

RISKS OF SERVING

Understanding the Duties of Nonprofit Directorship

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ROLE OF THE BOARD & OFFICERS

The Board of Trustees (i.e.-Directors) and Officers

- Are responsible for the strategic direction of the organization
- Are the central decision making body for the organization
- Have ultimate responsibility and accountability for the organization's actions



ROLE OF THE BOARD & OFFICERS

Three fundamental fiduciary duties:

- Duty of Care
- Duty of Loyalty
- Duty of Obedience





DUTY OF CARE

Board members should be <u>engaged</u>, <u>informed</u>, and <u>independent</u>

- Hallmarks of a good board:
 - Composed of volunteers who are committed to the mission and demonstrate an understanding of the community served
 - Have appropriate size to effectively further charitable purposes
 - Rotate board members establish and enforce term limits
 - Meet multiple times a year
- Good trustees ask difficult questions and challenge the status quo



DUTY OF CARE

Trustees should be engaged, informed, and independent

- Loss Scenario
 - A non-profit organization held a fundraising event.
 - The organization received a temporary operating fund or "float" from another organization which was to be repaid from the proceeds of the events.
 - The funds were used to pay general expenses.
 - The organization subsequently filed for bankruptcy
 - The lawsuit against the organization and directors included negligence for failing to properly supervise the employee and breach of trust.
- Courts have asked how much the board members engage



DUTY OF LOYALTY

Act in the best interest of the organization and mission

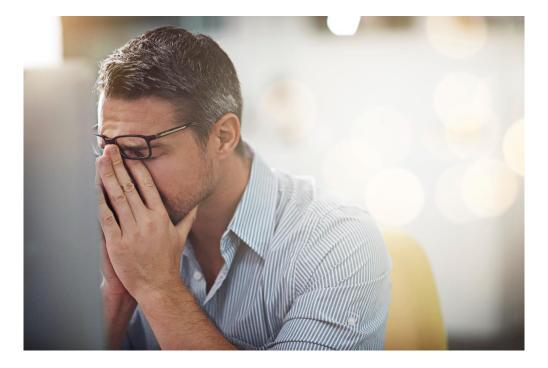
- Transparency is valuable:
 - Understand and publicly express the mission
 - Structure programs to effectively and efficiently work toward achieving mission
 - State performance expectation and accountability of Board members
 - Meeting attendance
 - Fundraising
 - Committee service
 - Involvement in program activities
- Act in the best interest of the organization/mission



DUTY OF LOYALTY

The mission, activities, finances, and governance should be transparent

- Loss Scenario:
 - Board declares bankruptcy
 - Local newspaper publishes self-dealing
 - Insurance is over priced, agent on the board
 - Price per square foot of lease overpriced, building owner on the board
 - Contract for cleaning services is overpriced, owner on the board
 - Report triggers bankruptcy trustee to investigate board conflicts of interest



DUTY OF OBEDIENCE

Good practices:

- Appoint the executive responsible for the day-to-day management and operations of the organization (e.g.-CEO, President, Executive Director, etc.)
- Establish and periodically review the bylaws and policies to ensure the effective governance and management of the organization
- o Engage in strategic planning
- Monitor and manage performance



DUTY OF OBEDIENCE

Loss:

Scenario 1:

- Home Owners Association begins to utilize the facilities to organize athletic tournaments
- Home Owners vote to stop the tournaments (facility availability, cost of wear & tear, etc.)
- o Board continues the tournaments, members sue

Scenario 2:

- Union donates to political campaigns
- Members bring suit that their dues were misused outside scope of mission



BREACH OF FIDUCIARY DUTY

And then there are allegations that cross over multiple duties:

- A non-profit organization applied for and received government funding for the purpose of organizing and hosting a concert event.
- The expenses incurred for the event far exceed the revenues received.
- Government conducted an audit and determined the funds had not been used for the purposes described in the funding application.
- The government commenced action seeking damages due to the alleged negligent misrepresentations in the application documents and for the alleged breach of fiduciary duty on the part of the directors of the organization.
- The claim was resolved by way of negotiated settlement.



BREACH OF FIDUCIARY DUTY

- The board of a professional association revoked an individual's membership due to allegations of unethical conduct.
- The member sued the association alleging the board of directors had targeted her and they had not followed the organization's bylaws.
- Although the facts did not appear to support the allegation that the board targeted the member, the bylaws were somewhat ambiguous, making it more difficult to defend the action.
- A settlement was negotiated to avoid any embarrassment or loss of reputation to the association





THANK YOU