

Director Fiduciary Duties

Directors of nonprofit corporations should be familiar with the legal responsibilities and fiduciary duties they have to the organization as a result of serving on the board.

What is the role of a nonprofit board?

The board is the legally required governing body of a nonprofit. It is responsible for overseeing and managing all affairs of the corporation. While the board may delegate many aspects of the nonprofit's management, it remains the ultimate authority.

What are the general responsibilities of a nonprofit board?

A nonprofit board should be focused on big picture strategic decisions and entrust the management of day-to-day operations to the nonprofit's professional or volunteer staff. A board's general responsibilities include strategic planning, ensuring sufficient financial resources, managing assets and liabilities, hiring and evaluating the chief executive officer, evaluating the performance of the nonprofit (including the board itself), and ensuring compliance with legal obligations. Directors also serve as community ambassadors for the nonprofit.

What are my legal responsibilities as an individual director of a nonprofit board?

Each state's nonprofit corporation law sets forth a standard of conduct that directors must follow in exercising their duties. A director's fiduciary duties are derived from this standard of conduct. For example, California law provides that a director shall perform their duties "in good faith, in a manner that the director believes to be in the best interests of the corporation" (the "duty of loyalty"), and "with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances" (the "duty of care").

How can I satisfy my duty of care?

In general, a director should attend and actively participate in meetings, diligently review all board materials, and be well informed about the nonprofit. Each director should ensure authority is carefully delegated to the right people at the right time and recommend appropriate checks and balances to aid

the directors in overseeing that delegated authority. When making decisions, each director should use independent judgment, ask questions, and request all relevant information until they are satisfied that they have sufficient information to make an informed decision.

What might be considered a breach of the duty of care?

The most common duty of care mistakes include over-delegating authority, failing to adequately supervise delegated authority, and making decisions without sufficient information and due diligence.

How can I satisfy my duty of loyalty?

A director must at all times place the nonprofit's interests ahead of their own (including those of their businesses and family members). A director must avoid using their position to obtain any personal benefit and refrain from making any special requests of the staff. A director must also fully disclose in advance any potential conflicts of interest, personal interests or competing corporate opportunities.

What might be considered a breach of the duty of loyalty?

The most common duty of loyalty mistakes include having an inappropriate or undisclosed conflict of interest, using the nonprofit's assets for personal benefit, disclosing or using confidential information, competing with the nonprofit or otherwise deriving any improper personal benefit from board service.

What additional fiduciary duties does the board have?

Within the concept of a director's fiduciary duties is the duty of obedience, which charges each director with ensuring that the nonprofit is at all times being faithful to its purpose as stated in its articles of incorporation, acting in compliance with its bylaws, abiding by all applicable laws and regulations, and not engaging in any unauthorized activities.