

Beyond Attendance: The Legal Duties of Nonprofit Board Members

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By Peter Spanos



Serving as an officer or director of a nonprofit organization is both an honor and a serious legal responsibility. Whether your organization is a large regional association or a small community-based nonprofit, the individuals who sit on the board are held to defined legal standards — standards that exist to protect the organization, its members, and the public it serves.

This article outlines the core governance obligations that apply to every nonprofit board member, including the three fiduciary duties imposed by state law, the board's proper role in organizational management, and several practical obligations that are easy to overlook but carry real legal consequences.

Modern Governance Demands Active, Informed Leadership

Nonprofits today operate in an environment of heightened public scrutiny, legal complexity, and accountability. The days when a board member could fulfill his or her obligations simply by showing up for quarterly meetings and voting on motions are long past. Effective governance now requires directors to be proactive, to engage with the organization between formal meetings, to participate meaningfully in leadership transitions, and to approach every board communication and decision with deliberation.

Passive participation is not just ineffective; it can be a legal liability. A director who sits back, defers entirely to others, and casts uninformed votes risks violating the very duties assumed upon joining the board.

The Board Governs — It Does Not Manage

One of the most important distinctions in nonprofit governance is the line between policy and management. The board of directors is the organization's governing body, with ultimate responsibility for its mission and direction. But that responsibility does not extend to the day-to-day administration of the organization. Operational decisions — staffing, program delivery, vendor relationships, and the like — are properly delegated to paid staff, designated committees, or empowered officers.

This principle holds even for smaller nonprofits that lack a professional staff. The board's role is to set policy and ensure that results align with the organization's mission and governing documents. When boards stray into micromanagement, they create confusion, undermine staff authority, and expose themselves to unnecessary risk. The best boards define clear boundaries, delegate appropriately, and hold leadership accountable for outcomes.

The Three Fiduciary Duties

State law imposes three legally enforceable fiduciary duties on every officer and director of a nonprofit organization: the duty of care, the duty of loyalty, and the duty of obedience. These duties are not optional — they cannot be waived by agreement, and

they apply regardless of whether the organization is large or small, well-funded or volunteer-run. Every decision made in the course of board service should be evaluated against all three.

Duty of Care: Be Informed and Engaged

The duty of care requires directors to exercise the same ordinary and reasonable diligence that a prudent person would apply in similar circumstances. In practice, this means directors must arrive at meetings prepared, ask questions when something is unclear, seek out information independently when necessary, and engage substantively in board deliberations.

A director who attends meetings without reviewing materials in advance, who relies entirely on the representations of other board members without independent inquiry, or who votes yes or no simply to go along with the room is not meeting this standard. The duty of care is an individual obligation; each director is personally responsible for being informed.

Duty of Loyalty: Put the Organization First

The duty of loyalty requires that when a director acts in his or her capacity as a board member, that director's allegiance must be undivided and directed entirely to the organization's interests. Personal interests, outside business relationships, and affiliations with other organizations must not influence board decisions.

This duty encompasses two related obligations. First, directors must avoid actual conflicts of interest — situations in which personal gain could be derived from an organizational decision. Second, and equally important, directors must avoid even the appearance of conflicts of interest. The credibility of a nonprofit depends in large part on public trust, and that trust is damaged when there is any reasonable basis for questioning whether a board member's decisions were made for the right reasons. Organizations should have a written conflict-of-interest policy, and directors should be prepared to disclose and recuse themselves where appropriate.

Duty of Obedience: Know and Follow Your Governing Documents

The duty of obedience requires directors to act in accordance with the organization's articles of incorporation, bylaws, mission statement, and any other governing documents, as well as applicable federal, state, and local law. This is not a passive obligation. Directors are expected to have read and understood the organization's governing documents, and to act consistently with them, even when a director might personally have approached a matter differently.

If governing documents are outdated, unclear, or inconsistent with current law, the appropriate response is to pursue a proper amendment, not to ignore the documents or work around them. Counsel can assist with reviewing and updating governing documents to ensure they reflect the organization's current operations and legal obligations.

Additional Obligations

Individual Accountability for Fellow Directors' Conduct

Board membership is not a passive credential. Directors have an individual obligation to respond when they become aware that a fellow director, or an officer, is engaging in conduct that is illegal, in violation of fiduciary duties, or otherwise contrary to the organization's interests. Awareness without action can itself give rise to personal liability.

What constitutes an adequate response will depend on the circumstances, but in serious cases it may require raising the issue formally at a board meeting, consulting with legal counsel, or escalating the matter through appropriate channels. Directors who simply look away when misconduct is apparent do so at their own legal risk.

Confidentiality: An Absolute Obligation

Board deliberations are confidential. Information discussed in the course of board business — whether in formal meetings or in communications among directors — may not be shared with individuals who are not part of the board or otherwise properly within the organization's governance structure. This obligation applies regardless of how a vote came out and regardless of whether the director agreed with the board's decision.

The reason for this rule is practical as well as legal. Open and candid board discussion depends on the mutual understanding

that what is said in the boardroom stays there. When confidentiality is breached, even informally, even with good intentions, it chills future deliberation and can seriously damage the organization. Directors should treat all board communications as confidential by default, and should decline to discuss board matters with family members, professional colleagues, or anyone else outside the governance structure.

Written Communications: Assume Everything Is Public

In litigation and regulatory proceedings, written communications are among the first materials sought in discovery which includes emails, text messages, board messaging platforms, and any other written communication, regardless of how informal the channel. There is, in practical terms, no such thing as a private electronic communication for a nonprofit director.

Directors should bring the same care to their written communications that they bring to formal board proceedings. This means avoiding emotional or inflammatory language, refraining from personal attacks, and thinking carefully before committing anything to writing that would be embarrassing, misleading, or legally problematic if it later appeared in a courtroom or regulatory hearing. When in doubt, a phone call is often the better choice. And when written communication is particularly sensitive, having it reviewed by counsel before sending is a worthwhile precaution.

Nonprofit Directors Are Accountable to the Public

Unlike the directors of a for-profit corporation, who owe their primary duty to shareholders, nonprofit directors operate in a context of broader public accountability. The tax-exempt status and public-benefit mission of a nonprofit organization mean that its governance is, in a meaningful sense, a matter of public interest. This is the foundation of many of the rules that apply to nonprofits and their directors, and it is why the standards for nonprofit governance are taken seriously by regulators, courts, and the communities these organizations serve.

Directors who internalize this principle — who understand that their role is not simply to serve the membership but to advance a mission for the broader public good — tend to govern more effectively and with greater integrity.

A Final Word

The legal obligations of nonprofit board service are real, and they apply from the moment a director takes office. But they are not burdensome for directors who approach the role with the seriousness it deserves. Directors who stay informed, act in the organization's best interest, follow the governing documents, communicate carefully, and hold themselves and their colleagues accountable will, in virtually every case, meet their legal obligations and serve their organization well.