

Duties of Board Members

While the board is not usually involved in the day-to-day activities of the organization, it is responsible for managing the organization and must make decisions crucial to the life and direction of the organization, such as adding or removing board members, hiring and firing key employees, engaging the auditors and authorizing financial transactions. In carrying out those responsibilities, members of a board of directors must fulfill fiduciary duties to the organization and the public it serves. Those duties are commonly referred to as the duties of *care*, *loyalty* and *obedience*.

Duty of Care

Under the *duty of care*, a director must be familiar with the organization's finances and activities and participate regularly in its governance. In carrying out this duty, directors must act in "good faith" using the "degree of diligence, care and skill" which prudent people would use in similar positions and under similar circumstances.

In exercising the duty of care, responsible board members should, among other things, do the following:

- Attend board and committee meetings and actively participate in discussions and decision-making
- Read the minutes of meetings and all reports, including financial statements and reports by employees
- Read any literature produced as part of the organization's programs
- Ensure that the organization has proper written internal financial controls and written policies to safeguard, promote and protect the organization's funds and other assets and obtain an employees, officers and directors fidelity bond to protect the organization from embezzlement
- Engage in careful oversight of the organization's finances. The Chief Executive or Financial Officer should report at every board meeting. The report should include an income and expense statement compared to the prior month, budget and year-to-date activities
- Encourage diversity among board members. Diversity will help ensure a board committed to serve the organization's mission with a range of appropriate skills and interests
- Be involved in the selection of the organization's Chief Executive Officer, Chief Financial Officer and other key employees responsible for the day-to-day activities of the organization. The board is responsible for such individuals having the appropriate education, skills and experience to assume a key position and for their doing a good job

Duty of Loyalty

Directors are charged with the duty to act in the interest of the corporation. This *duty of loyalty* requires that any conflict of interest, real or possible, always be disclosed in advance of joining a board. Board members must avoid transactions in which they or their family members benefit personally, and if such transactions are unavoidable, disclose them fully and completely to the board.

In order to exercise this *duty of loyalty* directors must be careful to examine transactions that involve board members or members of their families. The board must not approve any transaction that is not fair and reasonable to the corporation, and the conflicted board members may not participate in the board vote.

The board should have a written “conflicts of interest” policy so that all members are aware of the type of transactions that may prohibit them from joining the board. Some such policies prohibit board members from engaging in any transaction that may result in even the appearance of a conflict of interest.

No matter how well-off the corporation may be, board members may not borrow money from the corporation. Such loans are absolutely forbidden by New York law, even if there is a promise to repay the money borrowed with interest.

Duty to Carry out the Corporation’s Mission and Comply within the Law

A board has a *duty of obedience* to ensure that the corporation complies with all appropriate laws, including:

- Dedicating the organization’s resources to its mission
- Ensuring that the corporation carries out its purposes and does not engage in unauthorized activities

The board also has the duty to comply with all appropriate laws, including:

- Registering with the Attorney General’s Charities Bureau in NYS
- Complying with registration and reporting laws and other applicable laws of all states in which it conducts activities and/or solicits contributions
- Filing of required financial reports with the Attorney General, the State Workers Compensation Board, the State of Department of Taxation and Finance *and* the Internal Revenue Service

- Paying all taxes such as Social Security, income tax withholding (federal, state and local) and any unrelated business income tax
- Board members may be personally liable for failing to pay withholding taxes on employees' wages.
- Providing copies of its federal reports (990, 990PF, 990EZ) to members of the public who request it
- Maintaining complete and accurate records
- Maintaining complete and accurate books and records, including minutes of board and committee meetings and books of account
- Complying with all provisions of the Internal Revenue Code, including those that govern compensation and self-dealing so as not to subject the organization, the board or the officers to federal excise taxes

INFORMATION AVAILABLE TO YOU AS A BOARD MEMBER

As a board member, you need access to information necessary to carry out your responsibilities. You have an absolute right to:

- Review the books and records of the organization
- Receive copies of board minutes as well as financial and other reports
- Receive notice of all board meetings unless the time and the place of the regular meetings are set forth in the by-laws