

Legal Responsibilities of Nonprofit Board Members

Under well-established principles of nonprofit corporation law, a board member must meet certain standards of conduct and attention in carrying out his or her responsibilities to the organization. Several states have statutes adopting some variation of these duties which would be used in court to determine whether a board member acted improperly. These standards are usually described as the duty of care, the duty of loyalty, and the duty of obedience.

Duty of Care

The duty of care describes the level of competence that is expected of a board member, and is commonly expressed as the duty of "care that an ordinarily prudent person would exercise in a like position and under similar circumstances." This means that a board member owes the duty to exercise reasonable care when he or she makes a decision as a steward of the organization. Each board member has a duty to be informed to act in the best interests of the organization, utilizing the degree of care of an ordinary person in a like position under similar circumstances. It means that board members should attend board meetings and be informed about the activities of the organization in order to be able to make informed and independent decisions when voting. Being a "passive director" may lead to a breach of the duty to be informed.

Caveat: Beware of the passive director.

Duty of Loyalty

The duty of loyalty is a standard of faithfulness. A board member must act in good faith, be faithful to the organization, and pursue the organization's best interests. A board member must give undivided allegiance when making decisions affecting the organization and put the interests of the organization above self-interest. This means that a board member can never use information obtained as a member for personal gain. If a potential conflict of interest occurs, the affected board member should not attempt to unduly influence the rest of the board and should recuse himself or herself from discussing and voting on the matter.

Caveat: Beware of the conflict of interest.

Duty of Obedience

The duty of obedience requires board members to act in accordance with the organization's mission, its rules and policies, articles of incorporation, and bylaws. The board must comply with state and federal laws.

Board members are not permitted to act in a way that is inconsistent with the mission and central goals of the organization, and the duty of obedience forbids acts outside the scope of corporate power. A basis for this lies in the public's trust that the organization will manage donated funds to fulfill the organization's mission.

Each director is charged with the responsibility of carrying out the purposes of the organization. Unless expressly permitted by law, not-for-profit directors may not deviate in any substantial way from the duty to fulfill the particular purposes for which the organization was created. The justification for the duty is that when you seek donations from the public to fulfill a stated purpose, you have the duty to utilize those funds in the manner which was represented.

Caveat: Beware of straying from the mission statement.