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# Legal Duties of a Nonprofit Board

According to nonprofit corporation law, a board member should meet certain standards of conduct and attention to his or her responsibilities to the organization. These are referred to as the Duty of Obedience, the Duty of Care, and the Duty of Loyalty.

## **Duty of Obedience**

Obedience to the organization's central purposes must guide all decisions. The board must also ensure that the organization functions within the law, both the "law of the land" and its own bylaws and other policies.

## **Duty of Care**

Board members must exercise due care in all dealings with the organization and its interest. This includes careful oversight of financial matters and reading of minutes, attention to issues that are of concern to the organization and raising questions whenever there is something that seems unclear or questionable.

## **Duty of Loyalty**

Conflicts of interest, including the appearance of conflicts of interest, must be avoided. This includes personal conflicts of interest or conflicts with other organizations with which a board member is connected.

## **New Thinking on Legal Duties**

### **Duty of Transparency**

In addition to the above three traditional duties, boards have an obligation to ensure that their organization is appropriately transparent in its operations. For most nonprofits, this entails the filing of IRS form 990 or 990-PF and other appropriate informational and tax returns which are required to be made public.

*Adapted from BoardSource 2005*

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# Basic Responsibilities of Nonprofit Boards

1. **Determine the organization's mission and purpose.** A statement of mission and purposes should articulate the organization's goals, means, and primary constituents served. It is the board's responsibility to create the mission statement and review it periodically for accuracy and validity. Each individual board member should fully understand and support it.
2. **Select the chief executive.** Boards must reach consensus on the chief executive's job description and undertake a careful search to find the most qualified individual for the position.
3. **Support the chief executive and review his or her performance.** The board should ensure that the chief executive has the moral and professional support he or she needs to further the goals of the organization. The chief executive, in partnership with the entire board, should decide upon a periodic evaluation of his or her performance.
4. **Ensure effective organizational planning.** As stewards of the organization, boards must actively participate with the staff in an overall planning process and assist in implementing the plan's goals.
5. **Ensure adequate resources.** One of the board's foremost responsibilities is to provide adequate resources for the organization to fulfill its mission. The board should work in partnership with the chief executive and development staff, if any, to raise funds from the community.
6. **Manage resources effectively.** The board, in order to remain accountable to its donors and the public, and to safeguard its tax-exempt status, must assist in developing the annual budget and ensuring that proper financial controls are in place.
7. **Determine, monitor, and strengthen the organization's programs and services.** The board's role in this area is to determine which programs are the most consistent with the organization's mission, and to monitor their effectiveness.
8. **Enhance the organization's public standing.** An organization's primary link to the community, including constituents, the public, and the media, is the board. Clearly articulating the organization's mission, accomplishments, and goals to the public, as well as garnering support from important members of the community, are important elements of a comprehensive public relations strategy.
9. **Ensure legal and ethical integrity and maintain accountability.** The board is ultimately responsible for ensuring adherence to legal standards and ethical norms. Solid personnel policies, grievance procedures, and a clear delegation to the chief executive of hiring and managing employees will help ensure proper decorum in this area. The board must establish pertinent policies, and adhere to provisions of the organization's bylaws and articles of incorporation.
10. **Recruit and orient new board members and assess board performance.** All boards have a responsibility to articulate and make known their needs in terms of member experience, skills, and many other considerations that define a "balanced" board composition. Boards must also orient new members to their responsibilities and the organization's history, needs, and challenges. By evaluating its performance in fulfilling its responsibilities, the board can recognize its achievements and reach consensus on which areas need to be improved.

Adapted from *The Board Building Cycle*  
by Hughes, Lakey & Bobowick, 2003

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# Principles of Governance: Key Responsibilities

## Mission

- Ensure that your organization has a clear, succinct written mission statement that expresses its core values and reason for being.
- Tie the organization to the spirit of the sector and to the major issues facing the organization's field and community.
- Revisit the mission statement annually in light of internal and external change, and revise it if necessary.
- Ask other organizations and similar organizations for copies of their mission statements and compare how they describe their vision and values.
- Seek internal and external feedback - from staff and from members or constituents -- about the organization's mission.
- Make the organization's mission widely known by promoting it in the community.

## Oversight

- Engage in regular strategic planning as an integral part of effective leadership and management.
- Commission a periodic organizational assessment that examines, in detail, the organization's programs and services, as well as its management, structure, and capacity.
- Adopt and regularly review a code of ethics and conflict of interest policy for board and staff.
- Understand and respect the relationship between board and staff.
- Select the chief executive carefully, and provide a clear description of duties and relationships.
- Support and strengthen the chief executive and the board - CPO relationship through a regular performance evaluation.
- Ensure high quality executive leadership.
- Make board self-assessment a routine part of the board's work.

## Resources

- Formulate a fund-raising strategy, including a case statement that expresses the rationale for financial support.
- Expect each board member to make an annual contribution to the organization according to his or her means, and take an active role in raising money.
- Cultivate board members with expertise in finance.
- Approve and monitor the annual operating budget.
- Review regular financial reports from staff. Require an annual audit by an independent accountant.

## Outreach

- Listen to the needs and interests of current and potential stakeholders.
- Be active community ambassadors, promoting the organization's mission, service, and achievements as well as bringing community perspectives to the attention of the board and staff.
- Ensure that the organization has a marketing and public relations strategy to support outreach.
- Seek out key leaders in business, government, education, and the media to inform them about the organization.
- Develop policies that support and encourage outreach activities.

Adapted from *Meeting the Challenge: An Orientation to Nonprofit Board Service* (video) BoardSource, 1998

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# The Best Practices of Great Nonprofit Boards

- 1) A shared **VISION**
  - as expressed by the strategic plan
- 2) Clear individual board member **EXPECTATIONS**
  - enforced and evaluated
- 3) Board **RECRUITMENT** is done strategically
  - monthly & year round
- 4) Board **SELF-ASSESSMENTS** are conducted
  - every two to three years
- 5) Orientation and **EDUCATION** are valued
  - all year long
  - the Board stays current
- 6) **CHANGE** is embraced
  - Mission is reviewed annually
- 7) **STAFF** is valued and rewarded
  - role delineation is clear
- 8) **RESOURCE DEVELOPMENT** is viewed as a primary board responsibility
  - the entire board not a committee
- 9) **GOVERNANCE** is taken seriously
  - documents and policies are updated
- 10) The Board is **FOCUSED** on critical issues
- 11) Board members have **FUN**
  - they enjoy each other .and find service rewarding

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# Common Board Shortcomings

What are the main weaknesses, omissions, mistakes, flaws, bad judgments, and sins that a board or an individual board member can commit? This paper lists several ways that a governing board can lose its way, along with some basic principles by which to operate.

## 1. Veering off the mission

Example: A youth education organization accepts a generous grant to build a sports facility for young people.

The most important decision-making guideline for a board is the mission statement. If the mission is not a central theme at every board meeting, it can be easy for a board to lose focus of the organization's true purpose.

## 2. Complacency

Example: A board member does not know how to analyze financial statements. Instead of asking questions, he votes with the majority.

A core obligation of every board member is active participation. Some symptoms of complacency might include board members who put off their assignments, disregard the core responsibilities that come with being a board member, fail to ask questions, or miss meetings.

## 3. Misguided motivations

Example: A board member recruits an out-of-work relative to run the organization.

Board members must always think of the organization first. Allowing personal preferences to affect decision making places the organization in a secondary role in a board member's mind. Misguided and unethical motivations, undeclared conflicts of interest, and the pursuit of personal benefit can endanger the organization's tax-exempt status.

## 4. Multiple voices

Example: A board member is interviewed by the press and advocates for her own solution to a crisis situation - one not adopted by the board.

A board only has authority as a group. Boards speak with one voice, which is formulated through deliberation. Individual board members are bound by the collective decision. Differing opinions need to be resolved in the boardroom, not declared outside to constituents, the media, or customers.

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## **5. Micromanaging**

Example: The board insists on being involved in choosing a new computer system for the organization.

One of the key duties of a board is to hire a competent chief executive to run daily operations. Part of this duty assumes that there is a valid job description and a performance evaluation process in place. A board's role is to oversee that the organization is well run; not to interfere in the domain of the chief executive.

## **6. Limitless terms**

Example: Fearful of losing control, the founding board of an organization has been governing for 15 years.

Every board must accept and even thrive on change. New perspectives and different ideas keep a board and organization moving forward. Term limits can help boards avoid stagnation.

## **7. Lawless governance**

Example: To get through a temporary financial crunch, the chief executive decides not to pay payroll taxes for several months. The board is unaware that this is happening.

Nonprofit tax-exempt organizations must heed federal, state, and local regulations, as well as their own bylaws. It is the board's role to make sure that all laws are respected. The board needs to assure that the organization files its Form 990 correctly and on time; that employment taxes are withheld regularly; and that official documents are saved appropriately. If a board fails to adopt appropriate policies or to effectively oversee financial regulations, it may become liable for wrong doings.

## **8. No self-assessment**

Example: Board members' morale is low, attendance is sporadic, and the chair has no clue about how to energize the board.

By studying its own behavior, sharing impressions, and analyzing the results, a board is able to lay the groundwork for self-improvement. Failing to assess its own performance, a board is unable to define its strengths and weaknesses. As a by-product, it can also enhance its team spirit, its accountability, and its credibility with funders and other constituents.

## **9. Lack of self-improvement**

Example: Board members have never seen individual board member job descriptions and are not familiar with their legal obligations.

Self-improvement is one of the innate consequences of self-assessment. Regular self-assessment

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is a futile process if it does not address apparent weaknesses in a board and result in structured self-betterment. Boards that do not provide learning possibilities for their members miss opportunities and inefficiently utilize their members' abilities.

**10. Knotted purse strings**

Example: A board is not able to reach consensus on its personal contribution policy. It becomes divided due to feelings of unfairness and lack of commitment.

Asking for and giving money are natural aspects of being a board member in most 501(c)(3) charities. Boards that are responsible for fundraising, yet don't have a 100 percent personal contribution rate, have failed the ultimate commitment test. If the board is not supporting the organization whole-heartedly, how can it convince others to do so?

**References**

Richard T. Ingram, *Basic Responsibilities of Nonprofit Boards* (BoardSource Revised 2003).  
Berit M. Lakey, *Nonprofit Governance: Steering Your Organization with Authority and Accountability* (BoardSource 2000).

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