



Fiduciary Duties (Legal Responsibilities) of Your Board

Board members have fiduciary, or legal, duties as established in corporate law. These are the duty of care and duty of loyalty. The nature of the two duties can overlap. Variations or new duties are increasingly discussed, including duty of good faith, duty of candor and duty of obedience. (A Board member's good-faith action is acting truthfully and honestly with the best of intentions to benefit the nonprofit.)

Examples of performing the duty of care include clearly making a reasonable and good-faith effort to, for example:

- Be aware of the nonprofit's mission, plans and policies, and be sure that they indeed serve the needs of the community that the Board members represent.
- Be sure that all nonprofit activities are in accordance with the mission, plans and policies, and are in accordance with rules and regulations of the society and community. (Some people refer to these activities as being in accordance with a duty of obedience.)
- Fully participate in Board meetings, deliberations and decisions.
- Read, evaluate and ensure accuracy of all reports, including minutes, financial and evaluations.
- Ensure the organization has sufficient resources, including people, funding and other assets.

Examples of performing the duty of loyalty include clearly making a reasonable and good-faith effort, when acting as a Board or staff member, to:

- Always be thinking about, and focusing on, priorities of the nonprofit, and not that of yourself or another organization.
- Share ideas, opinions and advice to forward the progress of the nonprofit.
- Represent the nonprofit in a favorable light.

More clarity will come from considering more specific types of activities conducted by Board members. There are many resources that suggest roles and responsibilities of nonprofit Boards. Therefore, more than one perspective is included in this guide.

BoardSource (formerly the National Center for Nonprofit Boards), in its booklet *Ten Basic Responsibilities of Nonprofit Boards*, itemizes the following 10 responsibilities for nonprofit Boards.

1. Determine the organization's mission and purpose.
2. Select the Chief Executive.
3. Support the Chief Executive and review his or her performance.
4. Ensure effective organizational planning.

5. Ensure adequate resources.
6. Manage resources effectively. (This is often done by appointing a Chief Executive to manage the organization.)
7. Determine and monitor the organization's programs and services.
8. Enhance the organization's public image.
9. Serve as a court of appeal.
10. Assess its own performance.

Brenda Hanlon (2001, www.ncnb.org) suggests the following duties from *In Boards We Trust*.

1. **Provide continuity for the organization.**
This is done by setting up a corporation or legal existence, representing the organization's point of view through interpretation of its products and services, and establishing advocacy for them.
2. **Select, appoint and evaluate a Chief Executive Officer.**
The CEO is the person to whom responsibility for the administration of the organization is delegated. The Board's activities include:
 - a. To review and evaluate his/her performance regularly on the basis of a specific job description including the Chief Executive's relations with the Board and leadership in the organization, in program planning and implementation, and in management of the organization and its personnel.
 - b. To offer administrative guidance and determine whether to retain or dismiss the Chief Executive.
3. **Govern the organization by broad policies and objectives.**
These are formulated and agreed upon with the Chief Executive and employees. This includes assigning priorities and ensuring the organization's capacity to carry out programs by continually reviewing its work.
4. **Acquire sufficient resources for the organization's operations.**
This includes more than getting money. It includes ensuring sufficient personnel, expertise, facilities and other assets.
5. **Account to the public for the products and services of the organization.**
This is true especially for the organization's expenditures and conformance to rules and regulations, for example:
 - a. To provide for fiscal accountability, approve the budget, and formulate policies related to contracts from public or private resources.
 - b. To accept responsibility for all conditions and policies attached to new, innovative, or experimental programs.