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## Legal Duties

“The legal standard by which all aspects of operations of the organization should be tested requires *reasonableness* and *prudence*.”

“A director or officer of a charitable organization is a *fiduciary*. A fiduciary is someone who has special responsibilities in connection with the administration, investment, and distribution of property, where the property belongs to someone else.”

From: *650 Essential Nonprofit Law Questions Answered*, Bruce R. Hopkins.

### THREE OVERRIDING LEGAL PRINCIPLES

#### 1. Duty of Care

Directors and officers have the duty to act responsibly and exercise appropriate diligence. They need to exercise “the care that an ordinarily prudent person would exercise in a like position and under similar circumstances.” This duty covers most board member responsibilities, e.g. regular attendance, preparing, making sure you are educated about issues facing your organization, or asking appropriate questions before making decisions.

#### 2. Duty of Loyalty

This duty requires directors to act in the best interests of their organization, and in good faith. Directors must avoid any conflicts of interest, where they or members of their family stand to gain financially from a decision in which they participated or from information they receive through the nonprofit. It requires directors to honor confidentiality and other information proprietary to their organization (e.g. donor information).

#### 3. Duty of Obedience

This duty requires directors to be faithful and act consistently with the mission of the organization and in adherence to the law, its bylaws and other policies. In some states, this is considered a separate duty. In others it is included in the duty of loyalty.

From:

[www.BoardSource.org](http://www.BoardSource.org)

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*These materials are informational only. They are not meant to be legal advice.*



## The Work of your Nonprofit Board

Board Responsibilities/ Functions	I. Community Betterment/ Mission Achievement	II. Wise Stewardship/ Organizational Health	III. Quality Governance/ Intentional Practice
Definition of Success	Our Board has identified what difference our organization will make in our community or for our clients	Our organization has built the resilient capacity, resources and commitment that will achieve our mission objectives now and in the future. We are wise stewards of our resources.	We define what excellent governance looks like. We deliver on our commitments with integrity, respect, competence & ethical behavior.
Questions that every board must answer	What does our community look like and what are the changes we should plan for?	What competencies, knowledge, skills and leadership qualities do we need in our CEO?	What values are unwilling to compromise?
	What does our community [or our clients] need? What is the gap we are filling?	What capacity do we need now to execute results? What capacity will we need in the future?	How does this board add value to this organization – what are we responsible for as a group and as individuals?
	What good are we trying to accomplish? For whom? By when? At what price?	What does health look like for our organization?	What skills, knowledge, attributes, & competencies do we need in our board and its leadership to govern effectively? How do we ensure that?
	What is our theory of change? What strategy will achieve our desired results?	What are we accountable for? To whom? How will they know?	How will we make decisions and structure our work?
	How do we know that we are accomplishing what we set out to achieve?	What level of commitment do we have?	How will we ensure the uncompromising honesty & integrity required of us? How will we hold ourselves accountable?

## Core knowledge for board members

### External

- Issue/industry
- Nonprofit sector peculiarities
- Local, national, international trends
- Community context

### Internal

- Your organization's mission and programming
- Your organization's culture
- Financial structure and financial condition
- Goals, objectives and strategies
- Your key partners and funders

### Board Specific

- Bylaws
- Decision-making process and decision-rules
- Board expectations and obligations
- Other board workings

### Personal

- Personal commitments
- Meeting management

### Leadership

- Meeting facilitation
- Team dynamics
- Self-knowledge

## How to be an effective board member

- Choose board service if you are willing to carry the moral obligation on your shoulders.
- Choose an organization whose vision and values you are passionate about (or will quickly grow to be).
- Limit your board service – two boards at one time is usually enough.
- Know what you are getting into. Vet the organization as it vets you.
- There are many organizations of many sizes that need your help. Choose the one where your talents and passion align with its needs and vision.
- Generously leverage your wisdom, strategic sensibility, connections and expertise on behalf of the organization you serve.
- Value service, collegiality, collaborative and consultation.
- Insist on high standards of performance and legal and ethical behavior regardless of organization size.
- Hold fast to a philanthropic moral compass.
- Be curious. Learn. Study the nonprofit sector and the issues you serve.
- Speak up.
- Be prepared.
- Take responsibility.
- Observe the boundaries between board roles and staff roles.
- Donate at a personal leadership level (the top 1 or 2 in your giving).
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