

Utah Code §16-6a-822. General Standards of Conduct for Directors and Officers.

(1) (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, in accordance with Subsection (2).

(b) An officer with discretionary authority shall discharge the officer's duties under that authority in accordance with Subsection (2).

(2) A director or an officer described in Subsection (1) shall discharge the director or officer's duties:

(a) in good faith;

(b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

(3) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within the person's professional or expert competence;

(c) religious authorities or ministers, priests, rabbis, or other persons:

(i) whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence; and

(ii) who the director or officer believes to be reliable and competent in the matters presented; or

(d) in the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(4) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (3) unwarranted.

(5) A director, regardless of title, may not be considered to be a trustee with respect to any property held or administered by the nonprofit corporation including property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) A director or officer is not liable to the nonprofit corporation, its members, or any conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or member, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:

(a) the director or officer has breached or failed to perform the duties of the office as set forth in this section; and

(b) the breach or failure to perform constitutes:

(i) willful misconduct; or

(ii) intentional infliction of harm on:

(A) the nonprofit corporation; or

(B) the members of the nonprofit corporation; or

(iii) gross negligence.

Utah Code §16-6a-902. Authority to Indemnify Directors.

(1) Except as provided in Subsection (4), a nonprofit corporation may indemnify an individual made a party to a proceeding because the individual is or was a director, against liability incurred in the proceeding if:

- (a) the individual's conduct was in good faith;
- (b) the individual reasonably believed that the individual's conduct was in, or not opposed to, the corporation's best interests; and
- (c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to any employee benefit plan for a purpose the director reasonably believed to be in or not opposed to the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A nonprofit corporation may not indemnify a director under this section:

- (a) in connection with a proceeding by or in the right of the nonprofit corporation in which the director was adjudged liable to the nonprofit corporation; or
- (b) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in the director's official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper personal benefit.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with the proceeding.

Utah Code §16-6a-903. Mandatory Indemnification of Directors.

(1) Unless limited by its bylaws, a nonprofit corporation shall indemnify a director described in Subsection (2) against reasonable expenses incurred by the director in connection with the proceeding or claim with respect to which the director has been successful.

(2) Subsection (1) applies to a director who was successful, on the merits or otherwise, in the defense of:

- (a) any proceeding to which the director was a party because the director is or was a director of the nonprofit corporation; or
- (b) any claim, issue, or matter in the proceeding, to which the director was a party because the director is or was a director of the nonprofit corporation.

Utah Code §16-6a-904. Advance of Expenses for Directors.

(1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding **in advance** of final disposition of the proceeding **if**:

(a) the director furnishes the nonprofit corporation a **written affirmation** of the director's good faith belief that the director has met the applicable standard of conduct described in Section **16-6a-902**;

(b) the director furnishes the nonprofit corporation a **written undertaking**, executed personally or on the director's behalf, to repay the advance, if it is ultimately determined that the director did not meet the standard of conduct; **and**

(c) **a determination is made** that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b):

(a) shall be an unlimited general obligation of the director;

(b) need not be secured; and

(c) may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section **16-6a-906**.

Utah Code §16-6a-906. Determination and Authorization of Indemnification of Directors.

(1) (a) A nonprofit corporation may not indemnify a director under Section **16-6a-902** unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section **16-6a-902**.

(b) A nonprofit corporation **may not advance expenses** to a director under Section **16-6a-904** **unless**:

(i) authorized in the specific case after the written affirmation and undertaking required by Subsections **16-6a-904**(1)(a) and (1)(b) are received; and

(ii) the determination required by Subsection **16-6a-904**(1)(c) has been made.

(2) (a) The determinations required by Subsection (1) shall be made:

(i) by the board of directors by a **majority vote of those present at a meeting at which a quorum is present if only those directors not parties to the proceeding are counted in satisfying the quorum**;

(ii) **if a quorum cannot be obtained under Subsection (2)(a)(i), by a majority vote of a committee of the board of directors**:

(A) designated by the board of directors; and

(B) consisting of two or more directors not parties to the proceeding; or

(iii) by persons listed in Subsection (3).

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(b) The directors who are parties to the proceeding may participate in the designation of directors for the committee described in Subsection (2)(a)(ii).

(3) (a) The determination required to be made by Subsection (1) shall be made by a person described in Subsection (3)(b) if:

(i) (A) a quorum cannot be obtained in accordance with Subsection (2)(a)(i);

and

(B) a committee cannot be established under Subsection (2)(a)(ii); or

(ii) even if a quorum is obtained or a committee is designated, a majority of the directors constituting the quorum or committee directs.

(b) **If a condition described in Subsection (3)(a)** is met, the determination required to be made by Subsection (1) shall be made:

(i) by independent legal counsel selected by:

(A) a vote of the board of directors or the committee in the manner specified in Subsection (2)(a)(i) or (ii); or

(B) if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or

(ii) by the voting members, but a voting member may not vote on the determination if the voting member is:

(A) a director; and

(B) at the time seeking indemnification.

(4) (a) Except as provided in Subsection (4)(b), an authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible.

(b) Notwithstanding Subsection (4)(a), if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected the independent legal counsel.