



LEGAL RESPONSIBILITIES OF A NONPROFIT BOARD

Girl Scouts of
Heart of New Jersey

According to nonprofit corporation law, a board member should meet certain standards of conduct and attention to her/his responsibilities to the organization. The legal duties of a board are referred to as the Duty of Care, Duty of Loyalty, and Duty of Obedience.

Duty of Care

Board members must exercise due care in all dealings with the organization and its interests. Directors should be reasonably informed about the organization's activities, participate in collective decisions, and do so in good faith and with the care of an ordinary prudent person in similar circumstances. This includes careful oversight of the organization's finances, reading of meeting minutes, attention to issues that are of concern to the organization, and raising questions whenever there is something that seems unclear or questionable.

The duty of care is carried out by the following acts:

- Attendance at meetings of the board and appropriate committees
- Advance preparation for board meetings, such as reviewing reports and the agenda prior to meetings of the board
- Obtaining information before voting in order to make good decisions - unless otherwise assigned to find data or research that informs discussion in the board room
- Use of independent judgment
- Frequent review of the organization's finances and financial policies
- Compliance with filing requirements, particularly annual information returns

Duty of Loyalty

The duty of loyalty requires board members to exercise their power in the interest of the organization and not in their own interest or interest of another entity, particularly one in which they have a formal relationship. When acting on behalf of the organization, board members must put the interests of the organization before their personal and professional interests.

Conflicts of interest, including the appearance of conflicts of interest, must be avoided. This includes personal conflicts of interest or conflicts with other organizations with which a board member is connected.

In practice, the duty of loyalty is carried out by the following acts:

- Disclosure of any conflicts of interest
- Adherence to the organization's conflict-of-interest policy
- Avoidance of the use of corporate opportunities for the individual's personal gain or benefit
- Nondisclosure of confidential information about the organization

Duty of Obedience

Obedience to the organization's central purposes must guide all decisions. The board must also ensure that the organization functions within the law, both the "law of the land" and its own bylaws and other policies. The directors must remain the guardians of the mission.

The duty of obedience is carried out by the following acts:

- Compliance with all regulatory and reporting requirements, such as filing the annual information return (usually, IRS Form 990) and paying employment taxes
- Examination of all documents governing the organization and its operation, such as the bylaws and policies
- Making decisions that fall within the scope of the organization's mission and governing documents

The enactment of the Sarbanes-Oxley Act of 2002, passed in the aftermath of Enron and other corporate scandals, raised the standards of scrutiny in the private sector for such things as auditor independence, corporate responsibility, financial disclosure, and conflicts of interest. It is not surprising to realize that heightened concern for accountability is carrying over into the nonprofit sector, by law or in practice.

So, it is more important than ever that board members be mindful of their legal responsibilities.

Simply put, board members need to answer the following questions:

- What kind of oversight am I expected to provide?
- When and how can I be found personally liable?
- How can I avoid, or at least minimize, personal liability?

Adapted from BoardSource, "The Legal Duties of the Nonprofit Board."

Setting Strategic Direction

- Maintain focus on Girl Scout Mission
- Ensure that the council has a robust process in place for creating strategy
- Establish direction, approve the council's strategic priorities and annual budget
- Delegate authority for strategy implementation and management to the CEO
- Articulate, safeguard, model and promote Girl Scouts values

Ensuring the Necessary Resources

- Develop policies related to the generation of financial resources
- Ensure that the council has the right leadership and necessary resources for implementation of council's strategy

Providing Oversight

- Establish policies to protect assets and ensure all legal and ethical accountabilities are met
- Ensure compliance with applicable laws, ethical standards and promote transparency
- Monitor progress toward council strategic priorities and evaluate outcomes
- Regularly review the performance goals of the CEO against council strategic priorities

Board Performance

- Ensure that board members are actively engaged in the work of the board
- Use relevant information from multiple sources to make quality decisions
- Ensure that the board understands its roles and responsibilities
- Ensure that the board structure is aligned to support the council's strategy and governing role of the board
- Regularly assess the board's own performance

Decision Influencing

- Establish a process for two-way dialogue with the membership when making critical decisions