

# ***Right From the Start - A Handbook for Not-For-Profit Board Members***

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## ***WHO MAY JOIN A BOARD?***

Board members come from all backgrounds, bringing diverse talents to the organizations they serve. Anyone over eighteen years old is qualified to serve on a board.

## ***BEFORE BECOMING A BOARD MEMBER***

We suggest that you do the following to learn about the organization *before* you join its board:

Read the organization's Certificate of Incorporation, by-laws and any other organizational documents to learn about its purposes.

Review the organization's latest financial report to see how it spends its money and evaluate its economic health.

Learn about the organization's programs - read its publications, visit its program sites.

Talk to current and former board members to learn about what the board does.

Find out what is expected of you as a board member.

Find out whether the organization is required to register with the Attorney General's Charities Bureau and whether it has registered and filed all required reports.

Be sure that you can give the time expected of a board member. Your colleagues should respect your decision to decline an invitation to join a board because you are "over-extended." Joining the board without sufficient time to devote to its business is often the root of the troubles faced by many board members.

## ***DUTIES OF BOARD MEMBERS***

While the board is not usually involved in the day-to-day activities of the organization, it is responsible for managing the organization and must make decisions crucial to the life and direction of the organization. In carrying out those responsibilities, members of a board of directors must fulfill certain duties to the organization and the public it serves. Those duties are commonly referred to as the duties of care, loyalty and obedience.

### **Duty of Care**

Under the duty of care, a director must be familiar with the organization's finances and activities and participate regularly in its governance. In carrying out this duty, directors must act in "good faith" using the "degree of diligence, care, and skill" which prudent people would use in similar positions and under similar circumstances.

In exercising the duty of care, responsible board members should, among other things, do the following:

Attend board meetings regularly and actively participate in discussions and decision-making.

Read the minutes of meetings and all reports, including financial reports. Also, read reports prepared by employees and outside professionals, and have a general knowledge of the information contained in those reports.

Read any literature produced as part of the organization's programs.

Make sure that the board spends some of its time on future and strategic planning.

Insure that the organization has proper internal controls and policies to safeguard, promote and protect the organization's funds and other assets.

Engage in careful oversight of the organization's finances.

Question any activity or transaction that is unclear or troubling.

Encourage diversity among board members. Diversity will help insure a board committed to serve the organization's mission with a range of appropriate skills and interests.

Be involved in the selection and compensation of the organization's Executive Director and other key employees responsible for its the day-to-day activities. The board

is responsible for such individuals having the appropriate education, skills, and experience to assume a key position.

Be familiar with all issues addressed by the board. Ask for additional information if any issue is not clear.

### **Duty of Loyalty**

Directors must place the interest of the corporation above any private interests. This duty of loyalty requires that any conflict of interest, real or possible, be disclosed to the board. Board members must avoid transactions in which they or their family members benefit personally to the detriment of the organization.

In order to exercise the duty of loyalty, the board must be careful to examine all transactions that involve board members or members of their families. The board must not approve any transaction that serves a private interest at the expense of the interests of the corporation.

It is recommended that a board have a written "conflicts of interest policy" so that all members are aware of the type of transactions that may prohibit them from joining a board. Some such policies require that members of the board disclose all possible conflicts and prohibit board members from engaging in any transaction that may result in even the appearance of a conflict of interest.

No matter how well-off the corporation may be, board members may not borrow money from the corporation - such loans are absolutely forbidden by New York law, even if there is a promise to repay the money borrowed with interest.

### **Duty to Carry Out the Corporation's Mission and Comply With the Law**

A board has a duty of obedience to insure that the corporation fulfills its purposes, including-

Dedicating the organization's resources to its mission.

Insuring that the corporation carries out its purposes and does not engage in unauthorized activities.

The board also has a duty to comply with all appropriate laws, including -

Registering with the Attorney General's Office in New York and any other state in which such registration is required.

Filing of required financial reports with the Attorney General's Office and the Internal Revenue Service.

Paying all taxes such as payroll and unrelated business tax.

Providing copies of its financial report to members of the public who request it.

Maintaining complete and accurate records.

Complying with registration and reporting laws and other applicable laws of all states in which it conducts activities and/or solicits contributions.

Complying with all provisions of the IRS Code, including those that govern compensation and disclosure so as not to subject the organization to "intermediate sanctions."

### ***INFORMATION AVAILABLE TO YOU AS A BOARD MEMBER***

As a board member, you need access to information necessary to carry out your responsibilities. You should have the opportunity to -

Review the books and records of the organization.

Receive copies of board minutes as well as financial and other reports.

Receive notice of all board meetings unless the time and place of meetings is set forth in the by-laws.

### ***KEEP YOUR EYES ON THE ASSETS***

Board members are responsible for overseeing the assets of the organization and insuring that funds are expended only to promote the corporate mission. In order to insure that the assets are properly managed, the board should, often with professional guidance, do at least the following:

Review the annual budget.

Develop internal financial controls.

Make sure that restricted gifts are used for the purposes for which they were donated.

Require and review periodic financial reports from the employees charged with day-to-day operations of the organization.

Seek financial advice when appropriate.

### ***IF YOU ARE SUED***

Board members may be sued in their personal capacity by an individual or entity for conduct relating to activities of the corporation. That means your personal assets may be at risk for action taken while a board member. However, New York State law provides for indemnification of board members in certain circumstances and a corporation's certificate of incorporation may also provide for indemnification of its directors. In order to encourage people to serve on boards while protecting them from claims, many charitable organizations purchase liability insurance for directors and officers. As a board member, you should determine whether your organization has such insurance and understand its scope.

### ***SOURCES OF HELP***

This booklet was prepared by the Charities Bureau of the Office of the Attorney General to give board members and prospective board members basic information concerning their rights and responsibilities. It is not intended to answer all questions or provide all the information needed to avoid liability.

Your role as a board member is extremely important, and there are many organizations to help you. In the life of every board, there are times to seek help. New York is home to many organizations that provide assistance to not-for-profit corporations and their boards. Also, the Internet provides access to countless web sites providing assistance to not-for-profits. Please make your service both beneficial and enjoyable by using the wide range of information available to you.

You can receive information about registration with the Charities Bureau by contacting the Attorney General's Charities Bureau at (212) 416-8400.

You can also find us at the Attorney General's web site -  
<http://www.oag.state.ny.us/charities>

Our web site contains information and forms concerning registration requirements applicable to your organization and other information to assist you.

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