

Legal Duties of Association Board Members

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Are your association's officers, directors, committee members, and volunteers absolutely clear as to their roles and responsibilities within the organization's governance structure? Probably not. Some rights and obligations are determined by law, others by your own articles of incorporation and bylaws, and still others by written policies and more informal procedures.

The board of directors is the governing body of the association, responsible for the ultimate direction of the management of the affairs of the organization. The board is responsible for policymaking, while employees (and to a certain extent, officers) are responsible for executing day-to-day management to implement board-made policy. However, the ultimate legal responsibility for the actions (and inactions) of the association rests with the board.

The board can act legally only by consensus (majority vote of a quorum in most cases) and only at a duly constituted and conducted meeting, or by unanimous written consent (in most states, boards cannot act by mail, fax, or electronic ballot). The board may delegate authority to act on its behalf to others, such as committees, but in such cases the board is still legally responsible for any actions taken by the committees or persons to whom it delegates authority. An individual board member has no individual management authority simply by virtue of being a member of the board. However, the board may delegate additional authority to a board member, such as when it appoints board members to committees. In a similar fashion, an officer has only the management authority specifically delegated in the bylaws or by the board, although the delegated authority can be general and broad.

Those in positions of responsibility and authority in the governance structure of an association have a fiduciary duty to the organization, including duties of care, loyalty, and obedience.

Committees have no management authority except for that delegated to them by the bylaws or by the board. Furthermore, under most state nonprofit corporation laws, certain functions may not be delegated by the board to committees. For example, in many states, the board may not delegate to committees the power to elect officers, fill vacancies on the board or any of its committees, amend the bylaws, or approve a plan of merger or dissolution.

Employees have no management authority except that specifically delegated to them in the bylaws or by the board. For example, most associations' bylaws delegate to the chief staff executive the responsibility for the day-to-day operations of the association's offices, including the responsibility to hire, train, supervise, coordinate, and terminate the professional staff of the association, as well as the responsibility for all staffing and salary administration within guidelines established by the board.

Members have no management authority, as such authority is held by the board of directors. However, state nonprofit corporation laws generally reserve to members the right to remove officers and directors and to amend the association's articles of incorporation, among other rights. Under some associations' bylaws, certain matters, such as the amendment of the bylaws or the election of officers and directors, must be submitted to the membership for a vote. However, most other matters generally are not submitted to the full membership, but rather are handled by the board, one or more of its committees, or the officers or employees of the association.

Fiduciary Duty

Those in positions of responsibility and authority in the governance structure of an association—both volunteers who serve without compensation and employed staff—have a fiduciary duty to the organization, including duties of care, loyalty, and obedience. In short, this means they are required to act reasonably, prudently, and in the best interests of the organization; to avoid negligence and fraud; and to avoid conflicts of interest. In the event that the fiduciary duties of care, loyalty, or obedience are breached, the individual breaching the duty is potentially liable to the association for any damages caused to the association as a result of the breach. This fiduciary duty is a duty to the association as a whole; even those who only serve on a particular committee or task force owe the fiduciary obligation to the entire association.

- **Duty of care.** This duty is broad, requiring officers and directors to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Officers and directors must act in a manner which they believe to be in the best interests of the association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. The "business judgment rule" protects officers and directors from personal liability for actions made in poor judgment as long as there is a reasonable basis to indicate that the action was undertaken with due care and in good faith.
- **Duty of loyalty.** This is a duty of faithfulness to the association. This means that officers and directors must give undivided allegiance to the association when making decisions affecting the association. In other words, officers and directors cannot put personal interests above the interests of the association. Personal interests may include outside business, professional, or financial interests; interests arising from involvement in other organizations; and interests of family members, among others. Officers and directors should be careful to disclose even potential conflicts of interest to the board of directors and should recuse themselves from deliberation and voting on matters in which they have personal interests. For pervasive and continuing conflicts, such as a director of the association concurrently serving on the board of a competing association, resignation from the individual's association leadership post or from the outside conflicting responsibility may be required. Officers and directors can have business dealings with the association, but such transactions must be subject to considerable scrutiny. In such event, officers and directors must fully disclose any personal interests to the board of directors, and the terms of any transaction must be fair to the association. In addition, state nonprofit corporation statutes frequently provide specific procedures for dealing with transactions in which officers or directors have conflicts of interest.
- **Duty of obedience.** This duty requires officers and directors to act in accordance with the organization's articles of incorporation, bylaws, and other governing documents, as well as all applicable laws and regulations.

Reliance on experts. Unless an officer or director has knowledge that makes reliance unwarranted, an officer or director, in performing his or her duties to the organization, may rely on written or oral information, opinions, reports, or statements prepared or presented by

- officers or employees of the association whom the officer or director believes in good faith to be reliable and competent in the matters presented
- legal counsel, public accountants, or other persons as to matters that the officer or director believes in good faith to be within the person's professional or expert competence
- in the case of reliance by directors, a committee of the board on which the director does not serve if the director believes in good faith that the committee merits confidence.

Willful ignorance and intentional wrongdoing. Directors cannot remain willfully ignorant of the affairs of the association. A director appointed as treasurer, for example, with limited knowledge of finance cannot simply rely on the representations and reports of staff or auditors that "all is well" with the

association's finances. Moreover, officers and directors acting outside of or abusing their authority as officers and directors may be **subject to personal liability** arising from such actions. Furthermore, officers or directors who, in the course of the association's work, intentionally cause injury or damage to persons or property may be **personally liable**, even though the activity was carried out on behalf of the association.