

**PART 4**  
**STANDARDS OF CONDUCT**

■ **7-128-401. General standards of conduct for directors and officers.**

(1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(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.

(2) 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 such person's professional or expert competence;

(c) Religious authorities or ministers, priests, rabbis, or other persons 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 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.

(3) 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 (2) of this section unwarranted.

(4) A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.

(5) A director, regardless of title, shall not be deemed to be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the nonprofit corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

**Source:** L. 97: Entire article added, p. 698, § 3, effective July 1, 1998.

■ **7-128-402. Limitation of certain liabilities of directors and officers.**

(1) If so provided in the articles of incorporation, the nonprofit corporation shall eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director; except that any such provision shall

not eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any breach of the director's duty of loyalty to the nonprofit corporation or to its members, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, acts specified in section 7-128-403 or 7-128-501 (2), or any transaction from which the director directly or indirectly derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any act or omission occurring before the date when such provision becomes effective.

(2) No director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such director or officer was personally involved in the situation giving rise to the litigation or unless such director or officer committed a criminal offense in connection with such situation. The protection afforded in this subsection (2) shall not restrict other common law protections and rights that a director or officer may have. This subsection (2) shall not restrict the nonprofit corporation's right to eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director as provided in subsection (1) of this section.

**Source:** L. 97: Entire article added, p. 699, § 3, effective July 1, 1998. L. 98: (1) amended, p. 624, § 30, effective July 1.

■ **7-128-403. Liability of directors for unlawful distributions.**

(1) A director who votes for or assents to a distribution made in violation of section 7-133-101 or the articles of incorporation is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating said section or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-128-401. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each person who accepted the distribution knowing the distribution was made in violation of section 7-133-101 or the articles of incorporation, the amount of the contribution from such person being the amount of the distribution to that person that exceeds what could have been distributed to that person without violating section 7-133-101 or the articles of incorporation.

**Source:** L. 97: Entire article added, p. 699, § 3, effective July 1, 1998.