

Duties and Obligations of Nonprofit Directors/Board Members

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Members of nonprofit boards of directors broadly govern the organization's general operations and progress toward its short-term and long-term goals, while other persons, such as officers, managers and employees, oversee the day-to-day activities of the organization. You may have heard that serving on a board, such as that of a large corporation or wealthy family foundation, requires little of the member or can simply be a commemorative or retirement position; however, this is generally not the case. Serving as a nonprofit board member requires a significant commitment of time and energy. Most critically, you have serious fiduciary duties and obligations which you must observe, follow and, in some cases, record your compliance with, to prevent any legal problems for yourself and also the nonprofit organization. The following are descriptions of the particular legal duties imposed on members of nonprofit boards to assist you in your service as a board member:

The Duty to Exercise Obedience and Fidelity to the Mission and Purposes of the Organization:

1. **The Governing Documents of the Corporation.** Directors have a duty to follow the organization's governing documents (Certificate of Formation and Bylaws) to carry out the organization's mission and to assure that funds are used for lawful purposes. Directors should be intimately familiar with their organization's governing documents and should follow the provisions of those documents. Directors should be sure proper notice is given for meetings, that regular meetings are held, that directors are properly appointed/replaced and that the organization's mission is being accomplished.
2. **State and Federal Statutes.** Directors should be familiar with applicable state and federal statutes and laws generally relating to nonprofit corporations and those specifically related to and governing the mission and purposes of the subject organization. Directors should also have general knowledge of the corporation's state and federal tax and tax exemption issues, employee FICA and income tax withholding, and unemployment and workers' compensation obligations. Directors should see to it that their organization's status with state and federal agencies is protected.
3. **Filing Requirements.** Directors must comply with deadlines for tax, financial and other governmental reporting requirements, for making social security payments, for income tax withholding, and so on, as well as any Texas filing requirements to maintain its nonprofit corporate status.
4. **Expert Assistance.** When needed and where appropriate, directors should obtain opinions of legal counsel, accountants and other such experts.

The Duty to Exercise Due Care in Making Decisions for and Exercising Oversight of the Operations of the Organization:

1. **Active Participation.** Directors must actively participate in the management of the organization including attending meetings of the board, evaluating reports, reading minutes, reviewing the performance and compensation of the Executive Director and so on. Persons who do not have the time to participate in board meetings and obtain the knowledge sufficient to fulfill his/her duties to the organization and its mission/purposes should not agree to be on the board of a nonprofit corporation.
2. **Committees.** Directors may establish committees having the authority of the board and may rely on information, opinions or reports of these committees. Committees operate subject to the direction and control of the board. As a result, directors are still responsible for the committees and should periodically scrutinize their work.
3. **Board Actions.** A director who is present at a meeting when an action is approved by the entire board is presumed to have agreed to the action, unless the director objects to the meeting because it was not lawfully called or convened and doesn't participate in the meeting, or unless the director votes against the action or the director is prohibited from voting on the action because of a conflict of interest.
4. **Minutes of Meetings.** Written minutes should be taken at every board meeting. The minutes should accurately reflect board discussions as well as actions taken at meetings.
5. **Books and Records.** Directors should have general knowledge of the books and records of the organization as well as its general operation. The organization's articles, bylaws, accounting records, voting agreements and minutes must be made available to members and directors who wish to inspect them for a proper purpose.
6. **Accurate Record Keeping.** Directors should not only be familiar with the content of the books and records, but should also assure that the organization's records and accounts are accurate. This may mean that directors must take steps to require regular audits by an independent certified public accountant. At the very least, the director should be aware of what the financial records disclose and take appropriate action to make sure there are proper internal controls.
7. **Corporation's Property.** Directors have the duty to protect, preserve, invest and manage the corporation's property and to do so consistent with any specific donor restrictions and legal requirements. Instituting proper internal controls will aid in the protection of assets.
8. **Resources.** Directors must assist the organization in obtaining adequate resources to enable it to further its mission/purposes.
9. **Investigations.** Directors have a duty to investigate warnings or reports of officer or employee theft or mismanagement. In some situations directors may have to report misconduct to the appropriate authorities, such as the police or the Texas Attorney General. Where appropriate, a director should consult an attorney – either the corporate counsel of the corporation or an independent attorney – or other professionals for assistance.

The Duty to Exercise Loyalty to the Organization:

1. **No Personal Pecuniary Gain.** Directors have an absolute duty of complete, undivided loyalty to the organization. This means that directors should avoid using their position or the corporation's assets in a way which would result in pecuniary or monetary gain for them or for any member of their family. A director should put the good of the organization first and avoid engaging in transactions with the organization from which the director will benefit.
2. **Conflicts of Interest.** Under certain circumstances, a contract or transaction between a nonprofit corporation and one or more of its directors or an organization in which a director has a material financial interest is acceptable. However, if the transaction is challenged, the director will have the burden of establishing that the contract or transaction was fair and reasonable, that there was full disclosure of the conflict and that the contract or transaction was approved by members or other directors in good faith.
3. **Written Policy.** Boards should establish a written policy on avoiding conflicts of interest.
4. **Loans.** A nonprofit corporation may not lend money to a director or the director's family members unless the loan or guarantee may reasonably be expected, in the judgment of the entire board, to benefit the corporation.
5. **Corporate Opportunity.** Directors may not divert a corporate business opportunity for their personal gain. This duty means that 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 conflicts of interest procedures are followed.
6. **Internal Revenue Code.** Other prohibitions relating to the duty of loyalty are specified in the rules of the Internal Revenue Code regarding self-dealing. These rules apply to private foundations.

Examples of Specific Obligations of Nonprofit Board Members:

- **Determine the Organization's Mission and Purpose:** A statement of mission and purposes should articulate the organization's goals, means, and primary constituents served. It is the board of directors' responsibility to create the mission statement and review it periodically for accuracy and validity. Each individual board member should fully understand and support it.
- **Select the Executive:** Boards must reach consensus on the chief executive's job description and undertake a careful search process to find the most qualified individual for the position.
- **Support the Executive and Review Executive Performance:** 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. The chief executive, in partnership with the entire board, should decide upon a periodic evaluation of the chief executive's performance.

- **Ensure Effective Organizational Planning:** As stewards of an organization, boards must actively participate with the staff in an overall planning process and assist in implementing the plan's goals.
- **Ensure Adequate Resources:** One of the board's foremost responsibilities is to provide adequate resources for the organization to fulfill its mission. The board should work in partnership with the chief executive and development staff, if any, to raise funds from the community.
- **Manage Resources Effectively:** The board, in order to remain accountable to its donors, the public, and to safeguard its tax-exempt status, must assist in developing the annual budget and ensuring that proper financial controls are in place.
- **Determine and Monitor the Organization's Programs, Finances and Services:** The board's role in this area is to determine which programs are the most consistent with an organization's mission, and to monitor their effectiveness and financial viability consistent with the mission.
- **Enhance the Organization's Public Image:** The board is the organization's primary link to the community, including constituents, the public, and the media. Clearly articulating the organization's mission, accomplishments, and goals to the public, as well as garnering support from important members of the community, are important elements of a comprehensive public relations strategy.
- **Serve as a "Court of Appeal":** Except in the direst of circumstances, the board must serve as a court of appeal in personnel and other matters. Solid personnel policies, grievance procedures, and a clear delegation to the chief executive of hiring and managing employees will reduce the risk of conflict.
- **Assess Its Own Performance:** By evaluating its performance in fulfilling its responsibilities, the board can recognize its achievements and reach consensus on which areas need to be improved. Discussing the results of a self-assessment at a retreat can assist in developing a long-range plan.

Conclusion:

The basic obligation of a nonprofit board member is to be knowledgeable of the activities, operations, finances, management and legal status of the corporation. If you are ever uncertain of any issue facing the corporation or ever have any concerns about the above-stated organizational aspects, duties or obligations, you should present the issue/question to the full board or an attorney – either the corporate counsel of the corporation or an independent attorney – or other professionals.

Simply stated: If you don't know, just ask!