

LEGAL DUTIES OF NONPROFIT BOARDS

DUTY OF CARE

Board members must exercise due care in all dealings with the organization. In addition to financial oversight and reading minutes, this means attention to issues of concern to the organization and raising questions whenever something is unclear or questionable. Compliance with this duty requires that board members take care to:

- a. be informed, prior to making a business decision, of all material information reasonably available
- b. participate in decisions
- c. act with requisite care and good faith in the discharge of your duties
- d. make decisions “independently” (i.e., avoid undue influence of any one or few other board members.)

DUTY OF LOYALTY

This duty requires that board members set aside personal concerns and make decisions that are in the best interests of the organization. Conflicts of interest, including the appearance of conflicts of interest, must be avoided. Boards should be cautious of using language that implies members “represent” other groups or interests other than those of the organization. “Representation” is not the same thing as hearing diverse view points or encouraging different perspectives.

DUTY OF OBEDIENCE

Obedience to the organization’s central purposes—the mission—must guide all decisions. The board must also ensure that the organization functions within the law: the “law of the land,” the bylaws, its adopted policies, and any other laws that apply to the organization’s operations.

New Thinking:

DUTY OF TRANSPARENCY

In addition to the above three duties, boards have an obligation to ensure that their organizations are appropriately transparent in their operations. For most nonprofits, at a minimum, this entails the filing of IRS form 990 or other appropriate informational and tax returns that are required to be made public.

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Adapted from BoardSource, 2007: Understanding Nonprofit Governance: A Review