**Reducing the Risk of Liability**

Although lawsuits against board members of nonprofit corporations occur less frequently than those against board members of for-profit business corporations, they are not unknown. Recent widespread publicity and, in some cases, criminal convictions have highlighted the fiduciary role of board members and officers of nonprofit organizations.

It is possible that board members of a charitable/nonprofit corporation will find themselves sued as personal defendants in a lawsuit filed by an “outside third party” that has incurred some personal injury or financial loss as a result of dealings with the organization. To encourage citizens to serve as board members for charities, the law cloaks volunteer board members with qualified immunity. (See RCW 23B.17.030 and RCW 4.24.264) They cannot be sued for negligent acts. They may, however, be subject to lawsuits alleging that a loss was due to their gross negligence, willful or fraudulent acts.

NOTE – The IRS may also hold board members personally liable if the organization violates federal tax law. The most likely situation is the failure of the organization to perform mandatory payroll withholding.

Because there is some degree of risk, including the cost of defending a frivolous claim, board members should discuss with the organization’s legal counsel the prospect of purchasing Directors and Officers (D & O) liability insurance, and/or including indemnification provisions in the organization’s governing documents.

The organization should carry insurance appropriate to its activities (including, for example, general liability, errors and omission, automobile or malpractice) in amounts to meet its needs. The absence of appropriate insurance may cause an injured person to seek recourse from board members. If adequate insurance is in force, an injured person is less likely to seek damages from a board member.