



## What are the legal responsibilities of nonprofit boards?

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.

#### ***Reasonably informed, participate and act as a reasonable and prudent person***

- Evidence of compliance includes
  - Preparing for and attending meetings
  - Participating in discussions and voting
  - Using independent judgment
  - Frequent review of organization's financials

### **Duty of Loyalty**

The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This means that a board member can never use information obtained as a member for personal gain, but must act in the best interests of the organization.

#### ***Must exercise power as board member only in the best interests of the organization***

- Conflicts of interest
  - Must be disclosed
  - Conflict of interest policy must be followed
  - Don't use charity for personal gain
- Keep information confidential

### **Duty of Obedience**

The duty of obedience requires board members to be faithful to the organization's mission. They are not permitted to act in a way that is inconsistent with the central goals of the organization. A basis for this rule lies in the public's trust that the organization will manage donated funds to fulfill the organization's mission.

#### ***Stay true to the charity's mission & follow the organization's bylaws***

- Comply with federal rules
  - Form 990
  - Employment taxes
  - ERISA/DOL/OSHA
- Comply with applicable state & local law



## **Board Source**

### **Ten Basic Responsibilities of Nonprofit Boards**

**1. Determine mission and purposes, and advocate for them.**

It is the board's responsibility to create and review a statement of mission and purpose that articulates the organization's goals, means, and primary constituents served.

**2. Select the chief executive.**

Boards must reach consensus on the chief executive's responsibilities and undertake a careful search to find the most qualified individual for the position.

**3. Support and evaluate the chief executive.**

The board should ensure that the chief executive has the moral and professional support he or she needs to further the goals of the organization.

**4. Ensure effective planning.**

Boards must actively participate in an overall planning process and assist in implementing and monitoring the plan's goals.

**5. Monitor, and strengthen programs and services.**

The board's responsibility is to determine which programs are consistent with the organization's mission and monitor their effectiveness.

**6. Ensure adequate financial resources.**

One of the board's foremost responsibilities is to secure adequate resources for the organization to fulfill its mission.

**7. Protect assets and provide proper financial oversight.**

The board must assist in developing the annual budget and ensuring that proper financial controls are in place.

**8. Build a competent board.**

All boards have a responsibility to articulate prerequisites for candidates, orient new members, and periodically and comprehensively evaluate their own performance.

**9. Ensure legal and ethical integrity.**

The board is ultimately responsible for adherence to legal standards and ethical norms.

**10. Enhance the organization's public standing.**

The board should clearly articulate the organization's mission, accomplishments, and goals to the public and garner support from the community.