



# I'm on a Nonprofit Board - **Now What?**

## Not Just a Rubber Stamp: Legal Duties of Nonprofit Board Members

We often think of joining a nonprofit board as a rewarding way to help an organization doing important work in our local community. We serve because we feel a connection to the mission and choose to share our limited time moving that mission forward. What is easy to forget while volunteering to serve on a board is that individual nonprofit board members are obligated to meet **real** legal requirements. While not particularly difficult to fulfill, it is crucial to keep them top of mind to protect both you and the nonprofit.

### Your Legal Duties

As a board member, you are a **fiduciary** of the organization. That means you are in a position of trust. The nonprofit's assets are entrusted to you to be used in support of its mission. Those assets don't belong to the founder, the board, or anyone else. The state of Ohio has a duty to protect the interests of those that benefit from the nonprofit's work, and it imposes legal obligations (fiduciary duties) on the nonprofit's board members.

#### Overview of legal duties:

- **Duty of care** - Board members should handle the nonprofit's affairs with the same care and diligence they would use when handling their own affairs.
- **Duty of loyalty** - Board members must act in the best interest of the nonprofit, not themselves, family, or friends.
- **Duty of compliance** - Board members are ultimately responsible for the nonprofit's compliance with its mission, governing documents, and state and federal requirements.
- **Duty to manage accounts** - Board members are responsible for the nonprofit's financial stability and accountability.

### Tips to Fulfill Your Legal Duties

It is helpful to understand what implementing these duties looks like from a practical standpoint. Assembled here are simple tips to help guide you in fulfilling your legal duties during board service.

**Duty of care** – An easy way to think of the duty of care is to treat the nonprofit’s business like you would your own. For example, if your personal business is hiring a painter for a large project, you might talk to a few companies, get quotes, and check customer ratings or references. It should be no different when hiring a painter (or anyone else!) for the nonprofit.

Board members should:

- Prepare for and regularly attend meetings;
- Ask questions and use independent judgment; and
- Review the performance of the executive director annually.

**Duty of loyalty** – Board members must act in the best interest of the nonprofit, not themselves, family, or friends.

Board members should:

- Disclose conflicts and follow the nonprofit’s conflict of interest policy;
- Not compete with the nonprofit;
- Not divert corporate opportunities from the nonprofit; and
- Keep confidential information confidential.

**Duty of compliance** – Board members are ultimately responsible for the nonprofit’s compliance with its mission, governing documents, and state and federal requirements.

Board members should:

- Keep the Organization’s mission and purpose in mind;
- Understand and comply with the Organization’s governing documents such as the code of regulations (bylaws) and articles of incorporation; and
- Ensure the Organization is complying with state and federal registration and reporting requirements (including filings with Ohio Attorney General, Ohio Secretary of State, and the Internal Revenue Service).

**Duty to manage accounts** – Board members are responsible for the nonprofit’s financial stability and accountability.

Board members should:

- Establish financial policies, procedures, and an annual budget;
- Understand the Organization’s financial statements;
- Develop fundraising goals and prudently invest assets;
- Comply with constraints on restricted funds; and

- Create and monitor internal controls. This means creating procedures to help reduce the risk of theft from your nonprofit. This is very important for all nonprofit organizations, regardless of size or budget. Internal controls should be established by the board whether it is an all-volunteer organization or one with hundreds of employees.

## When Do These Legal Duties Apply?

The short answer is: **Always**. Whether the nonprofit has a \$5,000,000 budget or \$500 budget, its board members are held to the same legal standards. And while you can rely on the knowledge of a longtime executive director or founder, you cannot just rubber stamp their decisions. You must ask questions and exercise independent judgment. These responsibilities begin on Day 1 of your board service, which is why it is so important for you to understand them from the very beginning.

## Consequences

It is natural to wonder what the consequences might be for failing to meet your fiduciary duties. Board members can be held **individually responsible** for breaches of fiduciary standards within a nonprofit. For example, if the organization's assets are sold at less than their fair market value, board members may be held personally accountable for any shortfalls. And transactions involving conflicts of interest also can result in fiscal penalties. Even criminal fraud charges can result when board members and key staff ignore their obligations and personally profit from assets that should be used for community purposes.

## Conclusion

With your willingness to serve on a board, you are a part of the positive change happening in our community. Being aware of your legal responsibilities as a board member will help your nonprofit make sound business decisions, implement best practices, and avoid risk. A strong governing board will help ensure your organization has a solid foundation to serve our community members most in need for many years to come.

## Additional Resources

The Ohio Attorney General's Office's Guide for Charity Board Members informed the content of this article and is a valuable tool for each individual serving on a nonprofit board in Ohio. We encourage you to access and share the resource with fellow board members. Additionally, the Ohio Attorney General's Guide Avoiding Theft: Protecting the Integrity of Your Nonprofit contains helpful tips to implement internal controls.

This article is part of the series I'm On a Nonprofit Board - Now What? The Legal Governance Lowdown for Nonprofit Board Members and Leaders So You Can Come to the Table Ready to Lead. Published by Pro Bono Partnership of Ohio, this series includes a 6-part webinar series and corresponding articles on important topics that will help you confidently take your seat at the board table and continue to make a positive impact in our community.

### **Need legal advice?**

Pro Bono Partnership of Ohio is here to help. We regularly draft and advise on conflict of interest policies, bylaws, and other areas of board governance.

If you are a PBPO client and have questions regarding the content of this article or need legal assistance, please contact us at [info@pbpohio.org](mailto:info@pbpohio.org) or (513) 977-0304.

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