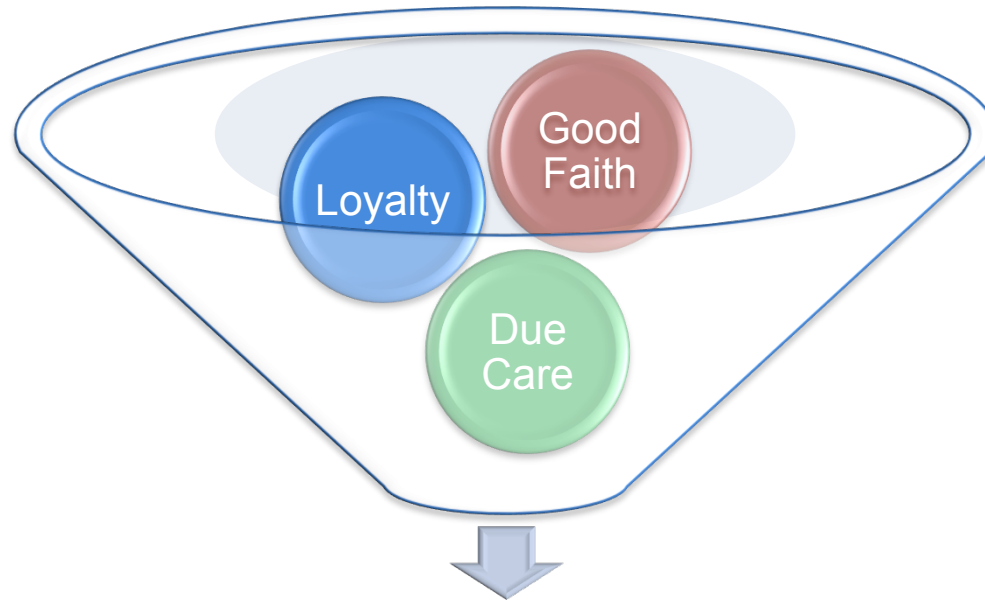
Good Faith

You must undertake your responsibilities in a state of mind consisting of:

Honesty in belief and purpose

Faithfulness to your duties and obligations

Absence of intent to defraud or to seek unconscionable advantage



Business Judgment Rule

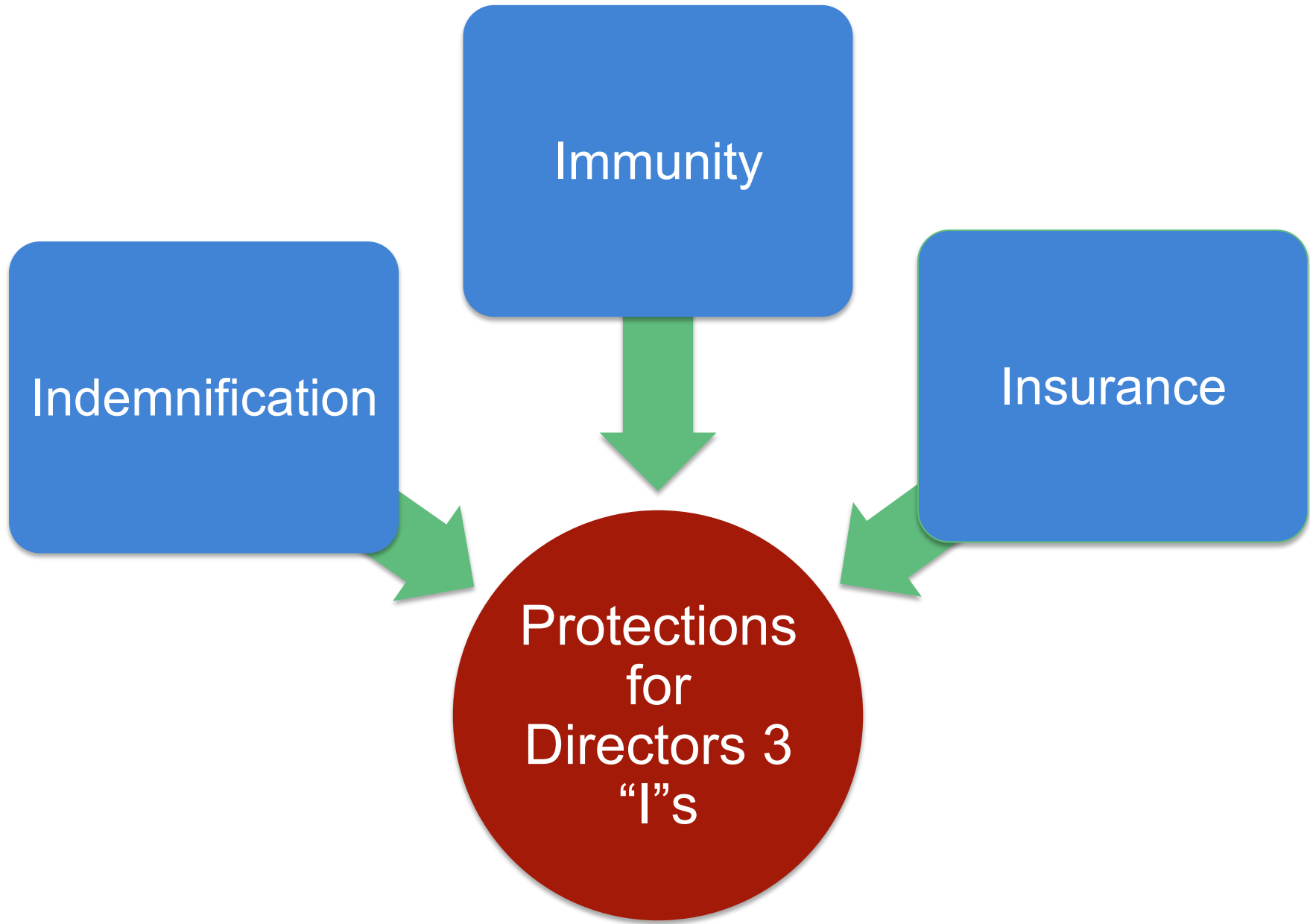
- ✧ BJR is a presumption that, in making a business decision, the directors of a company acted:
 - ✧ on an informed basis
 - ✧ in good faith, and
 - ✧ in the honest belief that the action taken was in the best interest of the company.

Immunity

Indemnification

Insurance

Protections
for
Directors 3
“I”s



Trustees are ultimately responsible for ensuring that any grants are in accordance with IRS guidance: “Expenditure Responsibility”

Pre-grant inquiry

- Before funds are allocated, due-diligence should be conducted to ensure that the grantee is capable of carrying out the charitable intent of grant

Written grant agreement

- A written grant agreement should be in place before funds are distributed, and should require grantee to repay money not used, to submit annual reports and maintain records, and to not use grant for impermissible activities

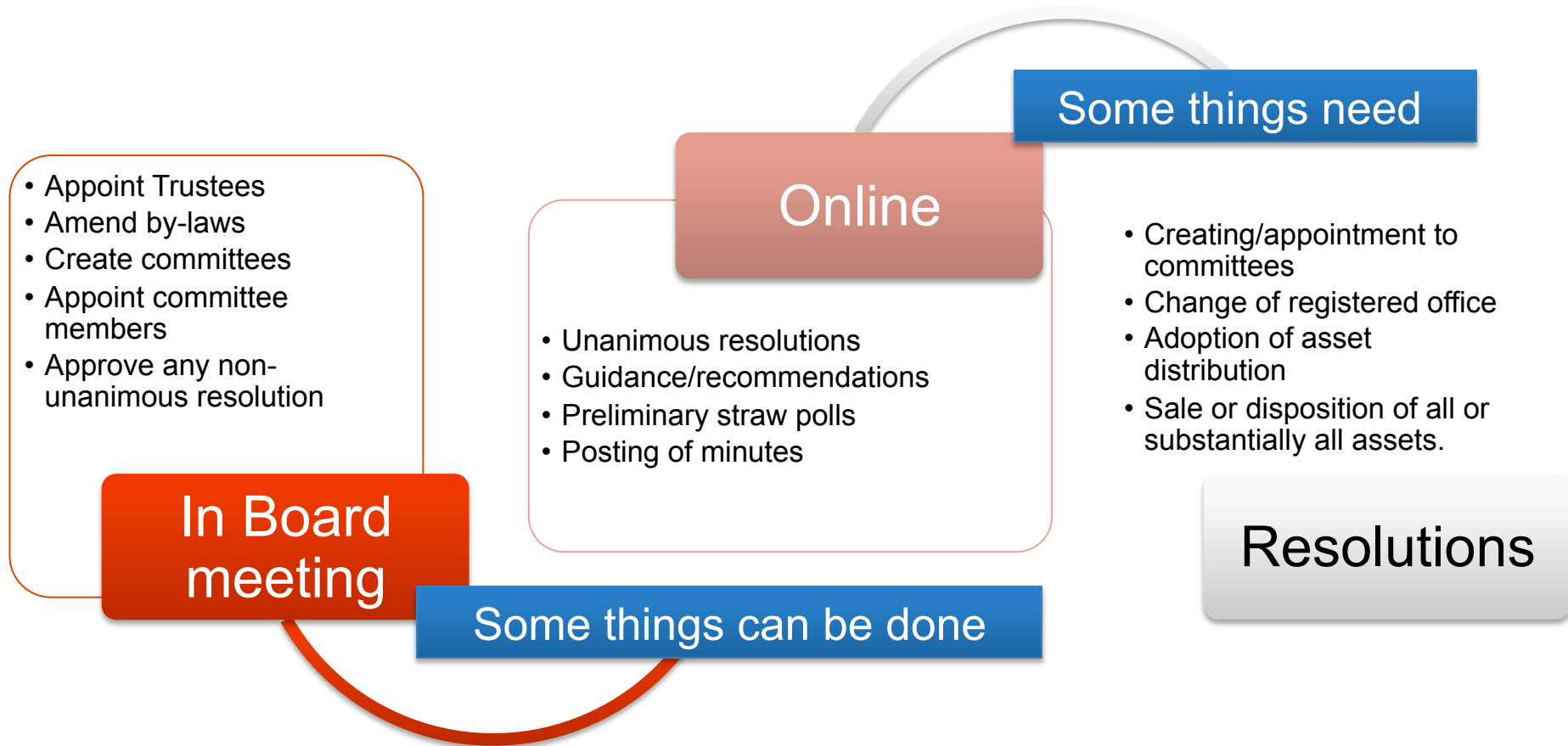
Action if funds are misused

- If it is discovered that grant funds are misused, a process needs to exist to try to recover misused funds and withhold further funds until problems fixed

Diligent record maintenance

- To ensure transparency and accountability, WMF should maintain records regarding grant making processes
- This includes pre-grant inquiry documents, grant agreement, documents provided by grantee, etc

Procedural Update



Appendix

The following slides are for information purposes only.

IMMUNITY: FLA. STAT. § 617.0834

A Trustee of a charitable organization has no liability unless:

- The Trustee breached one of their duties as a trustee; and
- The breach was:
 - A violation of criminal law;
 - A transaction where the trustee received an improper personal benefit; or
 - Reckless, an omission committed in bad faith, or willful and wanton disregard of human safety or property

Indemnification

Organization must pay:

- reasonable expenses for legal defense, in connection with a proceeding, if a director prevails in legal action.

may indemnify a director, if it determines that the director:

- acted in good faith;
- Believed the action was in the best interest of the organization; &
- (with respect to criminal cases) had no reasonable cause to believe his or her conduct was unlawful

No indemnification if:

- director violated criminal law and had no reasonable cause to believe conduct was lawful;
- willful misconduct by director in case brought by/in the right of the organization; or
- liability arose from a transaction where a director improperly received a personal benefit

Insurance D&O

- In place for Foundation trustees and officers as well as employees.
- Can pay liabilities directly
- Can sometimes cover liabilities that could not be indemnified.
- In most cases required to take advantage of statutory immunity.

Procedural Requirements under Florida Law

Actions that must occur at a meeting of the Board of Trustees:

Appoint Trustees to Vacant Board Positions¹

- Amend Bylaws²
- Adopt New Bylaws²
- Amend Articles of Incorporation²
- Create Committees³
- Appoint Committee Members³
- Any Resolution Where the Vote is Not Unanimous⁴

1. FLA. STAT. § 617.0809

2. FLA. STAT. § 617.1002

3. FLA. STAT. § 617.0825

4. FLA. STAT. § 617.0824

Procedural Requirements under Florida Law

- Meeting Recommended when Removing Officers⁵
- Meeting Recommended when Removing Trustees⁶
- Meeting Required to pass any resolution that is not unanimous.
- Any action taken outside of a regular meeting must be taken in the form of a Unanimous Written Consent.
 - In writing, unanimous (no abstentions, unless COI), effective as of date of last signature

5. FLA. STAT. § 617.0842

6. FLA. STAT. § 617.0808

Actions that Require a Resolution

- Creating committees and appointing members to committees¹
- Change of registered office or registered agent²
- Amendments to bylaws/articles of incorporation³
- Dissolving the corporation⁴
- Adoption of plan of distribution of assets⁵
- Sale, lease, exchange, or other disposition of all or substantially all property and assets⁶

1 FLA. STAT. § 617.0825

2 FLA. STAT. § 617.0502

3 FLA. STAT. § 617.1002

4 FLA. STAT. § 617.1402

5 FLA. STAT. § 617.1406

6 FLA. STAT. § 617.1202

Questions?