Acceptance of fiduciary responsibility

A fiduciary responsibility is an obligation that prevents one party from acting in their own interest rather than in the interest of the organization. For nonprofits, this ethical commitment makes it possible to fulfill the mission. Board members must be aware of their fiduciary duties and what constitutes a breach of responsibility. A lack of understanding regarding these duties results in liabilities for the organization and is poor board governance. The term fiduciary comes from the Latin "faith" or "trust." A fiduciary responsibility is between one party who is obligated to act in the best interest of another party. A fiduciary duty requires a person to conduct themselves at an ethical standard above what is legally required. A fiduciary duty demands a person does what is right, no matter the circumstances. Fiduciaries are governed by federal and state laws, as well as common law. Fiduciary responsibilities establish a high standard of care for individuals or organizations. In the case of nonprofit boards, members are responsible for managing the organization's interests, so they are bound to legal and ethical obligations, thus protecting the nonprofit from abuses of power and conflicts of interest. Fiduciary responsibilities provide:

- Protection of an organization's assets from misuse of power
- Prevent conflicts of interest
- Provide greater transparency and accountability
- Promote a higher level of professionalism from the organization's board leaders

Nonprofit board directors are legally bound by their fiduciary responsibilities. Governments need the assurance that nonprofit organizations — and all those involved with them — aren't profiting from the organization's efforts, which would otherwise subject them to paying taxes.

Good governance and ethical behavior

Board directors who diligently perform their fiduciary duties responsibly protect the organization's reputation — a central tenant of good governance.
Each fiduciary duty has a specific meaning and falls into one of the following six categories:

1. Duty of Care
2. Duty of Loyalty
3. Duty of Obedience
4. Duty of Confidentiality
5. Duty of Prudence
6. Duty to Disclose

Duty of Care

Duty of care means that board directors must give the same care and concern to their board responsibilities as any prudent and ordinary person would manage their personal matters.

At a minimum, the following fiduciary responsibilities fall under this duty:

- Participating actively in board meetings
- Serving on at least one committee
- Working to advance the nonprofit's mission and goals
- Practicing oversight of programs and activities
- Choosing a qualified president/CEO
- Periodically monitoring the budget and financial reports
- Engaging in strategic planning

Duty of Loyalty

Duty of loyalty means that board directors must place the interests of the organization ahead of their own interests at all times. Board members are required to publicly disclose any conflicts of interest and not use board service as a means for personal or commercial gain or to further the interests of themselves, their family or their employer.

Duty of Obedience

Duty of obedience means that board directors must make sure that the nonprofit is abiding by all applicable laws and doesn't engage in illegal activities. This also means board directors must ensure the mission is as stated in their nonprofit organization's registration forms.

Duty of Confidentiality

Duty of confidentiality means board members must keep certain types of information confidential. They must not use the information they see or hear in the scope of their position for personal or professional gain.

Duty of Prudence

Duty of prudence is being aware of risks and exercising caution in decision-making. Board members must handle matters with a high degree of professionalism and approve material expenditures wisely.

Duty to Disclose

Duty to disclose requires board members to be forthright in their speech and behavior. If they have material information that would influence their decisions or impact the decisions of other board members, they have a duty to make that information known using proper and appropriate channels and communication methods in a timely manner.

What Constitutes a Breach of Fiduciary Duty?

Before there can be a breach of fiduciary duty, there must be an established relationship between the fiduciary and the beneficiary. In the case of a nonprofit, an established relationship is in place via the responsibility accepted by the board members to serve as fiduciaries, and the nonprofit is the beneficiary. A board member is considered to have breached a fiduciary duty when they did or said something that was not in the nonprofit's best interest.

Please note the bulk of the content in this policy was taken from materials prepared by BoardEffect and Freed Maxick's Good Board Governance materials