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Three Basic Legal Responsibilities of Nonprofit Officers and Board Members

In general, nonprofit board members are not liable for the actions or inactions of the organization's officers, agents or employees. However, board members may be liable if they do not meet certain standards of conduct in carrying-out their duties on behalf of a nonprofit organization. These standards, which are set forth in state law, generally include three basic duties: the duty of care, the duty of loyalty, and the duty of obedience.

Duty of Care

This is often described as the level of competence that is expected to be exercised by a nonprofit board member. Generally it is thought that board members must exercise the "care that an ordinarily prudent person would exercise in a like position, under similar circumstances." In a nutshell this means that board members must make reasonable decisions considering the circumstances.

For example, the duty of care requires:

- board members to guard against loss or injury to the nonprofit corporation
- a duty to vote and not abstain
- a duty to review the organization's financial reports and the minutes from the previous board meeting

Duty of Loyalty

This means that board members owe an undivided allegiance to the organization for which they serve and must make decisions in the best interests of the organization. Board members must never make decisions for a nonprofit organization based on their personal interests or personal gain. It is a good idea to have a conflicts of interest policy to clarify the duty of loyalty and how board members should handle situations when conflicts arise.

Duty of Obedience

This means that board members must be faithful to the nonprofit organization's mission. Decisions must be made with the organization's mission in mind and board members may not act in a way that is inconsistent with the goals of the organization.

Three Basic Components of a Conflict of Interest Policy

A nonprofit organization's officers and directors have legal and fiduciary responsibilities to the organization they represent and support. One key duty of officers and directors is a duty of loyalty to the organization they serve. This means that board members owe an undivided allegiance to the organization and must make decisions in the best interests of the organization and not make decisions based on their personal interests or personal gain.

One way to help ensure officers, directors and staff properly carry-out their duty of loyalty is develop a conflict of interest policy for the organization. This policy may be included in the organization's bylaws, or simply passed by a resolution of the board and kept in the official files and policies of the organization.

A conflict of interest policy should require:

1. **Full disclosure** by board members and staff of any known connections with groups that do business with the nonprofit organization.
2. **Abstention from discussion and voting by board members** who have actual or potential conflicts of interest.
3. **Abstention by staff members** from the decision-making process when they have an actual or potential conflict of interest.

A sample conflict of interest policy might state:

Existence of Conflict, Disclosure. A conflict of interest may exist when the direct, personal, financial interest of any director, officer or staff member competes with the interests of the corporation. If any conflict of interest arises with regard to a matter requiring action by the Board of Directors, the interested person shall call it to the attention of the Board of Directors and such person shall not vote on the matter. When there is a doubt as to whether any conflict of interest exists, the matter shall be resolved by a vote of the Board of Directors, excluding the person who is the subject of the possible conflict.

Nonparticipation in Vote. The person having a conflict shall not participate in the final deliberation or decision regarding the matter under consideration and shall retire from the room in which the Board is meeting. However, that person shall first provide the Board with any and all relevant information.

Minutes of Meeting. The minutes of the meeting of the Board shall reflect that the conflict was disclosed and the interested person was not present during the final discussion or vote and did not vote on the matter.

Provision of Policy to Officers, Directors and Staff. A copy of this conflict of interest statement shall be furnished to each director, officer and staff member who is presently serving the corporation, or who may hereafter become associated with the corporation.