

SERVING AS A DIRECTOR OF A NONPROFIT ENTITY

Eric C. Perkins, Esq.
Perkins Law, PLLC
4870 Sadler Road, Suite 300
Glen Allen, Virginia 23060
(804) 205-5162
eric@ericperkinslaw.com
www.ericperkinslaw.com

People serve as directors of charitable organizations for a variety of reasons. Unfortunately, few people fully understand and appreciate the legal ramifications of being a director of a tax-exempt organization. The purpose of this article is to outline some of those responsibilities to help you become a better board member.

As a director of a charitable or nonprofit organization (the terms “tax-exempt,” “charitable,” and “nonprofit” have different legal definitions but are used interchangeably by most people), you are responsible for governing the organization as it carries out its charitable mission. This responsibility carries with it several legal duties, including a duty of care and a duty of loyalty.

A director’s duty of care means that he must act with such care as an ordinary person would exercise in the same situation. In other words, a director must act in good faith and make informed decisions concerning the organization’s activities. If you fail to attend meetings and stay reasonably informed, then you are violating your duty of care to the organization. This does not mean that perfect attendance at board meetings is required or that you must be able to describe in detail each and every activity and program of the organization. However, absent emergency situations or illness, you should strive to attend as many scheduled board meetings as possible, and you should have a general understanding of the organization’s mission, activities, and financial condition.

A director’s duty of loyalty means that he or she must act with undivided loyalty in a manner reasonably believed to be in the best interests of the organization. In other words, a director must not profit from transactions with the organization, or otherwise use his or her influence for personal economic gain.

To fulfill these legal responsibilities, you should: (i) attend board and committee meetings on a regular basis; (ii) actively participate in all meetings; (iii) carefully read all written correspondence, minutes, and other materials concerning the organization; (iv) ask questions about things you do not understand; and (v) use your own independent judgment on all decisions. You are entitled to be, and should be, aware of every major action the organization takes.

As a board member, you should be cautious about entering into any business relationship with the organization, and the board as a whole should be careful about entering into business

relationships with board members and other organization volunteers. Situations like these may present potential or actual conflicts of interest between the organization's mission and the pecuniary interests of an individual board member. These types of transactions should not occur until all relevant information concerning the conflict situation has been disclosed to the board, and the board determines the transaction is fair and would not violate the organization's governing documents or applicable law. Further, any interested board member (i.e., a board member with a conflict of interest) should excuse himself or herself when the particular transaction or arrangement is being discussed and voted upon.

In short, the board must carefully scrutinize any conflict of interest transaction, both because of the dynamic it can create within the organization and the skepticism with which the public might view such transactions.

If board members, organization employees, or volunteers profit from transactions with the organization, the organization could, under certain circumstances, lose its tax-exempt status, and those persons who received an improper benefit or who knowingly approved an improper transaction could face monetary penalties from the Internal Revenue Service.

In conclusion, serving on a nonprofit board can be a very enjoyable and rewarding experience, but it is not all fun and games. As a director, you have legal obligations and should take the initiative to educate yourself on an ongoing basis about your role and responsibilities.