Guide for Board Members

Serving on the Board of Directors of an association or other non-profit organization is a significant commitment. It entails important responsibilities. Some of these responsibilities are imposed by state law; others are the result of years of court decisions which have imposed various "fiduciary duties" on Directors.

A. FIDUCIARY DUTIES

The ultimate authority for managing the affairs of the organization is vested in the Board of Directors. Because the law grants Directors such authority, the law also imposes on Directors an obligation to act in the best interests of the organization. The law requires Directors 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 Director reasonably believes to be in the best interests of the organization.

B. DUTY OF CARE

The duty of care contains several elements. Its violation is the most frequent source of liability for Directors.

1. Attendance
   a.) Directors must attend Board meetings. Courts will have no sympathy for Directors who claim as a defense to any legal action that they did not know of a particular issue or did not participate in a particular action because of failure to attend Board meetings.
   b.) Directors who do not attend meetings are nevertheless bound by actions taken at those meetings and will be held responsible if any such actions are deemed negligent.
   c.) The act of failing to attend Board meetings may itself be deemed to be negligent behavior. Board meetings should be missed only for unavoidable emergencies. A Board member who repeatedly misses meetings should consider resignation.

2. Delegation vs. Abdication
    a.) While the Board of Directors makes the important policy decisions that guide and determine the activities of the organization, it must rely on others to carry out the decisions. Such delegation is necessary and legal.
    b.) Boards also delegate their duties to committees and other outside parties, such as accountants and attorneys.
    c.) A Board must monitor those to whom it has delegated authority to make sure such persons are acting responsibly.
    d.) Delegation does not relieve a Board of liability.

C. DUTY OF LOYALTY

By assuming office, the Director commits allegiance to the organization and acknowledges that the best interests of the organization must prevail over any individual interest of the Director, the Director's employer, and the Director's family and associates. Actions and decisions of the Director, while he or she is serving as a Director, must promote the organization's purpose and well-being rather than any private interest.

1. The duty of loyalty is transgressed when a Director uses his or her office to promote, advance or effectuate a transaction between the organization and such person or his or relatives or associates, and that transaction is not substantively fair to the organization.

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

D. INFORMATION FLOW

The essence of the duty of care is the duty to be informed. Courts will not tolerate Directors who are not sufficiently informed about the activities of their association. On the other hand, courts will not generally second-guess decisions of Boards based on thorough research and business judgment.

1. Directors must assure themselves that information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the Board itself timely, accurate information, sufficient to allow management and the Board to reach an informed judgment.

2. A Board's decisions not only must be informed, but also must be reasoned and deliberate.
    a.) Decisions should be made by the Board deliberately and without due haste or pressure.
    b.) The Board should be as thoroughly and completely prepared in its decision-making process as possible. Materials concerning decisions should be sent out for review in advance and the Board should read and understand those materials.
    c.) The Board members should be actively involved in deliberation in the Board meeting. Written materials should be read, digested and commented on by Board members.
    d.) Written records of Board preparation and deliberation should be maintained.
    e.) In the case of any major transaction, the Board should receive the basic documents and analysis by experts in connection with the transaction.
    f.) Independent evaluations and appraisals, as necessary, should be prepared by experts and presented to the Board.

E. DUTIES OF OBEDIENCE

Directors have a duty to follow the organization's global governing documents (such as Articles of Incorporation and Bylaws) to carry out the organization's mission and to ensure that funds are used for lawful purposes. Directors must also comply with state and federal laws relating to the organization.

F. FINANCIAL CONTROLS

One of the Board's responsibilities is to oversee the organization's financial affairs, including making sure that the organization has adequate internal accounting systems and controls.

1. The Board should be responsible for approving the organization's annual budget.

2. Board members should expect the staff to produce timely and adequate income and expense statements, balance sheets, and budget status reports.

3. The Board should employ independent accounting professionals and review the annual report of such professionals.

G. SAFEGUARDING ASSETS

The Board should oversee the effective use of the resources of the organization. Internal policies should be adopted and large transactions reviewed to ensure that the organization's assets are not misapplied or wasted.

1. The Board is not an insurer of the adequate performance of the organization's funds. There is no implied guarantee by a Board that its investment decisions will be profitable. The decisions must, however, be reasonable and defensible.

2. Directors are not expected or legally required to be experts in investment matters. Retention and reliance on advisors with good reputations is considered the exercise of prudence.

3. Intangible assets, such as the organization's goodwill, must also be safeguarded by the Board. The Board should evaluate the organization's activities and proposed activities with the overriding goal of protecting the organization's brand.

FOR MORE INFORMATION, CONTACT:

Paula Cozzi Goedert
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606

paula.goedert@btlaw.com

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