

BOARD OF DIRECTORS

Three Legal Duties

There are essentially three legal duties that the board of directors should understand and follow:

**The Duty of Care** describes the level of competence that is expected of a board member. The most commonly expressed standard is that a board member owes the duty “for care that an ordinarily prudent person would exercise in a like position and under similar circumstances.”

**The Duty of Obedience** requires board members to be faithful to the organization’s mission. Although board members may exercise their own reasonable judgment concerning how the organization should best meet its mission, they are not permitted to act in a way that is inconsistent with the mission of the organization. One reason is that nonprofits rely heavily on the public’s trust when soliciting donations and grants, and the public has a right to rely on the representation that the money will be used for the purpose for which it was given.

**The Duty of Loyalty** refers to a standard of faithfulness to the organization. The fundamental duty of loyalty owed by a board member is the duty to give undivided allegiance to the organization (i.e. versus personal gain) when making decisions affecting the organization. In practice this means that board members can never use information obtained as a member for personal gain and is only permitted to act in the interests of the organization. The most common breaches of the duty The most common breaches of duty of loyalty occur when a board member uses the organization’s property for personal ends or participates in any activity that would result in personal gain or “private inurement”, to use the technical term.