



BOARD OBLIGATIONS

Although the bylaws include a statement regarding indemnification, board members may not be completely exonerated of any and all liabilities that may arise from failure to carry out their responsibilities. For this reason, it is extremely important that board members at all times practice the Duties of care and Loyalty, as detailed in the following sections, and as outlined in the *Guidebook for Directors of Nonprofit Corporations, Second Edition, from the Committee on Nonprofit Corporations, American Bar Association*.

DUTY OF CARE

The duty of care calls upon a director to act in a reasonable and informed manner when participating in the board's decisions. The duty of care requires that first, a director is informed; and second, a director discharge his duties in good faith, with the care that an ordinarily prudent person in a like position would reasonably believe appropriate under similar circumstances. This is generally referred to as the "business judgment rule".

Elements of the Duty of Care:

- Attending meetings – regular attendance at meetings of the board of directors is a basic requirement of director service. Directors may not vote by proxy.
- Importance of regular attendance – All directors must remember that they act as a group, and therefore regular board meeting attendance is essential. Repeated absences may expose the director to the risk of not satisfying the duty of care.
- Attendance at committee meetings – A director appointed to serve on a committee of the board is expected to regularly attend such committee meetings, and to be active in the committee's deliberations and other activities. A director must satisfy the duty of care in discharging his duties as a committee member.
- Exercising independent judgment – The duty of care requires that each director share equally in the responsibility of the board to act in the best interests of the corporation. Each director should exercise his or her independent and informed judgment on all decisions. The director's decisions must only be based on what is in the corporation's best interest, not any personal or constituent group.

Example: The board of directors approves spending 75% of its income on a party for the board members. This would not be consistent with the duty of care.

DUTY OF LOYALTY

The duty of loyalty requires directors to exercise their powers in good faith and in the best interests of the corporation, rather than in their own interests or the interests of another entity or person. The basic legal principle here is that a director shall not use a corporate position for individual personal advantage.

Example: If a director owns a T-shirt company, and the board always gives the association tournament T-shirt order to his/her company, either without going



through a bidding process, or despite his/her prices being higher than other bids, the board would not be exercising the duty of loyalty.

The duty of loyalty primarily relates to conflicts of interest and confidentiality.

- Conflicts of interest – the duty of loyalty requires that a director be conscious of the potential for such conflicts and act with candor and care in dealing with such situations. Conflicts of interest involving a director are not inherently illegal nor are they to be regarded as a reflection on the integrity of the board. It is the manner in which the director and board deal with a disclosed conflict that determines the propriety of the transaction.
- Confidentiality – A director should not disclose information about the corporation's activities unless they are already known by the public. Individual directors are not spokespersons for the corporation and thus disclosure to the public of activities should be made only through the corporations designated spokesperson, usually the President or Association Manager.

The following list of related documents should be read and signed by each member of the board of directors: Code of Ethics

- Commitment to Serve
- Confidentiality Policy and Agreement
- Conflict of Interest & Sample Policy & Disclosure Form

The association should then retain the original documents in their files. All are available at:

https://www.bowl.com/Associations/Association_Home/ARC-BoardCommittees/

References:

American Bar Association (2002). *Guidebook for Directors of Nonprofit Corporations – Committee on Nonprofit Corporations*, Second Edition

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