



Legal Duties of a Nonprofit's Board of Directors

A brief article describing the legal responsibilities and duties of the board of directors of a nonprofit organization.

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Legal Lines

Legal Issues for Nonprofits

Legal Duties of a Nonprofit's Board of Directors

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As the governing body of the organization, a nonprofit's board of directors has a number of practical responsibilities. The board is responsible for defining the mission of the organization, adopting policies for the organization to implement, hiring and evaluating the performance of the chief executive, and overseeing the financial health of the organization – and that's just for starters. On a more basic level, the board of directors is legally responsible for the actions of the nonprofit.

There are three fundamental legal duties that all board members must follow. These three duties, commonly known as fiduciary duties, apply to everything that the board of directors does. Board members must keep these duties in mind when making decisions or taking action for the nonprofit. If they fail to do so, they could be held liable for any negative consequences of their actions.

- **Duty of Care**

The duty of care is often defined as the amount of care that an ordinarily prudent person would exercise in a like position and under similar circumstances. In everyday terms, this means that a board member must exercise reasonable care when he or she makes a decision for the nonprofit.

In order to meet the reasonable care standard, board members must take an active and informed role in decision-making. They should be sure to attend board meetings on a regular basis, and be actively involved in those meetings. They must ask questions about matters that are unclear, or if they feel they need more information. While they can rely, in part, on recommendations and information provided by others (including committees, outside professionals and knowledgeable staff members), they must make independent decisions based on that information.

- **Duty of Loyalty**

All directors owe a duty of loyalty to the organization. The duty of loyalty requires a board member to keep the best interests of the organization in mind at all times when making decisions on the behalf of the organization. A board member must never put personal priorities or opportunities ahead of the organization's interests. To comply with the duty of loyalty, directors must be sure that they are acting with the organization's interests in mind, not their own.

For example, in the case of a proposed transaction between the organization and a director (or if the director has another significant interest), the interest must be disclosed and the transaction should be approved by a majority of the non-interested directors. Similarly, if a director learns of an opportunity that may be of interest to both the organization and the director personally, the director must first offer the opportunity to the organization. To help avoid conflicts of interest, the board should adopt and follow a conflict of interest policy that addresses these issues.

- **Duty of Obedience**

The duty of obedience, which is sometimes considered part of the duty of due care, requires board members to be faithful to the organization's mission. Their actions must be consistent with the organization's mission statement, Articles of Incorporation, bylaws, and tax-exemption documentation. The nonprofit's central goals must guide all board decisions. In addition, board members must also comply with all applicable laws and regulations.

To ensure obedience to the organization's mission, board members must be knowledgeable about and comfortable with the mission. Before joining a board, potential members must familiarize themselves with the mission statement, organizing documents, and programs. These documents should also be revisited on a regular basis, to guard against "mission drift" (or to revise the mission statement when appropriate). Board members must also become familiar with the basic

laws and regulations affecting the organization (tax-exemption, fundraising, employment, etc.), and have a strategy in place for complying with them. While this strategy may involve the use of experts and staff members, the ultimate responsibility for compliance rests with the board of directors.

Given the duties and risks accepted by members of its board of directors, the nonprofit has a responsibility to indemnify its board. A nonprofit should not ask board members to accept the duties and risks associated with serving on a board without providing the necessary assurances (such as Directors' and Officers' insurance).

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