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WHAT PERSONAL LIABILITY DO DIRECTORS OF NONPROFIT CORPORATIONS HAVE?

Serving on the board of directors of a **nonprofit** corporation can be a rewarding endeavor; however, before doing so, it is important for directors to be aware of potential personal liability associated with such service. Generally, North Carolina law provides protection for members of Boards of Directors of nonprofit corporations. However, at times, such directors may be personally liable for acts arising from their duties while serving on the board. Consequently, it is important for directors to be aware of the extent to which they may be protected under law and the limitations of such protections.

Director Immunity

The North Carolina Nonprofit Act provides that an uncompensated director or officer of a **nonprofit** corporation is immune from civil liability for acts or failures to act arising out of service when he or she is acting reasonably, in the scope of his or her official duties, and in good faith. N.C.G.S § 55A-8-60. However, the statute expressly limits this immunity to the extent the director is covered by insurance. *Id.* If a corporation obtains directors and officers insurance, such directors would not be immune from civil liability, but insurance could likely cover litigation expenses and any liability flowing from such claims. Additionally, if the director received improper financial benefits or incurred the liability from operation of a motor vehicle, the director will not be immune from civil liability. *Id.*

Indemnification

Even if a director is civilly liable, the statute allows—and in some instances requires—nonprofits to indemnify such directors.

Mandatory Indemnification

When a director is successful in defending a proceeding that the director is a party to because he or she is or was a director of the corporation, North Carolina law requires the nonprofit corporation to indemnify the director. N.C.G.S § 55A-8-52. Notably, though, the statute permits a nonprofit corporation to limit this mandatory indemnification right in its articles of incorporation.

Permissive Indemnification

The statute also permits a nonprofit corporation to indemnify a director if the corporation determines that the director acted in good faith and reasonably believed that his or her actions were in the corporation's best interest—or in some cases, at least not opposed to the corporation's best interests. N.C.G.S § 55A-8-52. A corporation cannot indemnify a director in lawsuits brought by the nonprofit corporation if the director is held liable to the corporation or if the director received an improper

benefit from the nonprofit. Additionally, the nonprofit corporation may only pay a director's reasonable litigation expenses in cases brought by the corporation if the lawsuit concludes without a determination of liability. *Id.* There is no such limit in all other cases, and the nonprofit corporation may indemnify the director against all incurred liabilities. As with mandatory indemnification, a nonprofit corporation may limit the permissive indemnification right by incorporating such limitations into its articles of incorporation. *Id.*

JAH Can Help

The rules outlined here are complex, and your nonprofit corporation's articles of incorporation may alter and limit these rules accordingly. **The attorneys at JAH** are available to counsel you and navigate these and other complicated legal concepts to ensure that your nonprofit corporation is properly protected. **[Click here to contact a member of our Corporate Practice Group](#)** if you are in need of assistance.

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