

BOARD MEMBER DUTIES/GOVERNANCE ISSUES/GOVERNANCE POLICIES

Board Member Fiduciary Duties – Legal and Ethical Obligations of Serving on a Board

The AOA is incorporated as a not-for-profit corporation in Illinois. Consequently, the laws that govern corporate conduct for this organization are generally contained in the Illinois General Not-For-Profit Corporation Act of 1986, as amended January 1, 2010. This statute, in combination with relevant court decisions and various federal requirements, guides the requirements for the duties and obligations of members of the Executive Committee that are described below and allows for the AOA to indemnify and insure directors as long as the directors act in good faith and in the best interests of the organization. Conduct of board members, when exercising the duties of loyalty and care to carry out board responsibilities, are covered by Directors and Officers Insurance maintained by the AOA and by organizational resources as provided in the AOA Bylaws.

Beginning in 2005 and 2006, federal agencies closely scrutinized the oversight regulation of the not-for-profit industry. In particular, regulatory bodies are concerned with board fiduciary standards of conduct, financial performance and disclosure, and how business transactions are conducted. Application of Sarbanes-Oxley laws to the not-for-profit industry have been applied primarily as transparency and reporting requirements in the IRS Form 990 that the AOA must file each year, based upon audited Financial Statements. Multiple “best practices” have additionally resulted from these heightened standards. As a result of Sarbanes-Oxley and the increasing governmental scrutiny, not-for-profit boards have been encouraged to more clearly understand and fulfill their fiduciary obligations.

Generally, board member fiduciary obligations and duties are:

1. Duty of Loyalty

Sensitive information disclosed to board members must remain confidential to the board. Conflicts of interest in either the access to or use of information given to the board must be avoided. Where a board member has a direct or indirect interest in a transaction being considered, that member must disclose his/her interest prior to the discussion and board consideration of the transaction. (Illinois law defines indirect interest as a material financial interest of any type or where the member is an officer, director or general partner.) The interested director may not be counted when the board takes action on the transaction. Loyalty must be to the greater good/long term life of the organization.

2. Duty of Care

There are very specific obligations relating to the Duty of Care; in general, a board member must adequately educate him/herself in order to act in the best interest of the organization in both financial oversight and in business decisions. Specifically, the director should:

- a. use diligence in performing director duties
- b. understand all organization activities
- c. attend and participate in all board meetings
- d. adequately prepare for all board interactions
- e. fulfill the obligation to carry out the mission and purposes of the organization in a lawful manner
- f. be compliant with all laws and regulations relating to the organization

The Duty of Care also requires that directors realize and act according to the “duty of good faith.” This more esoteric obligation means that board members should use their best efforts to honestly and ethically serve their organization and the membership in good faith.

What does this mean? How do these “duties” translate into conscientious board member participation?

- Board members should disclose all direct and indirect conflicts, potential and apparent conflicts of interest. Disclosure should occur on a regular, periodic basis **and** when the board member identifies a potential, real or apparent conflict of interest will arise during a planned board discussion. When the latter occurs, the board member should bring this to the attention of the President and recuse him/herself from the discussion if appropriate or if requested.
- Board members should always put the organization’s interests ahead of personal interests or the interests of other organizations the board member serves
- Board members need to retain the confidences of the organization, especially regarding business opportunities that may be of interest to other individuals/organizations
- Board members should consistently remember and reflect -- in organizational decision making -- the mission, purposes and values statement of the organization
- Board members need to adequately prepare for board meetings/decision making by 1) trying to understand all board matters, 2) making efforts to participate in board governance education, 3) asking appropriate questions, 4) making independent, well-informed judgments, 5) seeking out, questioning and resolving perceived or real conflicts of interest, and 6) understanding that lack of knowledge/preparedness does not take away accountability for board decisions

(Ref.: L. Edward Bryant, Esq., “Nonprofit, Tax-Exempt Organizations’ Boards of Directors: Legally Required Fiduciary Duties,” c. 2005)

Basic Responsibilities of Not-For-Profit Boards

While Illinois law does not specify the specific responsibilities of not-for-profit boards, there are ten basic responsibilities, developed by BoardSource (previously known as the National Center for Nonprofit Boards) and commonly accepted as standard board obligations:

1. Determine the organization’s mission and purpose
2. Select the chief executive
3. Provide proper financial oversight
4. Ensure adequate resources for the organization to fulfill its mission
5. Ensure legal and ethical integrity and maintain accountability
6. Ensure effective organizational planning and monitoring of plan’s goals
7. Recruit and orient new board members and assess board performance
8. Enhance the organization’s public image
9. Determine, monitor and strengthen the organization’s programs and services
10. Support the chief executive and review his/her performance

Governance Issues – How Board Members Should Approach Board Participation

While board membership is really a group responsibility, there are specific approaches that each member can use to most effectively participate on a board. The following principles are based upon case studies of effective governance models:

- Understand that you are individually and collectively (as a board) representing the membership; represent the entire ownership, not a particular constituency
- Be aware and accountable for group productivity – is the board focused upon mission, program priorities, cost/benefits and governance policies?
- Be prepared in advance to discuss board topics, express your opinion, and accept/validate the group decision, even if you disagree with it
- Be proactive – board participation should not be about listening to reports once you understand the information
- Remain focused on the big picture – what are the outcomes of the activities prioritized by the board, do they reflect the mission and provide impact in a broad sense. Handle big issues – even though they can be daunting, board inaction is in itself an action
- Support the board’s final choice; understand that the collective decision is the one that leadership and staff will follow
- Don’t confuse form over substance – process and reporting can take the place of good governance oversight; traditional governance structures establish responsibilities procedurally and through the accomplishment of processes
- Assure that board priorities and organizational focus do not reflect individual board member agendas – the board should concentrate upon what the organization should accomplish, according to its goals and mission
- Support the board president’s efforts regarding board discipline – assist the chair in following the correct processes

(Ref.: J. Carver and M. Carver, “The CarverGuide Series on Effective Board Governance: Your Roles and Responsibilities as a Board Member, c. 1996)

Governance Policies

Membership Process

All online and other member commentary regarding candidates for AOA membership will be destroyed after Executive Session ratification of membership.

Financial

- Checks in amounts less than \$2,000 may be signed by the Executive Director.
- Checks in excess of \$2,000 require the signature of the Treasurer.
- The Treasurer will receive a monthly check log of all checks processed.