

## Orie Maharaj Family Foundation, Inc. (OMFF) Compensation of Nonprofit Board Members and Board Immunity Organizing Document

### **Non-Profit Officers and Directors Regulations:**

1) If officers and directors are directly compensated in any shape or form for their efforts on the board, they will lose their statutorily granted immunity, effective immediately. [Note, a Chief Executive Officer or President cannot be a board member at any point in time and will volunteeringly forfeit their position if done so. A President or CEO may be present during board meetings even though they cannot vote in board making decisions.]

2) If even one member of a board is “compensated,” as in the situation where a salaried executive director is allowed to serve as a voting member of the board, then it is possible that the presence of one compensated member could defeat the immunity for that member *and possibly for each and every remaining member of the board.* As such no paid director may serve on the board.

3) No members of OMFF board can be “compensated” in any way, other than for expenses on behalf of the organization.

4) No member of any OMFF board can be paid by the organization that it governs *for any activity.*

The board is responsible for overall policy and direction of the association, and delegates responsibility of day-to-day operations to the staff and committees. The board shall have up to 10, but not fewer than 2 members. The board receives no compensation other than reasonable expenses based on The Not For Profit Corporation Act of 1986 (hereinafter referred to as the “Act”), 805 ILCS 105/101.01 *et seq.*, defines “Board of Directors” as: The group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated. 805 ILCS 105/101.80(d).

Note: Section 108.70(b) of the Act states: (b) No director of a corporation organized under this Act or any predecessor Act for the purposes identified in items (14), (19), (21) and (22) of subsection (a) of Section 103.05 of this Act, and exempt or qualified for exemption from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, and no cause of action may be brought for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director, unless: *(1) such director earns in excess of \$0.00 per year from his duties as director, (note this is reflected in OMFF Bylaws as a modification to the Act) other than reimbursement for actual expenses; or (2) the act or omission involved willful or wanton conduct.* 805 ILCS 105/108.70(b) Section 108.70(b), as stated above, reflects Public **Act** 96-649 ("P.A. 96-649"), which went into effect January 1, 2010. Under P.A. 96-649, the Illinois legislature increased the amount of annual compensation a director may earn from \$5,000 to \$25,000. However, OMFF decided to omit this change and modify the amount to what is best suited for the organization, as such a director may earn up to \$0.00 before he/she may be held liable for damages resulting from a cause of action against the corporation. Meaning any amount will result in liability for damages resulting from a cause of action.

Pursuant to Section 108.05(c) of the Act: Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, *shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, notwithstanding the provisions of* Section 108.60 of this Act. 805 ILCS 105/108.05(c).

When compensation of board members is made permissible under the articles of incorporation and bylaws, it is important to consider the amount of compensation as it relates to statutory civil immunity. Generally, directors of a non-profit corporation have limited liability. However, where the director earns in excess of \$0.00 per year from his or her duties as director, a cause of action may be brought against the director for damages.

## **Immunity**

Accordingly, the following provisions likely grant civil immunity to a director of a non-profit corporation who is

“uncompensated” (receives less than \$25,000 per year):

(a) **No director or officer serving without compensation**, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, shall be liable, *and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct.* 805 ILCS 105/108.70(a).

( b) Except for willful and wanton conduct, **no volunteer board member serving without compensation**, other than reimbursement for actual expenses, of a corporation organized under this Act or any predecessor Act and exempt, or qualified for exemption, from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be liable, *and no action may be brought, for damages resulting from any action of the executive director concerning the false reporting of or intentional tampering with financial records of the organization, where the actions of the executive director result in legal action.* 805 ILCS 105/108.70(b-5).

(c) **No person who, without compensation** other than reimbursement for actual expenses, renders service to or for a corporation organized under this Act or any predecessor Act and exempt or qualified for exemption from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, *shall be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering such services*, unless the act or omission involved willful or wanton conduct. 805 ILCS 105/108.70(c).

To exempt a board of directors (not to mention those voluntarily contributing services) from liability under the Not For Profit Corporation Act, the following must be true:

1. The directors must serve without compensation;
2. The corporation must be organized under the Not For Profit Corporation Act;
3. The corporation must be exempt or qualify for exemption from taxation under Federal law; and
4. The conduct of the directors must not have been willful or wanton.

If a director/CEO's salary exceeds the limit, he or she will not enjoy the strong immunity granted to "uncompensated" directors. The other compensated trustees, to the extent their compensation remains below the limit, still enjoy statutory immunity. However, if anyone is "compensated" there is always the possibility of an argument that this defeats the statutory immunity for the entire board. There is no case law on this, but we maintain that it is a good argument and the reason why, to keep my client boards absolutely safe, as such there be no compensation of any kind for any nonprofit board member.

**EXEMPTION REQUIREMENTS:** To exempt a board from liability under this section, several prerequisites must be met: first, the directors must serve without compensation; second, the corporation must be organized under this Act; third, the corporation must be exempt from or qualify for exemption from taxation under federal law. *Robinson ex rel. Estate of Robinson v. LaCasa Grande Condominium Ass'n*, 204 Ill. App. 3d 853, 150 Ill. Dec. 148, 562 N.E.2d 678 (4 Dist. 1990). In order for a director to be immune from liability under the statute, he must be unpaid, the corporation must be organized under the Not for Profit Corporation Act, the corporation must be tax exempt under federal law, and the director's conduct must not be willful or wanton. *Schmitt v. Schmitt*, 165 F. Supp. 2d 789, 2001 U.S. Dist. LEXIS 15373 (N.D. Ill. 2001), *aff'd*, 324 F.3d 484 (7th Cir. 2003).