

On a Not-for-Profit Board? Don't Forget Your Fiduciary Duty

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Board members of not-for-profit corporations are usually volunteers who offer their time and expertise to serve organizations they feel strongly about. Many times, however, board members either forget or don't even realize they are in a fiduciary relationship with the not-for-profit they serve.

According to Black's Law Dictionary, a fiduciary relationship is a "relationship in which one person is under a duty to act for the benefit of another in matters within the scope of the relationship." In light of that fiduciary relationship, a not-for-profit board member owes a variety of duties. The most important of those duties are: (1) a duty of care; (2) a duty of loyalty; and (3) a duty of obedience.

In particular, a board member must exercise the judgment and care that a reasonably prudent person would exercise in making the same decision. The duty of loyalty mandates that the board member act in good faith when making board decisions, and avoid dealings in which he or she has an individual conflict of interest. The duty of obedience necessitates that the board member follow the not-for-profit's bylaws and mission, and follow all applicable law.

Current or prospective not-for-profit board members need to remember these principles to avoid potential future liability. In what types of situations might a board member face liability? A major one revolves around grants. Many not-for-profits seek grants to make up their annual budgets. Grants typically come with certain requirements regarding how funds are used. Failure to utilize grant funds in a proper manner may lead to board liability.

In addition to grant funding, not-for-profits typically seek funding from private donors. The not-for-profit is answerable to those private donors to ensure that donations are being used properly. Board members must create proper financial policies and approve budgets that adequately account for and utilize the not-for-profit's funding. If such steps are not taken, board members face potential liability.

All in all, serving on a not-for-profit's board involves more than volunteering time for an organization you care for—it's also about faithfully executing one's fiduciary duty to that organization.

By Mohsen Pasha

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