



OAK RIDGES MORAINÉ LAND TRUST

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Board Accountability and Risk Management Policy

Policy Statement

The Board of Directors is accountable for performing ethically and professionally in conducting the affairs of the Oak Ridges Moraine Land Trust (ORMLT) in accord with current legislation, regulations for charities, fiscal duties and standards and practices for Canadian Land Trusts. Governors who are not exercising due diligence and oversight in their fiduciary duties may incur personal liability for errors in judgment or wrongdoing as well as introduce unplanned and inappropriate risk. The registered status as a not for profit corporation and charity, provides basic protection for Directors and Officers if they collectively and individually have acted diligently, honestly, in good faith and in the best interests of the Trust and its membership. Liabilities of Boards are met best with Board members who understand and meet their responsibilities for risk management with accepted practices and with due diligence in all their actions and decisions.

Board Accountability

Standards for accountability and duties of Directors and Officers are generally described in Not for Profit legislation, bylaws and guidance as the primary duties that Boards of Directors owe their organizations. ORMLT and Ontario Land Trusts are also guided by

the Canadian Land Trust - Standards & Practices (S&Ps), Generally Accepted Accounting Practice (GAAP) and Canada Revenue Agency (CRA) regulations for charities.

These accountabilities and liabilities include the following duties:

Duty of Care - Every Director and Officer must exercise the fiduciary care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances. Ability to meet this duty requires active engagement of Directors in informed decisions.

Duty of Loyalty - Every Director and Officer must act honestly, in good faith, legally and in a manner that could be considered as in the best interests of the corporation. It is the Director's duty to avoid and declare all potential conflict of interest situations.

Duty of Obedience - Every Director and Officer must adhere to and pursue the purpose, mission, vision, policies, directions and priorities of the organization as provided in the approved bylaws, strategic plans, budgets, operating policies and programs.

Liability may occur for breaching of duties, wrongful conduct e.g. conflict of interest or personal gain or violation of laws that apply to individuals or corporations.

Risk Management

Risk management is about understanding the options that a person or corporation faces and, having considered the key relevant factors, responding with sound judgement and reasonable care. Successful risk management also means that there has not been an unreasonable act upon which an opponent can launch a successful complaint.

Risk can be defined as the real possibility that something harmful or undesirable could happen. Governors of not-for-profit corporations may encounter harmful or undesirable situations e.g. something may occur that adversely affects business of the corporation or someone is held to account for a situation arising from actions or inactions.

None of the protections available to Directors e.g. due diligence, indemnification by the corporation, statutory provisions or insurance can provide absolute protection against wrongdoing. Good governance is always meant to provide both guidance and latitude for best practices, without endangering the corporation or Board of Directors.

Diligence and Exposure

As part of their primary duties, all Directors of not-for-profit corporations have a clear obligation to exercise due diligence in governing, overseeing and managing the diverse operations of the corporation. This includes attending Board meetings, setting policies and priorities, reviewing financial reports, monitoring compliance with standards and ensuring that Board decisions are based on relevant, reliable information.

Due diligence means that Directors must be oriented to key aspects of the corporation. Directors should attend most Board meetings to engage in dialogue and decisions. If a Director cannot be present at a Board meeting, they should review agenda materials in advance and ask questions if they have concerns. After reading draft minutes, if there are questions, Directors should ask for clarification as soon as possible.

Indemnity and Liability

Under its approved bylaws and policies, the Board of Directors may by specific agreement cover the cost or otherwise assist Directors with lawsuits resulting from their reasonable actions or inactions in their capacity as a Director. Indemnification includes coverage for the cost of defending any legal actions. Coverage may extend to situations where the action is successful in a court decision. Indemnification will not apply in situations where the act of a governing Board, a Director or an Officer has been determined to be illegal.

Indemnification is supportive but will be of minimal help in situations where:

1. the Trust does not have sufficient assets or insurance coverage to meet the financial obligations of the indemnity from liability;
2. a Director's or Officer's acts were beyond the scope of his or her authority or responsibility and/or they acted without good faith or acted dishonestly;
3. a Director's or Officer's actions or inactions constitute willful neglect or default;
4. a Director's or Officer's actions or inactions involve a breach of their fiduciary obligations, even if this did not constitute any willful neglect or default;
5. a Director or Officer is held personally liable for statutory monetary payments, such as unpaid wages or government deductions;
6. the Director or Officer is or has been involved in an illegal act.

Insurance and Liability

The ORMLT holds Directors & Officers (D&O) liability insurance. The general liability insurance policy of a not-for-profit corporation provides only limited or specified protection for its Directors and Officers against any alleged wrongful acts. This type of policy, which is carried by the Trust, does protect its Directors and Officers against claims arising in the general context or normal conduct of the organization's business and operations.

The D&O liability insurance protects against those claims arising out of Board decisions or omissions, or out of actions or activities being performed directly under authority of the Board of Directors. Where Directors and Officers act as property trustees, claims arising from that aspect of their work are not covered by the standard Directors and Officers (D&O) liability insurance. A policy on fiduciary liability is required to protect Directors and Officers against such claims. Directors and Officers liability insurance complements the general liability insurance coverage held by the Trust.

The D&O liability policy insures against risks that are not covered under the general liability insurance policy, but does not cover all actions against Directors and Officers. Therefore, it is important for Governors to periodically review the exclusions in the

coverage and, where appropriate, to consider and evaluate having additional and/or other appropriate trustee coverage such as the fiduciary liability policy.

Directors and Officers (D&O) liability insurance for a not-for-profit corporation will not provide coverage for actions by Directors or Officers for breach of trust arising out of an illegal mishandling of trust funds, improper investments, illegal activities e.g. violations of the anti-terrorism legislation or other statutory violations.

Good Governance

The best protection against liabilities from Board accountability and risk management is to recruit and orient an able Board of conscientious and committed Governors who both understand their duties and meet their responsibilities. The ORMLT Board of Directors has established a guiding framework of plans, policies, practices and priorities that supports good conduct and good governance across the whole corporation.