



Corporate Governance Glossary of Terms

Corporation is an artificial person created (chartered) under the laws of the state and in the case of banks, can be chartered under federal law. Corporations are empowered to own property, enter into contracts, sue and be sued as well as pay taxes. They are generally perpetual unless limited by corporate bylaws

A **Director** is an individual elected by the shareholders (owners) with whom **management** of the company is entrusted. The directors are responsible for determining the corporation's business strategy, major policies and procedures. They appoint and supervise **Officers** and oversee their performance, review the financial status of the corporation, preparing information for shareholders and government regulators. Directors assure that corporation is in compliance with a myriad of Federal, State and local laws. If the directors fail at this, they can be held personally liable. (It hits the director in his/her pocket book).

Officer is an individual, appointed by the Directors who are responsible for the day-to-day operations of the corporation.

An **Employee** is anyone who has agreed to be employed, under a contract of service, to work for some form of payment. This can include wages, salary, commission and piece rates.

Wrongful Act – any act which in the ordinary course will infringe upon the rights of another to his damage, unless it is done in exercise of an equal or superior right.

D&O Liability Insurance Policy – ‘claims made’ policy, which pays damages and defense expenses for claims based upon alleged ‘wrongful act(s)’ of people – Directors and Officers in the discharge of their duties in the respective positions. This is true of all D&O policies from Not-for-profits, Privately Held Firms, Financial Institutions or Publicly Traded Firms.

D&O Insured – Directors, Officers and usually the Corporation and sometimes Management and/or Employees, Committee members, Volunteers.

Employment Practices Liability Insurance Policy – ‘claims made’ policy-providing defense and damages from an alleged ‘Wrongful Act(s)’ stemming from Sexual Harassment, Discrimination or Wrongful Termination. It may be included within a D&O package like the Power Source or it may be a stand-alone contract.

EPLI Insured - the Corporation (because that is who you work for), Directors (that's who governs the Officers), Officers (who govern the Managers), Managers (who govern the employees) and sometimes employees (who interact with one another), contractors and third parties. An exposure exists for a wrongful act anyone who is acting on the corporation's behalf.

Fiduciary Liability- Claims made policy providing defense and indemnity for claims based upon wrongful acts as defined under ERISA and similar statutes. Often extend to employee benefit liability depending on the contract.

Fiduciary Liability Insured – The Plan Sponsor, Trustees and other Fiduciaries.

Plan Sponsor - Usually the Corporation under a sole sponsored plan or a Collective Bargaining Unit (Labor Union) under a multi-employer plan.

Plan Trustee – Those charged (like directors) determining the plan’s investment strategy, administration and major policies and procedures governed by the plan document.

Fiduciary – anyone working by or on behalf of a plan.

Immunity Statutes - Not-for-profit entities legislature enacted immunity statutes as respect non-compensated directors. Hoosiers are the best at helping their neighbors as volunteers. If you were a volunteer, donating your time gratis, you got immunity from civil litigation. Please keep in mind, this only applies to non-compensated directors for suits filed in Indiana Courts. It does not apply to Officers, Employees, Compensated Directors or the Entity becoming a defendant in a suit. It further, has no limitation on suits filed in Federal Court.

Corporate Indemnification - the company pays the defense expense (legal fees) and any damages charged against the Director. As respect for profit entities, the state enacted ‘enabling legislation’ (an ‘optional law’ this meant the corporate board had to adopt the practice beforehand) by enacting one of the broadest corporate indemnification statutes in 1986. The Act allowed corporate indemnification as long as the Director acted ‘in the best interest of the corporation’ and was ‘not willfully or wantonly negligent’. Please keep in mind this is applicable to Directors. No mention made of officers. Most firms have adopted this for Directors as well as officers.

The Law – Three Types

Natural Law – Moses and the 10 Commandments.

Common Law – based upon case and opinions rendered by judiciary (Judges making decisions) as distinct from legislative enactments (statutes). Business judgment rule is included.

Statutes – it is what we commonly refer to as ‘the law’, which is an act of the legislature, adopted pursuant to constitutional authority. Examples of this include the Federal Securities Acts of 1933 & 1934, the Civil Rights act of 1964, the Americans with Disabilities Act and the ERISA Act of 1974

Duties of Directors. Easy to remember! – ‘OLD’. It comes from Common Law (handed down by judges).

Obedience - Loyalty – Diligence

EPLI – Main Coverage Points – Wrongful Termination, Discrimination, Sexual Harassment.

Securities Laws - The principal laws governing the initial sale and subsequent trading of securities (stocks) are the Securities Act of 1933 and The Securities Exchange Act of 1934. The Securities and Exchange Commission (SEC) regulates it. It was founded during the 'new deal' of the Roosevelt administration and, if you take anything away from this presentation –

Securities Act of 1933 – Governs Initial Public Stock Offerings (IPO's). Ensures that complete and reliable information is available to investors in an IPO. It required the filing of a **Registration Statement**.

Registration Statement - a document, which provides each prospective shareholder with a Prospectus, and a second document, which is some additional supporting data, which is on public inspection at the SEC. It explains the company's operation – the product it manufactures or the services it provides, historical financial results, intention for the use of the capital (your money) and a projection (what you can expect from the company in return for your investment).

Securities Exchange Act of 1934 -Governs the trading of Public Securities. Some of the governing legal principals include Sections 10b and 10b-5. Concerns financial reporting (10-K, 10-Q and other documents) of public companies for the benefit of shareholders, lenders and regulators. It relates to the Duty of Obedience for the directors following the law.

Private Securities Litigation Reform Act of 1995. Its intent was to fill some perceived gaps in the existing Federal securities laws. The Act allowed for a company so have a 'safe harbor' from litigation through the use of forward-looking statements. It is basically 'fluff' with a disclaimer ('buyer beware'). A director can add his/her opinions or 'fluff' to his statement. If the opinion or 'fluff' was based upon assumptions or reasons the defendant knew to be accurate then there is a safe harbor; if he/she knew to be inaccurate, then there is a cause of action.