

## **BOARD ROLES, RIGHTS AND RESPONSIBILITIES**

### **I. Introduction**

- A. **Types of Nonprofits**
  - 1. Corporations, Associations
  - 2. 501(c)(3)
  - 3. Member/Nonmember
- B. How a nonprofit differs from a for-profit business

### **II. Roles of Board Members**

- A. Strategic Planning and Evaluation
- B. Personnel
- C. Board operations
- D. Financial recordkeeping
- E. Fundraising activities
- F. Community relations

### **III. Rights of Board Members**

- A. Access to Records, Advisors, Staff
- B. Right to Engage Advisors
- C. Right to rely on info from staff, advisors, committees

### **IV. Responsibilities of Board Members**

- A. Duty of Care
- B. Duty of Loyalty
- C. Duty of Obedience

### **V. Personal Liability of Board Members**

- A. No liability if act in accordance with Duty of Care, Loyalty & Obedience
- B. Qualified Director
- C. Exceptions to "No Liability"
- D. Limitations on personal liability through articles
- E. Indemnification
- F. Insurance

### **VI. Other Issues**

- A. Open Records/Open Meetings
- B. Lobbying and Political Activity
- C. Restrictions on Use of Federal Funds by Religious Organizations

### **VII. Resources**

## BOARD ROLES, RIGHTS AND RESPONSIBILITIES

### I. Introduction

#### A. Types of Nonprofits

1. Corporations, Associations
2. Tax Exempt Status
3. Member/Nonmember corporation (Board members v. “members”)

#### B. How a nonprofit organization differs from a for-profit business

1. Public Mission v. Private Gain
2. Responsibilities to community and public v. shareholders
3. Volunteer board
4. “Fund balance” versus “profit”
  - a. Commerciality Doctrine—can lose tax exempt status if business of organization looks too much like “normal” business (YMCA)
  - b. Unrelated Business Income: Must pay tax on income from a trade or business regularly carried by an organization and not substantially related to furtherance of the organization’s exempt purpose; if have too much UBI, could lose 501(c)(3) status; there’s no clear guideline on how much is too much.

## II. Roles of Board Members

### A. General oversight, Planning and Evaluation:

1. Oversee management of organization,
2. Keeping organization focused on its mission,
3. Planning- strategic and business planning
4. Understand organization's programs and resources,
5. Understand organization's staffing
6. Understand Articles, Bylaws and other documents and laws governing the organizations

### B. Personnel

1. Hire and evaluate executive director; executive director deals with staff
2. Adopt personnel policies
3. Set salary scales, fringe benefits
4. Delineate roles of board and staff
5. Adopt policies re: use of volunteers, independent contractors

### C. Board operations

1. Recruit board members
2. Active participation:
  - (1) attend board meetings,
  - (2) read materials
3. Board manual (articles, bylaws, meeting minutes, financial reports)
4. Board trainings

### D. Financial recordkeeping and oversight

1. Adopt internal controls policy
2. Adopt budget
3. Review monthly and year-end financial statements
4. Make sure payroll taxes, workers comp are paid
5. Make sure state and federal tax returns are filed
6. Adopt investment policy for excess cash
7. Make sure insurance policies are in place
8. Track "unrelated business income"

### E. Fundraising activities (participate in fundraising activities, make sure organization remains solvent)

### F. Community relations: talk up organization at meetings, come to special events

### III. Rights of Board Members

#### A. Access to Information:

1. Management,
2. Internal Information,
3. Books and Records;
4. Organization's Advisors (attorney, auditor)

#### B. Reliance.

1. Right to Engage Outside Advisors;
2. OK to rely on information, opinions, reports or statements of *staff or outside advisors (lawyers, accountants, etc.)* if director reasonably believes person presenting information is reliable, information is within person's area of competency.
3. Right to Rely on reports of *Board Committees* of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; however, the creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with this standard of conduct.
4. No right of reliance if director has knowledge that makes such reliance unwarranted
5. While it's OK to rely on others, you cannot simply rubber-stamp recommendations of others; rather, you must make your own independent decisions. You must conduct reasonable inquiries to be sure you get sufficient information to carry out your responsibilities.

#### IV. Responsibilities of Board Members

##### A. Duty of Care (ORS 65.357)

1. *Act in good faith, with due care, with reasonable belief that action is in best interest of organization*
2. Deal openly, honestly, and fairly.
3. You must actively participate by attending meetings, evaluating reports, reading meeting minutes and evaluating the performance of the Executive Director. Be diligent, attentive, and familiar with all relevant materials
  - a. Missing meetings is no excuse
  - b. Active and Informed Participation—review information before meetings, ask questions at meetings
4. While it's OK to rely on others, directors cannot simply rubber-stamp recommendations of others; rather, you must make your own independent decisions. You must conduct reasonable inquiries to be sure you get sufficient information to carry out your responsibilities.
5. Ensure that the corporation is solvent, that adequate funds are available for corporate obligations,
6. Ensure that programs are run reasonably and effectively, and are in accordance with the organization's mission.
7. *You don't have to be right all the time. You do have to act in good faith, with due care, in an informed manner and in a manner you reasonably believe is in the best interest of the organization.*

## Responsibilities of Board Members (continued)

### B. Duty of Loyalty

1. *Put the interests of the organization first.*
2. Avoid *Conflicts of Interest* (ORS 65.361):
  - a. *What is a Conflict of Interest?* A conflict of interest transaction is a transaction with the Corporation in which a director of the corporation has either a direct interest (such as a financial interest) or an indirect interest.
    - (1) A director has an indirect interest if either (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction, or (2) another entity of which the director is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the Board of the corporation.
    - (2) While the statute does not say so, you should consider whether matters involving friends, relatives should also be included.
  - b. *Procedure to Follow:* A transaction in which a director has a conflict of interest may be approved by the Board if the material facts of the transaction and the director's interest are disclosed or known to the Board, and the transaction is in the best interest of the corporation.
    - (1) The transaction must be approved by a majority vote of the directors on the Board who have no direct or indirect interest in the transaction, even if less than a quorum.
    - (2) The director who has a conflict should (a) disclose the material facts, (b) disclose what the director's interest is that creates the conflict, and (c) abstain from participating in the discussion and vote.
    - (3) However, the presence of, or a vote cast by, a director with a conflict of interest does not affect the validity of the vote, if it was fair to the corporation at the time it was entered into. [It is not advisable to rely on this standard. Follow the "disclose and don't vote" procedure.]
    - (4) Minutes should reflect disclosure, that there was discussion re: why transaction is in best interests of corp., abstention and who voted and how they voted
  - c. The usual remedy for breach is to require the director to restore the corporation to the position it was in before the violation.
  - d. *Have a written "conflicts of interest" policy*—define what constitutes a conflict of interest, set out the procedure to follow in the event of a conflict,

and state what happens in the event of a breach of the policy.

3. *Maintain Confidentiality of Information*-- Treat as confidential all matters involving the corporation until there has been a general public disclosure, unless and until the information is a matter of public record or common knowledge
4. *Don't exploit corporate opportunity* A director may not engage in or benefit from a business opportunity that is available to and suitable for the corporation unless the corporation decides not to engage in the business opportunity and the conflicts of interest procedures are followed.
5. *No material profit*
  - a. **No Private Inurement.** Can't use corporate assets for private gain.
  - b. **Loans to Directors Prohibited.** The Corporation shall not make a loan to or guarantee an obligation of, or for the benefit of, any director or officer of the Corporation, except as specifically allowed by law.
  - c. **No Excess Benefit Transactions.** Transactions where a "disqualified person" (that is, a person who within past 5 yrs has been in a position to exercise substantial influence over organization (directors, president/CEO, treasurer/CFO, certain family members of these officers; possibly founder, substantial contributor) receives unreasonable compensation.

## Responsibilities of Board Members (continued)

### C. Duty of Obedience:

1. This is the duty to follow the governing documents of the organization and to carry out the mission of the organization.
2. You must make sure that there is full compliance with state and federal laws.
  - a. IRC § 501(c)(3) and exemption letter (e.g., *lobbying restrictions*)
  - b. ORS Chapter 65 (nonprofit corporations)
  - c. ORS Chapter 128 (Attorney General oversight of nonprofits)
  - d. Articles of Incorporation
  - e. Bylaws
  - f. Grants and contracts
    - (1) restricted funds
    - (2) procurement requirements
    - (3) nondiscrimination/affirmative action
    - (4) reporting requirements
    - (5) financial recordkeeping requirements (OMB A-110, A-122, A-133)
3. Maintain and update the Articles of Incorporation and the Bylaws.
4. Keep minutes of board meetings.
5. Approve the annual budget
6. Employ an independent accountant for an annual financial report.
7. Receive and review financial reports
8. Appoint officers;
9. Hire, oversee, and evaluate the CEO; if necessary, discharge the CEO. Let the CEO deal with the staff.
10. ensure that donor restrictions are observed and that solicitation activities are responsible.

## V. Personal Liability of Board Members

- A. *If a director acts in accordance with the duty of care and the duty of loyalty, the director will not be personally liable to the corporation or to anyone else.*
1. Have written policies, with associated trainings, for conflict of interest, workplace and employment discrimination
  2. Have Internal Controls covering financial practices, and have an annual audit
  3. Have Personnel Policies and Regular Staff Evaluations
  4. Review Financial Statements
- B. **Qualified Directors.** If a director is a “*qualified director*” (a director who is unpaid, except for reimbursement of reasonable expenses) and the organization is a 501(c)(3) organization, then the director is only personally liable for *gross negligence or intentional acts*, not for simple negligence (ORS 65.369)
- C. **Exceptions to “No Liability”**
1. Excess Benefits—if a “disqualified person” (that is, a person who within past 5 yrs has been in a position to exercise substantial influence over organization (directors, president/CEO, treasurer/CFO, certain family members of these officers; possibly founder, substantial contributor) receives unreasonable compensation, then any director agreeing to such compensation can be fined 10% of the excess benefit, if the director *knowingly and willfully participated in the transaction, and had no reasonable cause for approving it.*
  2. Failure of organization to pay Payroll Taxes or Workers’ Compensation taxes
  3. Loans to Directors (these are absolutely prohibited)
  4. Lobbying-- if organization didn’t make lobbying election, directors who approve expenditures knowing they would likely result in loss of exempt status are liable for a tax = 5% of lobbying expenditures
  5. ERISA Trustees
  6. Agreement to be personally liable: A director may agree to be personally liable, either
    - a. willingly (e.g., by signing a loan guaranty for the corporation), or
    - b. unwillingly (e.g., by failing to indicate on a signature line in a document that the director is signing “as agent for the corporation”).

**D. Limitation of Personal Liability in Articles of Incorporation:**

The Articles can eliminate or limit the personal liability of a director to the organization or its members, except for:

1. Acts occurring prior to the adoption of the provision;
2. A breach of the director's duty of loyalty.
3. An act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law
4. A loan to the director or an unlawful distribution
5. Any transaction from which the director derived an improper personal benefit.

**E. Indemnification**

1. Indemnification is an agreement to pay a director for legal fees, damages, and other costs the director must pay because of actions the director took as a director (for example, if the director is sued in court, the corporation may indemnify the director for legal fees and the amount of the judgment).
2. The articles of incorporation or bylaws can allow for indemnification of a director for acts other than those set out in ¶ D(1) through D(5) above.
3. Even if not in the articles or bylaws, the corporation *may* indemnify a director named in a lawsuit if the director acted in good faith and reasonably believed the action was in the best interest of the corporation. The court or the Board must authorize such indemnification, after giving notice to the Attorney General.
4. Unless the Articles of Incorporation state otherwise, the corporation *must* indemnify a director who successfully defends an action brought against the director as a director. (ORS 65.394)
5. Even if a director is entitled to indemnification, a nonprofit corporation may not have the financial resources to bestow it. As a result, directors should plan for this possibility beforehand.

**F. Insurance**

1. Directors and Officers Liability Insurance (purchased by the organization)
2. Individual's insurance coverage: Generally, a director can obtain an individual umbrella liability policy if directors' and officers' liability insurance is not available through the corporation. We recommend that a prospective director discuss this issue with his or her insurance agent.
3. Limitations of Insurance. Policies may not cover gross negligence, or the maximum coverage amount may be insufficient to protect the director adequately. What are the limits of coverage, what is the deductible, are any co-payments required? Typical exclusions from coverage include fines, penalties, punitive damages, employment claims, ERISA claims, libel and slander, and intentional conduct such as fraud, dishonesty or criminal conduct. Endorsements may be available to cover staff, volunteers and employment discrimination.

## VI. Other Issues

### A. Open Meetings Law/Open Records Law

1. Oregon Statutes inapplicable unless organization acting as government
2. Federal law requires disclosure of past 3 yrs' 990 and 501c3 application and supporting materials

### B. Lobbying and Political Activity

1. Lobbying (aka "Legislative Activities") = working to pass a piece of legislation.
  - a. Some lobbying ok, but too much risks loss of 501(c)(3) tax exempt status
  - b. Exceptions:
    1. nonpartisan public policy educational action (eg, full analysis of pros and cons of legislative proposal OK, even if analysis comes to conclusion on the merits of the proposal),
    2. providing testimony and advice upon written request
    3. "self-defense communications": appearing before or communicating with legislative body about decision affecting the organization
    4. legislation of direct interest to the organization: communications between organization and its members about legislation of direct interest to the organization, provided communications don't encourage members to either influence legislation or encourage nonmembers to influence legislation
2. **Political Activity = working to elect a candidate to office or to promote a political party** (includes contributions and public statements); *absolutely prohibited*

### C. How the Sarbanes Oxley Act of 2002 Applies to Nonprofits

1. It is a crime to knowingly alter, falsify or destroy documents with the intent to obstruct a governmental or official investigation. Punishable by fine and/or imprisonment. Document destruction is a process that should be monitored and carefully administered; policies on document retention can provide protection.
2. Whistleblower Protection- it is a crime to knowingly retaliate including by interfering with their lawful employment or livelihood, against any person for providing truthful information to a law enforcement officer relating to the commission or possible commission of a Federal offence. Punishable by fine and/or imprisonment.

### D. Restrictions on Religious Activity if Receiving Federal Funds

3. can't engage in inherently religious activity (worship, religious instruction, proselytization) with federal funds;
4. such activities must be offered separately, in time or location, and participation must be voluntary.

5. can use space in its facility to offer federally funded activities, without removing religious symbols
6. organization retains its authority over its internal governance, and may retain religious terms in its name, select its board members on a religious basis, and include religious references in its mission statement and governing documents
7. cannot discriminate against a program beneficiary on basis of religion.

## VII. Resources

The Oregon Nonprofit Corporation Handbook (4<sup>th</sup> Edition, published by Technical Assistance for Community Services (TACS) (phone 503-239-4001). [www.tacs.org](http://www.tacs.org)

CompassPoint Nonprofit Services (phone: 415.541.9000); <http://www.boardcafe.org/>

Risk Management Resource Center: <http://eriskcenter.org/>

Nonprofit Risk Management Center: <http://nonprofitrisk.org/>; (202) 785-3891

Internal Revenue Service: [www.irs.gov](http://www.irs.gov)

Community Development Law Center: 503-471-1180 [www.cdclweb.org](http://www.cdclweb.org)

Oregon Nonprofit Association: new membership organization- [www.ornonprofits.org](http://www.ornonprofits.org)

## **Board & Staff Roles in Financial Management**

Neighborhood Partnership Fund  
November 13, 2008

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## **Board Financial Oversight**

- What are you looking for?
- What are the signs of financial health and strong financial management?

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## **Key Financial Goals**

- Achieve mission
- Liquidity: have cash when needed
- Solvency: build positive net worth
- Compliance: with restrictions/requirements

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### **Healthy Nonprofit Needs**

- **Positive net income**
- **Sufficient Net Assets (equity) to withstand adversity and permit innovation/expansion**
- **Strong cash position**
- **Ability to achieve and document compliance**

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### **Affordable Housing Oversight Challenges??**

- **Multiple lines of business**
- **Multiple entities**
- **Multiple compliance authorities**

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### **Multiple Lines of Business**

- **Real estate development**
- **Property & asset management**
- **Home sales**
- **Resident services**
- **Other services**

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### **Multiple Entities**

- Core nonprofit organization
- Single asset nonprofits – HUD 202 or 811 projects, LIHPRA
- LIHTC (Low Income Housing Tax Credit) – for-profit entities

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### **Multiple Compliance Authorities**

- GAAP – Generally Accepted Accounting Principles
- IRS
- Funding Source Requirements
  - OMB Circulars A-110, A-122, A-133
  - Funding contracts

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### **Financial Oversight Roles???**

- Board of Directors?
  
- Executive Director?

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### **Board Role**

- **Approve annual budget**
- **Approve asset purchases & debt**
- **Understand financial condition**
- **Ensure sound management**
- **Select and communicate with auditor**

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### **Executive Director Roles**

- **Select & evaluate chief financial officer/fiscal manager**
- **Obtain timely, useful financial reports**
- **Understand financial condition**
- **Investigate unexpected results**
- **Recommend strategies to Board**

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### **Key Tools**

- **Comprehensive operating budget**
- **Accounting records**
- **Financial reports**
- **Annual audit**
- **Fiscal controls**

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## Comprehensive Budget

- Reflects multiple lines of business
- Reflects funding restrictions
- Reflects impact of transactions with multiple entities used for housing development

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Sample Functional Budget

EXPENSES	Monthly		TOTAL ADMIN		F.A. PROG. A.		FROG. B.		FROG. C.		FROG. D.	
	Positions	Salaries	Salaries	Benefits								
Executive Director	1	1	3000	12	36000	27000	9000	0	0	0	0	0
Facilities Manager	1	1	2500	12	30000	27800	0	0	0	0	0	0
Program Director	1	1	2500	12	30000	0	0	7500	7500	7500	0	0
Prog. A & B Supervisor	1	1	2000	12	24000	0	0	12000	12000	0	0	0
Prog. C Supervisor	1	0.25	2100	12	25200	0	0	0	0	9450	9450	0
Class Manager	4	1	1800	12	21600	0	0	43200	43200	0	0	21600
Secretary	3	1	1500	9	18000	0	0	0	0	13500	13500	0
Child/Facilitator	7	0.5	1200	9	11700	2125	2125	0	0	0	0	5350
<b>Subtotal: Salaries</b>					<b>273100</b>	<b>37325</b>	<b>11925</b>	<b>62700</b>	<b>14800</b>	<b>30450</b>	<b>57900</b>	
Payroll Taxes (7.5%)					20482	2819	895	4702	1110	2284	4343	2337
Class Room (15%)					25563	3267	1782	9405	2190	4568	6955	
<b>Subtotal: Personnel</b>					<b>324145</b>	<b>73311</b>	<b>13702</b>	<b>82807</b>	<b>17100</b>	<b>35292</b>	<b>74198</b>	
Professional Services					10000	4000	8000	1000	500	500	5000	
Classroom					40000	15000	30000	10000	5000	5000	20000	
Supplies					10000	5000	10000	5000	2000	2000	20000	
Transportation					4000	2000	4000	0	2000	2000	4000	
Other Expenses					60000	30000	120000	20000	20000	80000	100000	
<b>Subtotal: Other</b>					<b>116000</b>	<b>67000</b>	<b>136000</b>	<b>37000</b>	<b>29000</b>	<b>100000</b>	<b>124000</b>	
<b>Subtotal: All Other</b>					<b>0</b>	<b>49700</b>	<b>8000</b>	<b>21107</b>	<b>21100</b>	<b>12400</b>	<b>23174</b>	
<b>Subtotal: All Expenses</b>					<b>440145</b>	<b>123011</b>	<b>21702</b>	<b>112807</b>	<b>36600</b>	<b>47692</b>	<b>198198</b>	
<b>Subtotal: All Expenses</b>					<b>440145</b>	<b>123011</b>	<b>21702</b>	<b>112807</b>	<b>36600</b>	<b>47692</b>	<b>198198</b>	
<b>Subtotal: All Expenses</b>					<b>0</b>	<b>49700</b>	<b>8000</b>	<b>21107</b>	<b>21100</b>	<b>12400</b>	<b>23174</b>	

## Financial Impact ??

- Housing Development
- Rental Housing Operation
- Home sales
- Resident Services
- Other Services

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### **Directly Owned Rental**

- Debt, acquisition, and development costs recorded on the core nonprofit's books
- Profit/loss from operation directly impacts core org's net income
- Cash flow from property directly impacts core nonprofit's cash
- "Developer Fee" is usually debt not income

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### **Nonprofit Single Asset Entity**

- Property is asset of the separate entity
- Debt is debt of the separate entity
- Profit/loss from operation impacts the net worth of the separate entity, not the core nonprofit

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### **Nonprofit Single Asset Entity**

- Property management, asset management, resident services fees may be paid to the core entity
- Fees are expense of the separate entity and income to the core nonprofit
- Payment of fees results in cash to core entity

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### Single Asset Entity

- **Developer Fee is part of the cost of the asset recorded on the separate entity's books**
- **Payment of Developer Fee increases debt of the separate entity**
- **Developer Fee is income to the core nonprofit**

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### LIHTC Entities

- **99%+ owned by investors**
- **Core Nonprofit is General Partner with less than 1% ownership**
- **Property recorded as asset on the LIHTC books**
- **Debt, acquisition, and development costs recorded on the LIHTC books**

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### LIHTC

- **In the LIHTC  
assets – liabilities = owner's equity**
- **Core nonprofit records its minority interest in the equity of the LIHTC entity as an asset on the nonprofit's books**

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### **LIHTC Developer Fees**

- **Developer fee is part of the cost of developing the property – recorded on the LIHTC books as an asset**
- **Obligation to pay the Developer Fee is recorded on the LIHTC books as a liability**

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### **LIHTC Dev. Fee Impact**

- **Developer Fee from LIHTC is income to the core nonprofit**
- **When LIHTC pays the Developer Fee, nonprofit receives cash**
- **When LIHTC defers payment of Developer Fee, nonprofit records receivable as an asset**

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### **LIHTC - Operations Impact**

- **LIHTC operating profit/loss increases/decreases the equity of the LIHTC**
- **Nonprofit records minority share of the LIHTC net income/loss as income or loss – impacts nonprofit net income**

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### **LIHTC Cash Flow Impact**

- **LIHTC net cash flow impacts ability to pay Deferred Developer Fees or other Note Payable to the core nonprofit**
- **Core nonprofit may be required to contribute cash to LIHTC if severe cash flow problems persist**

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### **LIHTC Compliance Risks**

- **Nonprofit general partner responsible for compliance**
- **For profit partners are at risk for losing tax credits if project not managed properly**

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### **Longer Term Impact**

**Poor financial performance by either directly owned and separate entity properties may damage the credibility of the core nonprofit and reduce opportunities for future development**

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### **Board Info Needs**

**Evaluate financial health:**

- **Cash position**
- **Net assets**
- **Risks and opportunities**

**Evaluate management performance**

- **Progress toward targets**
- **Compliance**

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### **Management Info Needs**

- **Financial health**
- **Compliance**
- **Progress toward targets**
- **Cost center performance**
- **Risks and opportunities**

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### **Financial Health Info**

- **GAAP financial statements**
- **Project financial reports – cash flow**
- **Trend analysis**

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## Happy GAAP Financial Story!

In the beginning:

**Assets – Liabilities = Net Assets**

Then . . .

**Revenue – Expenses = Net Income**

The end:

**Assets – Liabilities = greater Net Assets**

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## Sad GAAP Financial Story

In the beginning . .

**Assets – Liabilities = Net Assets**

Then . . .

**Revenues – Expenses = Net Loss**

The end . .

**Assets – Liabilities = reduced Net Assets**

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## GAAP Story Tools

- Balance Sheet
- Statement of Activities
- Statement of Functional Expenses
- Statement of Cash Flows

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## Balance Sheet

- Assets, Liabilities, and Net Assets
- At one moment in time or comparing two moments in time
- Also called Statement of Financial Position
- Consolidated version – presents assets, liabilities, and net assets of multiple entities as if they were one entity

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The image shows a balance sheet table with multiple columns and rows of text. The text is too small to read clearly, but it appears to be a standard financial statement layout. At the bottom of the table, the email address 'kay@kaysohlconsulting.net' is visible.

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## Statement of Activities

- Revenues, Expenses, and Net Income
- Net Income also called “increase/decrease in Net Assets”
- Reports on activity over a specified time period, usually current month & yr-to-date
- Compare actual revenues and expenses to budget

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### **Consolidation**

- **Old GAAP rules** – require consolidation when one entity has both control and economic interest in other entities – did not require consolidation of LITHC entities with core nonprofit
- **New GAAP rules** – EITF 04-5 – may require consolidation of LITHC entities with core nonprofit

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**Financial oversight of housing development and asset management requires focus on Cash Flow that goes beyond the info provided by GAAP financial statements**

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### **Happy Cash Flow Story**

- **Core nonprofit** collects cash from multiple entities for **Developer fees, accrued interest, resident service fees, and asset management fees.**
- **Homes sell quickly** and proceeds fully cover all debt incurred plus some additional cash
- **Payment is received quickly** on reimbursement based contracts

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### **Sad Cash Flow Story**

- **Nonprofit must provide asset management services but is not entitled to any fees**
- **LIHTC waterfall goes dry - no cash available for paying debt or fees to core nonprofit- or core required to contribute cash**
- **Home inventory moves very slowly**

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### **Cash Flow Story Tools**

- **Property Pro Forma**
  
- **Property Cash Flow Reports**

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### **Property Cash Flow**

- **Lenders/investors focus on property cash flows –focus attention on:**
  - Debt service coverage
  - Contributions to reserves
- **Core nonprofit focuses on**
  - Keeping lenders/investors happy
  - Cash available for payment to core entity

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**How do Boards and Executive Directors know financial information is reliable????**

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**Independent Audits**

- Nonprofit engages CPA to conduct independent audit
- Auditor determines whether financial statements provide fair presentation of the financial condition of the nonprofit within the standards of GAAP
- Auditor reports on compliance with funding requirements

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**A-133 Audits**

- Include all standard independent audit procedures and reports
- Require **additional testing and reporting** on compliance with federal funds requirements
- Include **findings on compliance and questioned costs**
- **Nonprofit responds to findings** and describes corrective actions undertaken

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## SAS 112

- **Statement of Auditing Standards - effective for audits for years beginning after 2006**
- **Requires more rigorous analysis of risks of misstatement and design of audit procedures to test for significant risks**
- **Requires test of controls even when controls are deemed inadequate**

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## Impact of SAS 112

- Increased reporting of **significant deficiencies** or **material weaknesses** in internal control
- Increased auditor concern about **independence** – reluctance to perform audits for clients lacking sufficient expertise to form independent judgments about proposed adjustments

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## More SAS 112 Impact

- **Higher audit fees**
- **More emphasis on auditor communication with Board of Directors**

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**Steps to Strengthen  
Financial Oversight ????**

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**Board Oversight Strategies**

- Training to help each board member understand the financial statements
- Agree on key indicators to track
- Monthly report on multiple entities with management recommendations
- Annual Board discussion with the auditor without staff

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# Sample Functional Budget

EXPENSES			Monthly		TOTAL ADMIN	F.R.	PROG A.	PROG B.	PROG C. GENERAL	PROG C. GRANT 1	
	# Positions	% FTE	Salary	# Months							
Salaries: Positions											
Executive Director	1	1	3000	12	36000	27000	9000	0	0	0	
Fiscal Manager	1	1	2300	12	27600	27600	0	0	0	0	
Program Director	1	1	2500	12	30000	0	0	7500	7500	7500	
Prog A & B Supervisor	1	1	2000	12	24000	0	0	12000	12000	0	
Prog C Coordinator	1	0.75	2100	12	18900	0	0	0	9450	9450	
Case Manager	4	1	1800	12	86400	0	0	43200	21600	0	
Specialist	3	1	1500	9	40500	0	0	0	13500	13500	
Clerical Assistant	2	0.5	1300	9	11700	2925	2925	0	0	0	
<b>Subtotal: Salaries</b>					<b>275100</b>	<b>57525</b>	<b>11925</b>	<b>62700</b>	<b>54600</b>	<b>30450</b>	<b>57900</b>
Payroll Taxes (13%)					35763	7478	1550	8151	7098	3959	7527
Fringe Benefits (15%)					41265	8629	1789	9405	8190	4568	8685
<b>Subtotal: Personnel</b>					<b>352128</b>	<b>73632</b>	<b>15264</b>	<b>80256</b>	<b>69888</b>	<b>38976</b>	<b>74112</b>
Professional Services					16000	4000	8000	1000	500	500	2000
Occupancy					40000	8364	1734	9117	7939	4427	8419
Supplies					15000	1000	5000	4000	2000	1000	2000
Transportation					4000	500	600	0	1200	800	900
Other Expenses					20000	2000	4000	2000	3000	4000	5000
<b>Allocation of Admin</b>					<b>0</b>	<b>-89496</b>	<b>8658</b>	<b>24117</b>	<b>21153</b>	<b>12438</b>	<b>23129</b>
<b>SUPPORT AND REVENUE</b>					<b>TOTAL</b>	<b>UNDESIGNATED</b>	<b>PROG A</b>	<b>PROG B</b>	<b>PROG C GENERAL</b>	<b>PROG C GRANT 1</b>	
Government Grants/Contracts					160560	0	20000	25000	0	115560	
Foundations					40000	0	5000	20000	15000	0	
Individual Donations					85000	77000	5000	1000	2000	0	
Special Events					50000	50000	0	0	0	0	
Program Service Fees					115000	0	70000	40000	5000	0	
Investment Income					4000	4000	0	0	0	0	
<b>Allocated Undesignated Amounts</b>					<b>0</b>	<b>-80312</b>	<b>20490</b>	<b>19680</b>	<b>40142</b>	<b>0</b>	

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	HDC OPERATING		PROJECTS UNDER DEVELOPMENT			OPERATING RD PROJECTS				TOTAL
	ADMIN	FUND-RAISING	MARIA LUISA II	REEDVILLE (1 MO)	MONTE-BELLO	ELM PARK I	ELM PARK II	CORNELIUS PARK	REEDVILLE (11 MO)	
<b>REVENUE</b>										
RESTRICTED RENTS										
RESTRICTED LAUNDRY										
RESTRICTED VACANCY LOSS										
FOUNDATION GRANTS										
STATE GRANTS										
COUNTY GRANTS										
INTEREST										
DEVELOPERS FEES										
INCOME FROM LIMITED PTNRSHIP										
<b>TOTAL</b>										
<b>EXPENSES</b>										
STAFF SALARIES										
PR TAXES										
EMPLOYEE BENEFITS										
APT MANAGERS										
FISCAL & AUDIT										
OTHER PROF SERVICES										
OFFICE RENT										
TELEPHONE										
INTERNET										
UTILITIES										
OFFICE SUPPLIES										
PRINTING/COPIES										
POSTAGE										
ADVERTISING										
INSURANCE										
INTEREST EXPENSE										
STAFF EDUCATION										
AUTO ALLOWANCE (MILEAGE?)										
SEMINAR TRAVEL/STAFF										
SEMINAR TRAVEL/BOARD										
TENANT SERVICES										
FEES										
REPAIR & MAINTENANCE										
EQUIPMENT PURCHASES										
<b>TOTAL</b>										
<b>REVENUE OVER (UNDER) EXPENSE</b>										
<b>CASH FLOW ADJUSTMENTS:</b>										
INVESTMENTS IN PROPERTIES										
LOAN PROCEEDS:PROJECTS										
LOAN PROCEEDS:DEV FEES										
MORTGAGE PRINCIPAL PAYMENTS										
<b>NET AFTER CASH FLOW ADJUSTMENTS</b>										

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HDC SUMMARIZED BUDGET

PROJECTS  
UNDER  
RD  
OPERATING DEVELOPMNT PROJECTS TOTAL

REVENUE

RESTRICTED RENTS			
RESTRICTED LAUNDRY			
RESTRICTED VACANCY LOSS			
FOUNDATION GRANTS			
STATE GRANTS			
COUNTY GRANTS			
INTEREST			
DEVELOPERS FEES			
INCOME FROM LIMITED PTNRSHIP			

TOTAL

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EXPENSES

STAFF SALARIES			
PR TAXES			
EMPLOYEE BENEFITS			
APT MANAGERS			
FISCAL & AUDIT			
OTHER PROF SERVICES			
OFFICE RENT			
TELEPHONE			
INTERNET			
UTILITIES			
OFFICE SUPPLIES			
PRINTING/COPIES			
POSTAGE			
ADVERTISING			
INSURANCE			
INTEREST EXPENSE			
STAFF EDUCATION			
AUTO ALLOWANCE (MILEAGE?)			
SEMINAR TRAVEL/STAFF			
SEMINAR TRAVEL/BOARD			
TENANT SERVICES			
FEES			
REPAIR & MAINTENANCE			
EQUIPMENT PURCHASES			

TOTAL

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REVENUE OVER (UNDER) EXPENSE

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CASH FLOW ADJUSTMENTS:

INVESTMENTS IN PROPERTIES			
LOAN PROCEEDS:PROJECTS			
LOAN PROCEEDS:DEV FEES			
MORTGAGE PRINCIPAL PAYMENTS			

NET AFTER CASH FLOW ADJUSTMENTS

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**ROSE Community Development Corporation**  
**STATEMENT OF FINANCIAL POSITION**

6/30/2002

UNAUDITED

**Assets**

	FY 02 - YTD	FY 01-YTD
<b>Current Assets</b>		
Cash in Banks	34,517	96,944
Cash Held by Property Managers	35,468	15,912
Grants and Contracts Receivable	127,410	122,396
Other Receivables	87,149	68,062
Rental Deposits Held	31,146	22,403
Replacement Reserves and Escrow Accounts	115,716	92,588
Prepaid Expenses and Deposits	4,375	1,946
Total Current Assets	<u>435,780</u>	<u>420,250</u>
<b>Other Assets</b>		
Notes & Loans Receivable	25,907	104,362
Equity in Joint Ventures	366,410	154,997
Office Building, Furniture and Equipment (Net)	231,955	241,190
Total Other Assets	<u>624,272</u>	<u>500,550</u>
<b>Operating Assets</b>		
Predevelopment	104,116	420,128
Construction in Progress	212,234	-
Rental Housing (Net)	4,668,473	4,406,121
Homes for Sale	-	126,464
Total Operating Assets	<u>4,984,823</u>	<u>4,952,713</u>
<b>Total Assets</b>	<u><b>6,044,875</b></u>	<u><b>5,873,513</b></u>
<b>Liabilities and Net Assets</b>		
<b>Current Liabilities</b>		
Accounts Payable	49,556	59,752
Accrued Interest Payable	18,977	48,209
Deferred Revenue	81	-
Payroll Liabilities and Vacation Accruals	13,861	11,880
Rental Deposits Held	31,141	22,395
Total Current Liabilities	<u>113,616</u>	<u>142,236</u>
<b>Long Term Liabilities</b>		
Portland Development Commission	1,662,274	1,277,212
Equity Gap Loans	1,208,361	923,739
US Bank Loan-Office Building	147,247	147,247
KeyBank Loan-Beyer Ct	367,558	373,651
Enterprise Loans	38,928	452,070
NOAH Loans	398,113	398,113
Washington Mutual Loan-Country Squire	1,133,376	1,141,998
Shore Bank Pacific-Johnson Creek	235,192	-
Other Loans	117,598	98,011
Total Long Term Liabilities	<u>5,308,647</u>	<u>4,812,041</u>
<b>Total Liabilities</b>	<u><b>5,422,263</b></u>	<u><b>4,954,277</b></u>
<b>Net Assets</b>		
Unrestricted - Available for General Operations	139,106	59,668
Unrestricted - Designated for Specific Purposes	512,408	353,894
Unrestricted - Investment in Property and Equipment	(91,869)	381,862
Temporarily Restricted - Net Assets	# 62,967	123,812
Total Net Assets	<u>622,613</u>	<u>919,236</u>
<b>Total Liabilities and Net Assets</b>	<u><b>6,044,875</b></u>	<u><b>5,873,513</b></u>

**ROSE Community Development Corporation**  
**FISCAL YEAR 2002 BUDGET TO ACTUAL REPORT**

For the Period Ending 5/31/2002

UNAUDITED

	<u>Current</u> <u>Month</u>	<u>Actual</u> <u>Year to Date</u>	<u>FY 02</u> <u>Budget</u>	<u>Actual to</u> <u>Budget (%)</u> Expected = 92%
<b>Support and Revenues</b>				
<b>Support</b>				
PNDSC Grant	8,423	120,000	120,000	100%
BHCD Grants	6,863	99,540	153,528	65%
Meyer Grant	-	100,000	100,000	100%
Multnomah TT	-	21,060	21,061	100%
In-Kind Contributions	-	32,828	35,000	94%
Other Grants	5,250	75,654	60,000	126%
Contributions	2,100	43,465	35,000	124%
		-		
<u>Total Support</u>	<u>22,636</u>	<u>492,547</u>	<u>524,589</u>	<u>94%</u>
<b>Revenues</b>				
Rental Income	40,031	418,390	448,637	93%
Gains/Losses on sale of houses	-	(92,977)	(148,000)	0%
Equity Earnings in Joint Ventures	-	17,894	(3,782)	0%
Interest Income	102	1,914	2,000	96%
Development Fees	-	-	25,000	0%
Contract Revenues	150	8,562	15,000	57%
Other Income	2,243	19,724	20,000	99%
<u>Total Revenues</u>	<u>42,527</u>	<u>373,507</u>	<u>358,855</u>	<u>104%</u>
<b><u>Total Support and Revenues</u></b>	<b><u>65,163</u></b>	<b><u>866,054</u></b>	<b><u>883,444</u></b>	<b><u>98%</u></b>
<b>Expenses</b>				
Salaries	23,516	257,627	273,843	94%
Payroll taxes	2,363	23,797	23,047	103%
Employee benefits	1,717	22,100	30,872	72%
Workers comp insurance	125	1,159	1,200	97%
Professional services	5,725	76,551	70,000	109%
Occupancy	2,445	24,947	30,000	83%
Printing	113	6,244	5,000	125%
Postage	113	3,861	4,200	92%
Telephone	482	3,940	5,000	79%
Insurance	283	4,094	5,750	71%
Supplies	19	3,078	3,000	103%
Non Capital Equipment & Repair	274	1,849	3,000	62%
Professional dues & newsletter	1,014	6,459	9,000	72%
Training	410	7,940	9,000	88%
Depreciation expense	12,953	132,933	149,215	89%
Property management	5,191	68,240	69,478	98%
Maintenance and repair	5,781	57,850	51,362	113%
Property insurance	1,663	17,234	18,520	93%
Utilities	6,948	56,259	63,482	89%
Taxes	-	-	-	0%
Debt service	18,630	199,456	208,354	96%
Childcare subsidies	728	15,954	28,000	57%
Other expenses	6,621	47,697	15,000	318%
<b><u>Total Expenses</u></b>	<b><u>97,113</u></b>	<b><u>1,039,269</u></b>	<b><u>1,076,323</u></b>	<b><u>97%</u></b>

10/30/2006

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**Adjustments****Other Sources:**

Carry over funds	(761)	26,876	35,000	77%
Loans and Development fees	34,048	622,844	550,730	113%
Change in Depreciation Office Bldg.	350	3,845	4,200	92%
Change in Depreciation Equipment	425	4,680	5,102	92%
Change in Depreciation Property	12,528	128,253	139,913	92%
Use of Revolving Fund	-	-	-	0%
Planned use (increase) of Net Assets	-	-	-	0%
<b>Total other sources</b>	<b>46,590</b>	<b>786,498</b>	<b>734,945</b>	<b>107%</b>

**Other Uses:**

Property Acquisition & Rehab	(22,167)	(454,280)	(340,000)	0%
Net Change to replacement reserve	(1,273)	(18,747)	(17,147)	0%
Net Change to Construction hold	-	-	-	0%
Building, capital equip. purchases	-	-	-	0%
<b>Total other uses</b>	<b>(23,440)</b>	<b>(473,027)</b>	<b>(357,147)</b>	<b>0%</b>

**Net Adjustments**

<b>Net Adjustments</b>	<b>23,150</b>	<b>313,472</b>	<b>377,798</b>	
<b>Total Budget Surplus (Deficit)</b>	<b>(8,800)</b>	<b>140,256</b>	<b>184,919</b>	<b>76%</b>

**ROSE Community Development Corporation**  
**STATEMENT OF FUNCTIONAL EXPENSES**  
For the Period Ending 6/30/2002

UNAUDITED

EXPENSES	PROGRAM SERVICES					SUPPORT SERVICES		YTD TOTAL	FY 01 YTD
	Child Care Network	Community Organizing	Community Econ. Dev	Housing Development	Rental Housing	Management & General	Fundraising		
Salaries and related	86,595	66,150	15,130	74,077	51,443	18,990	19,645	332,029	320,143
Professional Services	35,120	6,046	775	5,250	6,235	12,366	16,096	81,888	33,996
Occupancy	6,442	4,547	1,579	7,011	3,109	2,442	1,866	26,995	26,156
Postage & Printing	2,211	1,411	394	1,775	799	2,903	1,694	11,186	9,688
Telephone	1,033	731	257	1,117	516	344	300	4,299	4,586
Insurance	1,426	1,333	166	711	327	218	196	4,377	3,714
Supplies	1,401	888	314	1,544	663	491	420	5,720	14,365
Professional Dues & Newsletter	1,370	2,287	260	1,333	434	499	302	6,484	7,406
Training	2,939	1,090	488	2,551	526	341	88	8,024	6,354
Depreciation Expense	1,207	853	302	1,307	141,385	412	355	145,821	108,050
Property Management	-	-	-	-	73,227	-	-	73,227	70,627
Maintenance and Repair	-	-	-	-	60,400	-	-	60,400	84,715
Property Insurance	-	-	-	-	18,898	-	-	18,898	14,013
Utilities	-	-	-	-	59,693	-	-	59,693	50,687
Taxes	-	-	-	-	-	-	-	-	-
Interest	-	-	-	-	214,772	2,114	-	216,886	217,332
Child Care Subsidies	20,807	-	-	-	-	-	-	20,807	20,751
Other Expenses	7,068	4,220	192	25,412	1,615	3,912	8,657	51,076	123,737
<b>TOTAL</b>	<b>167,619</b>	<b>89,556</b>	<b>19,858</b>	<b>122,087</b>	<b>634,040</b>	<b>45,033</b>	<b>49,618</b>	<b>1,127,811</b>	<b>1,116,320</b>