



Fiduciary Duties

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BOARD DUTIES

Every officer and member of the Board is a fiduciary, subject to fiduciary duties.

FIDUCIARY DUTIES

The law requires a Board member to act:

1. In good faith;
2. With the care an ordinary prudent person in a like position would exercise under similar circumstances; and
3. In a manner the Board member reasonably believes to be in the best interests of the association.

DUTY OF CARE

1. Attendance
2. Delegation vs. Abdication

While the Board makes the important policy decisions that guide and determine the activities of the association, it must rely on others to carry out the decisions. Such delegation is necessary and legal.

INFORMATION FLOW

The essence of the duty of care is the duty to be informed. Courts will not generally second-guess decisions of Boards based on thorough research and business judgment.

DUTY OF LOYALTY

By assuming office, Board members commit allegiance to the association and acknowledges that the best interests of the association must prevail over any individual interest of a Board member.

Full disclosure and refraining from discussion and voting are required when a Board member may be influenced by a private interest.

The duty of loyalty requires each Board member to refrain from public criticism of Board or association decisions.

DUTIES OF OBEDIENCE

A Board member has a duty to follow the association's governing documents (such as Bylaws) to carry out the association's mission and to ensure that funds are used for lawful purposes. A Board member must also comply with state and federal laws relating to the association.

PERSONAL PROTECTION

1. Corporate statutes
2. Volunteer protection statutes
3. Insurance

TAX ISSUES

1. What does tax-exemption mean?
2. Duties under tax rules
 - a. No politics in the association
 - b. Must benchmark salaries of key employees, etc.

TAX ISSUES (cont.)

3. Must file tax return/Form 990
4. Must pay tax on unrelated business income (eg, advertising, some sponsorship income)

ANTITRUST ISSUES

A. More than price fixing

1. Survey issues

B. Common issues faced by membership organizations

1. Group boycotts
2. Disciplinary issues