



## Governance and Director Accountability

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This year, Cherise has been asked to chair the board development committee. This committee, responsible for the nomination, orientation, ongoing training, and retention of board members, meets once a month. The nomination process is spelled out in the bylaws: the nominating committee must create a slate, then get it approved by the board of directors, before it is voted on at the annual meeting.

Cherise asks fellow board members Malcolm, John, and Rosa to join the committee. After the first meeting, they poll the board to find out if the board members are thinking of anyone in particular. In reporting back to the board, Rosa nominates her boss: “I would really appreciate it if you guys could consider him. He really wants to get his name out in the community, and I think he would give me that promotion I want if I could get him on our board.”

In September, the slate of proposed directors (including Rosa’s boss) is ready. Unfortunately, the annual meeting was moved to October, and there is no regularly scheduled board meeting between now and then. “Don’t worry.” says Cherise. “We will just take it to the annual meeting. I am sure it will be fine.”

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### What are the responsibilities of a board member?

The responsibilities of a board member all fall into three major categories: duty of loyalty, duty of care, and duty of obedience. These are known as the fiduciary responsibilities of a board member. “Fiduciary” means holding in trust for another; literally, board members are holding the trust of the public in the decisions they make for the organization.

#### Three Fiduciary Responsibilities:

- **Duty of Loyalty**

*Board members are prohibited from utilizing information obtained through board membership for personal gain. Faithfulness and undivided allegiance should be exhibited by board members so that they act in the best interest of the organization.*

Board members must exercise their power in the interest of their organization. In making decisions on behalf of the organization, a board member must put his or her own personal and professional interests aside. This is when the conflict-of-interest policy becomes most useful. In addition, a board member promises to avoid the use of organizational opportunities for their own gain and to keep confidential information private.

- **Duty of Care**

*Board members must carry out board duties with the level of care that an ordinary prudent person would exercise in a like position or similar circumstance. It requires the board member to be familiar with the organization's finances and activities and participate regularly in its governance.*

A board member must pay attention to the organization's activities and program. Regular attendance at board meetings, while only a first step, is vital. Reports should be reviewed, full information should be obtained before making decisions, and the staff or other board members should be questioned for background and information. Remember, a board member has legal responsibility for the organization, and in the state of Delaware, he or she can inspect all of the books and records of the organization.

- **Duty of Obedience**

*Board members must ensure the organization complies with the appropriate laws, follows its own rules, regulations, policies, and procedures, and is faithful to the mission.*

Board members are responsible for ensuring the organization is in compliance. This compliance is not just regarding laws; the organization must also be compliant with its own rules. A board member cannot disregard the financial reporting policies, the bylaws, or any other document laying out the rules of the organization. In addition, the board serves as "guardians of the mission." A nonprofit must serve the mission it has laid out for itself; the board is responsible for making sure this mission is carried out. Changes in direction of the organization should be discussed and agreed upon by the full board.

### **How do these fit with the main responsibility of board members?**

In Board Basics, we learned that the main responsibility of the board of directors is for the conduct of the organization. Now that we understand fiduciary responsibility, that can be taken a bit further.

The three fiduciary responsibilities sum up exactly what a board should be doing. All of the work of the board fits into one of those responsibilities; if it does not, it is probably outside of the scope of the organization. Very generally, if a board member adheres to the duties of loyalty, care, and obedience, he or she will not be found personally liable for any major issues of the organization.

### **What is the responsibility of a board in the nominating process?**

In order for a nonprofit's board to be in a position to govern an organization, it must first take responsibility for its own operations. Careful attention to recruiting and selecting board members, as well as training and orienting new members, is crucial to the success of an organization's board and its operations.

Board members should determine the policies and procedures necessary for the maintenance of an effective board. These policies should cover recruiting and orienting new members, fundraising, strategic planning, and board meetings and participation.

Boards should also consider the current and future needs of the organization. Every board member brings a different skill set. A board may need the skills of an attorney, or perhaps the board realizes

there is no one with the financial background to serve as treasurer. Sometimes a board may want someone with bigger ideas, to take the organization to the next level. An organizational self-assessment, to determine the needs of the organization, can be helpful in figuring out what type of new members the board should recruit.

In addition, boards should always strive to include people with a variety of backgrounds and life experience. Boards that include members representing different genders, races, ethnicities, socioeconomic background and age groups will have deeper and broader insights on how to best guide the organization. Differences in perspective allow a board to more effectively consider the impact on consumers and the community of every decision made.

Most importantly, all board members should feel part of the nominating process. A good board nominating or development committee will work with many organizational stakeholders—including board members—to ensure that a far reaching net is cast to find those who can give the highest level of commitment and service to a board.

### **What can a nonprofit expect from its board members?**

Establishing written expectations for board members is a great way of communicating clear expectations to new members regarding their role as a nonprofit board member. Board members play many volunteer roles in their service to an organization, which may include (but are not limited to) fundraising, strategic planning, serving on committees, and participating in program activities.

There are many ways to communicate board member expectations. Expectations may be simply listed in a board member job description. Or, expectations may be spelled out in detail in a letter from the chair for new board members. Still other organizations opt to communicate board member expectations through a board commitment form that requires a board member's signature to acknowledge receipt, understanding, and a pledge to fulfill their responsibilities.

Expectations for members will differ from one board to another, and each board needs to decide what roles its members will play. The nominating committee or executive committee should periodically review the expectations to determine if updates are warranted. If so, changes can be proposed for approval by the full board.

### **Review of the basics:**

#### **Can you now answer the following questions?**

1. What are the three fiduciary responsibilities of a board member?
2. Which responsibilities were ignored by the members of the nominating committee in the scenario?
3. What is the best way to protect yourself as a director against possible legal action?
4. What are some ways the organization you are joining can lay out your responsibilities?

## **Quick Links to More Resources About Governance & Director Accountability**

A great piece on governance basics can be found from the [Minnesota Council of Nonprofits](#). The Free Management Library has a useful [toolbox](#) for board members.

The [Nonprofit Good Practice Guides](#) from the Johnson Center are rather in-depth on best practices.

The [Delaware Association of Nonprofit Agencies](#) maintains a library of information in their InfoCentral. In addition, members of DANA can get sample policies and procedures for free.

### **Evaluation Survey: Tell us what you think about this Training Module?**

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**[Governance and Director Accountability Training Module Survey](#)**