

Practice 4B: Board Compensation

- Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation must be in compliance with charitable trust laws. The board's presiding officer and treasurer are never compensated for professional services.
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People serve on land trust boards as volunteers in a spirit of civic-minded service, contributing their time, talents and funds as they are able. Board members should not serve for any personal financial interest, or the interest of any firm or organization they may represent. While board members may be reimbursed for expenses (such as travel and lodging) incurred in attending board meetings and carrying out the land trust's business, additional direct compensation for land trust board members is virtually unheard of and is restricted by law in some states. Compensation of board members, either directly or indirectly via payment for services or contracts, leads to the risk that decisions will be made that are more in the interest of the compensated party than in the public interests the organization was established to serve. Direct or indirect compensation may also be construed as private inurement. This can jeopardize the land trust's tax-exempt status. In limited circumstances when the organization is seeking services that might be contracted out, a board member may be considered as a paid provider of these services. In these cases, the conflict of interest policy and policies on fiscal controls (such as bid requirements) should be carefully adhered to. Services provided by a board member should be offered at or below market rate and must not be in conflict with charitable trust or other laws. In all cases of providing compensation to a board member, the credibility of the land trust must be considered. The guidelines for charity accountability suggest that the board chair and the treasurer not be compensated for services either directly or indirectly and *Land Trust Standards and Practices* follows suit.

Possible Exception for Chief Staff Officers

A few organizations have given the status of member of the board of directors to the paid chief staff officer (usually called the executive director), as a way of recognizing a peer relationship. Nevertheless, it may not be advisable, and certainly is not common practice, to have the chief staff officer serve on the board. Some feel that a staff head who is on the board is likely to exercise controls that should more properly be the board's. It may also be difficult for the board to review the chief staff officer's performance, set salary or consider dismissal if necessary. On the other hand, placing the chief staff officer on the board may help create an atmosphere of equal partners working toward a common goal.

Reimbursement of Expenses

It is acceptable, and generally sound practice, to reimburse board members for expenses, such as travel, lodging and daycare arrangements, incurred in attending board meetings and carrying out the land trust's business. This makes it possible for organizations to recruit the most qualified board members, regardless of their financial means. Board members who are able and willing not to take reimbursement may consider their out-of-pocket expenses in the course of board service to be charitable contributions.

Board Members Paid to Render Professional Services

Land trusts frequently have board members—such as attorneys, landscape architects, financial planners, accountants, marketing or public relations specialists—who are asked to join the board in part so the land trust can benefit from their professional expertise. Such professionals can and should provide the organization with general advice in their areas of expertise, raise important issues that might otherwise go unrecognized, provide leads and information, and so forth.

Difficult questions arise, however, when the land trust wants to hire a board member to provide the trust with professional services, rendered as a consultant or part-time staff person. If the trust pays the board member for such services, it raises legal and public relations issues. Whether the board member is paid or not, the trust must consider whether hiring board members to do work for the land trust is good business practice.

The [Wise Giving Alliance](#) recommends “not more than one or 10% (whichever is greater) directly or indirectly compensated person(s) serving as voting member(s) of the board. Compensated members shall not serve as the board's chair or treasurer.” *Land Trust Standards and Practices* prohibits chair and treasurer compensation.

Disadvantages of retaining board members

Most nonprofit experts advise against having a board member perform professional activities—even on a voluntary basis—for which he would normally be paid. The dangers of hiring board members are many.

- Board members may find it difficult to appraise a business contract or generally to monitor professional services if they are reviewing the work of a fellow board member.
- The chief staff officer may find it awkward to review the performance of a professional service with a board member who has a special interest in it, since the board member can also influence the board's evaluation of the chief staff officer's performance.

- If unpaid, the “working” board member, like any unpaid consultant, may not give the time, attention and priority to the land trust’s work as he or she would give to other clients. Or such a board member may feel he deserves special consideration for the free work provided to the organization.
- The board may find it difficult to “fire” board members from their “jobs” if the work is unsatisfactory.
- It may lead to a perception in the community that there is self-dealing within the land trust board, that the land trust only does business with insiders or that the land trust is simply a tax-exempt arm of a board member’s business.
- In certain cases, it could lead to private inurement.

Perhaps most important, it may be difficult for all involved to distinguish the board member in his/her consulting role from his/her fiduciary (board member) role. This may cause the consulting board member to take on greater decision-making responsibility than is appropriate, subsuming the responsibility of the full board. And it may be very difficult for the board to treat the board member one minute as a peer decision maker and the next minute as a consultant, whose recommendations should be objectively evaluated the same way as any other expert the board might hire.

Arrangements for retaining board members

In spite of these difficulties, some land trusts use the professional services of some of their board members. Sometimes the professional expertise a land trust would like to have both on its board and in its work is available from only one person. Sometimes those who are willing to provide services below cost are found only among the highly committed members of the board. Sometimes the land trust may feel that a board member knows the land trust’s needs and work better than an outsider, or may feel most confident in the quality of his or her work.

The land trust and the board member should be very careful entering into such a relationship. When asking professionals to join the board, the land trust’s expectations should be clear. Some attorneys, for example, feel it would be too uncomfortable or too fraught with conflicts for them to serve on a land trust’s board and render it legal services, and prefer to serve the land trust solely in their professional capacity. When a board member is to perform services for the trust, all parties should try to be as clear as possible about the work to be performed and the expectations on both sides.

Many nonprofit organizations avoid or absolutely prohibit paying board members for services. If a land trust decides that it really is in the best interest of the land trust’s work to use the services of a board member, paying for those services has some advantages. The nature of the relationship is clearer, the terms are normally put in writing, and the burden on the board member to deliver timely and quality service to the land trust is clearer than if the work is pro bono.

Paying a board member for services raises questions of private inurement under the Internal Revenue Code and self-dealing or conflict of interest issues under state law, as discussed in practice 4A. The land trust should investigate the standards established by the statutes and legal decisions of its own state. The land trust also needs to make the decision in an open, deliberative process so it can defend itself against any public criticism. In general, the land trust should:

- **Be sure that the payment is reasonable.** The requirement in California's nonprofit law provides a good standard: that a more advantageous arrangement could not have been obtained with reasonable effort under the circumstances. Getting other bids or quotes on the same work or investigating hourly or daily rates for similar service can provide such information.
- **Be sure that the work in question furthers the organization's purposes as stated in its charter.**
- **Follow all land trust procedures,** such as land trust requirements for bids and contracts.
- **Have a written agreement** outlining the term, compensation and required deliverables, which is distributed to all board members.
- **Approve the hiring by a vote of the full board,** without the presence of the affected board member.

Under federal law, if a board member receives compensation in excess of fair market value, that board member and any organization leaders involved in approving the compensation may be subject to financial penalties. However, the compensation will be presumed by the IRS to be reasonable if: (1) it is approved by the board or a board committee in the compensated board member's absence; (2) the decision on the amount of compensation is based on reliable information about the fair market value rate for such services; and (3) the board or board committee documents the decision and basis for the amount of compensation in the minutes. This does not provide a guarantee against penalties because the IRS still can bring in data to show the compensation was not reasonable, but it does provide a measure of safety.

If the land trust finds itself using the services of a board member repeatedly, and the board member and the trust feel he or she can best serve the land trust in a professional capacity, then, absent compelling countervailing considerations, that board member should resign. He or she may be able to serve the land trust in some other capacity.

Links to Helpful Resources

- [Wise Giving Alliance](#) – part of the Better Business Bureau. The Alliance reports on nationally soliciting charitable organizations that are the subject of donor inquiries.

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