

## Governance Basics

### ***Three Legal Responsibilities of Nonprofit Boards***

#### *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.

#### *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.

#### *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.

#### *Implied: Duty of Transparency*

The duty of transparency requires board members to document and illustrate due diligence. Due diligence should be reflected in your meeting minutes and meeting minutes should be available to anyone who asks. By making full and accurate information about governance publicly available, a charity encourages transparency and accountability.

### ***Documents requested on the 990***

1. Conflict of Interest Policy
2. Document Retention/Destruction Policy
3. Whistleblowers Policy

### ***Some illustrations of due diligence***

- Meeting minutes document discussions and decisions
- Bylaws are followed and basic rules around quorum and voting are followed
- Policies are approved and the board meeting minutes document adhering to policies
- The board intentionally recruits board members and has an intentional orientation and training plan
- The board discusses and plans for successions and transitions

## **10 Basic Responsibilities of Nonprofit Boards**

1. Determine the organization's mission and purpose. 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. Provide proper financial oversight. The board must approve the annual budget and ensure that proper financial controls are in place.
4. Ensure adequate resources. One of the board's foremost responsibilities is to secure adequate resources for the organization to fulfill its mission.
5. Ensure legal and ethical integrity and maintain accountability. The board is ultimately responsible for ensuring adherence to legal standards and ethical norms.
6. Ensure effective organizational planning. Boards must actively participate in an overall planning process and assist in implementing and monitoring the plan's goals.
7. Recruit and orient new board members and assess board performance. All boards have a responsibility to articulate prerequisites for candidates, orient new members, and periodically and comprehensively evaluate their own performance.
8. 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.
9. Determine, monitor, and strengthen the organization's programs and services. The board's responsibility is to determine which programs are consistent with the organization's mission and to monitor their effectiveness.
10. Support the chief executive and assess his or her 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.

## **Individual Board Member Responsibilities**

1. Attend and actively participate in board meetings, fundraisers, special events, etc.
2. Come prepared for board meetings (e.g. review agenda and materials prior to meeting and write down questions/concerns)
3. Speak up on any legal or ethical concerns
4. Serve on board committees
5. Be well informed about the organization's mission, policies, programs and services
6. Address conflicts of interest consistently with the organization's conflict of interest policy
7. Be a "Goodwill Ambassador" for the organization
8. Make a financial contribution at least once a year
9. Identify and help solicit new donors
10. Suggest possible new board members

### Recommended Practices:

- At least every two years, the board should review the organization's bylaws and mission statement and amend as needed to reflect organizational growth and development.
- The board should establish an organizational transition plan to maintain daily operation during the time of a change in executive and board leadership.
- Annually the board should approve an annual budget for the organization.
- To demonstrate personal stake in the organization, board members are expected to make personal financial contributions to the nonprofit as well as to raise funds from external sources.
- No more than one employee of the organization should serve as a voting member of the board and he/she should not serve as chair or treasurer of the board.
- Nonprofit board members are responsible for making decisions in the interest of the organization and not in the interest of another entity, including themselves.
- Board members (who are not employees) should receive no monetary compensation.
- Establish conflict of interest policies regarding board members, staff, volunteers, consultants and other contractors and adhere to these policies in all dealings.
- The board should play a leading role in the planning process from the very beginning, starting with mission identification.
- They should also accept responsibility for making the plan a "living document," by using it to guide their on-going actions and priorities.
- The board should establish a process for selecting new board members that will ensure adequate infusion of new ideas and community perspectives, while preserving institutional memory.
- The board should be made up of at least five persons unrelated to each other or to staff to ensure appropriated deliberation and diversity.
- The board should be comprised of individuals who represent the best interests of the organization.
- Board policies should encourage clear and honest communication of key information.
- Board members should actively seek opportunities to communicate with the community.
- Board meetings should be held at least on a quarterly basis and regular attendance should be expected of all board members.
- Annually, the board should conduct a performance review of the chief executive.
- The chief executive's performance should be assessed in light of organizational accomplishments, and the total compensation package should reflect his/her performance as well as industry standards.