



SOLUTIONS

3 Legal Duties That CEOs and Board Members Must Know

Your nonprofit's future depends on these 3 fiduciary duties. Learn what they are and how CEOs and board members can get them right.



By **Elizabeth M. Schmidt**
Contributor



Getty Images

SHARE THIS STORY:    

December 12, 2025 | Read Time: 6 minutes

Nonprofit executives are contending with many disruptive forces this year, from federal funding cuts and economic upheaval to artificial intelligence and more. During uncertain times, leaders often look to their boards of directors for critical guidance and collaboration to address such challenges.

It's important to emphasize that nonprofit executives and board members each have legal obligations to the organizations they serve, and a thorough understanding of them leads to better partnerships — and better outcomes for organizations.

Staff and board leaders share responsibilities for stewarding the mission and ensuring a nonprofit's fiscal health. All states require nonprofits to have governing boards to approve the organization's direction, provide oversight, and ensure the group has sufficient resources. Executives, in turn, carry out the day-to-day operations and supervise employees.

Board members and executives have other legal obligations as well. State laws generally say that the board, officers, and other persons with similar power within a charity have fiduciary duties to that organization.

In most states, these are defined as duties of care and loyalty. Some states also recognize a duty of obedience. Almost always, if one of these duties is breached, they all are, but it's worth considering each individually.

Here's how CEOs and board members should understand these legal responsibilities, along with a key consideration: protecting against personal liability.

Duty of care: oversight of a nonprofit.

The duty of care recognizes each board member's and the executive's fiduciary duty to oversee the organization — to pay attention to the mission and to attend to the organization's needs.

The law usually specifies that board members and top executives should act in good faith and with the degree of care a reasonable person in a similar situation would act. For example, leaders should ensure all paperwork is done thoroughly and on time and that all policies are followed.

ADVERTISEMENT

In the best-run organizations, leaders are proactive in their oversight — and a time of uncertainty is a good time to revisit your mission. Make sure everyone interprets it the same way and that all decisions advance that mission.

Given the funding cuts and increased competition for support, it is also a good time to review finances and examine all sources of funds. Are you in danger of losing funding? Can you raise funds from new sources?

These questions can prompt an opportunity for scenario planning. What happens if the nonprofit loses significant funds or faces an investigation? Play out any hypotheticals and be sure to have a crisis communications plan in place.

Lastly, especially if you are a board member, don't be afraid to speak up if you disagree with others. It's a sign that you take your duties seriously. Those who are not truly engaged with the mission or willing to do the work should consider resigning.

Duty of loyalty: managing conflicts of interest.

The duty of loyalty requires fiduciaries to keep the interests of the nonprofit above their own personal and professional interests. It tells board members and executives to be wary of conflicts of interest and to ensure that neither they nor anyone close to them benefits unfairly from their relationship with the nonprofit.

Take your conflict-of-interest policy seriously. If a board member, an executive, or someone in their family does business with the nonprofit, even on a voluntary or below market-value basis, you should ensure the transaction is fair to the nonprofit and the conflicted person does not participate in any vote or discussion about the transaction. You should also consider whether the appearance of a conflict will undermine the nonprofit's mission, even if the correct procedures have been followed.

ADVERTISEMENT

In times of political polarization, it's also possible that personal politics conflict with an organization's mission. Be honest if that is the case and consider whether it's time for an executive or trustee to depart.

If something makes you uncomfortable, pay attention. Your intuition may be telling you that you or another fiduciary has a conflict of interest with the organization.

Duty of obedience: adherence to the mission and the law.

The duty of obedience requires board members and top executives to ensure that a nonprofit pursues its mission and follows the law. This duty is recognized only in a few states, probably because the duties of care and loyalty cover the same requirements. Nevertheless, it is unique to the nonprofit world, and it emphasizes the differences between for-profit and nonprofit corporations.

Especially in this moment, it's important to be the person who asks in every board meeting: Does this further our mission? Are there any potential conflicts here?

Board members and executives are also obligated to double check whether all Forms 990 and state filings have been turned in on time and to ensure policies are in place to prevent fraud.

Protect against personal liability.

The law builds in significant safeguards for board members and top executives. First, the business judgment rule protects fiduciaries who have made decisions in good faith and with due care. It prevents courts from questioning a well-reasoned decision that turns out to be a mistake.

For example, if a nonprofit pays fair market value for a property days before the market tanks, the fiduciaries will not be liable for the loss in value. If the organization paid too much for the property because it never investigated the fair-market value, however, those who made the decision could face liability.

ADVERTISEMENT

Second, fiduciaries are only liable for bad decisions if they are grossly negligent. A board member may breach their fiduciary duty by skipping a meeting, but a single action will not lead to personal liability.

However, a series of smaller breaches can lead to a finding of a serious breach and sanctions. You should be aware that if you profit financially at the expense of the nonprofit, you will also be required to pay the funds back – along with an excise tax.

Most nonprofits also pay for directors and officers insurance to protect fiduciaries, and the bylaws often offer to indemnify fiduciaries for any liability. Of course, these protections will not be available in cases of fraud or conflicts of interest.

Finally, most nonprofits are corporations. If the corporation is liable for an action, the board members and executives will not be personally liable. There is one big exception, however: If the corporation has not paid its portion of federal withholding taxes, the board members and top executives could be on the hook for those penalties.

Elizabeth Schmidt is senior research fellow at the University of Massachusetts at Amherst's School of Public Policy and author of Rules of the Road for Nonprofit Leaders.

Newsletter

Philanthropy Today

Sign up for the latest news, trends, and opinion articles about the nonprofit world every week day with our free newsletter.

Email address*

tracy@tcphilanthropy.com



CONFIRM AND SIGN UP

Philanthropy Today

Sign up for the latest news, trends, and opinion articles about the nonprofit world every week day with our free newsletter.

SUBSCRIBE

Special Reports

Philanthropy 50

Search or browse this year's list of America's biggest donors and all the past lists going back to 2000. You can sort by name, amount donated, source of wealth, location, and top cause.

READ MORE

Today's Top Jobs

Chief Advancement Officer and Executive Director of the Foundation

Tompkins Cortland Community College



Chief Development Officer

WSKG



VP of Development

The Common Market



Executive Director

The Common Market



Chief Advancement Officer, Heinz College of Information Systems and Public Policy

Carnegie Mellon University



[SEE MORE JOBS](#)

About the Author



Elizabeth M. Schmidt

Contributor

Elizabeth M. Schmidt is senior research fellow at the University of Massachusetts at Amherst's School of Public Policy and author of *Rules of the Road for Nonprofit Leaders*.

More Solutions



PLAYBOOKS

How to Tap Into the Psychology of Giving



By No Author
Contributor

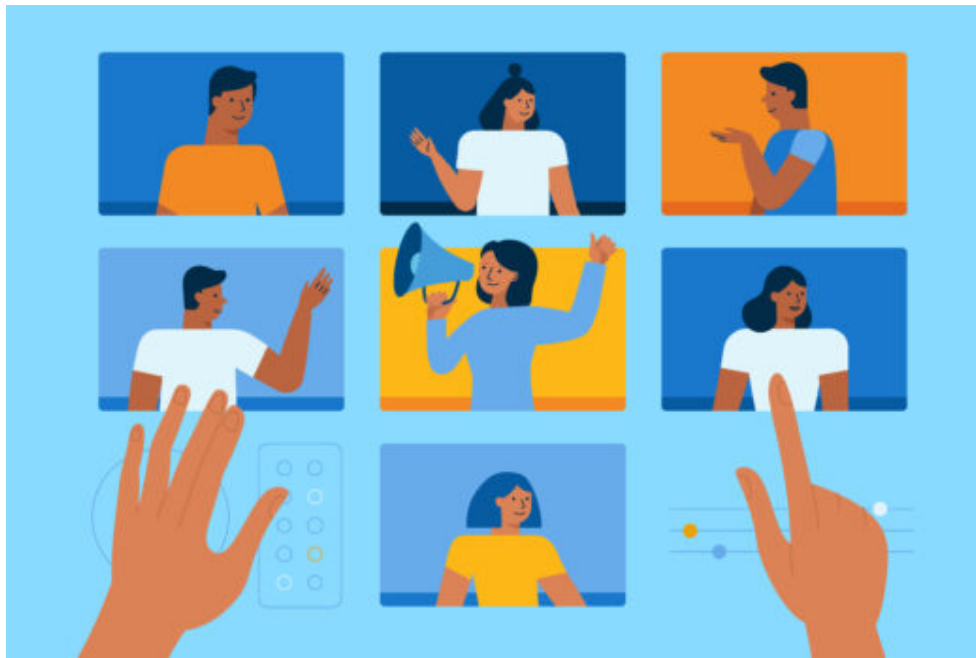


PLAYBOOKS

How to Attract Midlevel Donors



By No Author
Contributor



SOLUTIONS

Stronger Together: the Benefits of Joining Nonprofit Networks



By Laurie Mazur
Contributor

Editor's Picks

FOUNDATION GIVING

How a Notorious Billionaire's Foundation Is Saving Lives in Rural America

SOLUTIONS

3 Legal Duties That CEOs and Board Members Must Know

OPINION

Bill Gates Is Wrong: This Is No Time to Back Down on Climate

SOLUTIONS

Stronger Together: the Benefits of Joining Nonprofit Networks

SECTIONS

Latest

TOPICS

Advocacy

[Fundraising](#)

[Giving](#)

[Leading](#)

[Solutions](#)

[The Commons](#)

[Store](#)

[Impact Stories](#)

[Career Center](#)

MEMBERSHIP

[My account](#)

[Newsletters](#)

[Help](#)

[Find a Job](#)

[Post a Job](#)

[Magazine](#)

[Careers](#)

[Communications](#)

[Corporations](#)

[Foundation Giving](#)

[Grant Seeking](#)

[Innovation](#)

[Philanthropists](#)

[Technology](#)

ABOUT

[Our Mission & History](#)

[Contact Us](#)

[Fellowship](#)

[Advertise With Us](#)

[Advertising Terms & Conditions](#)

[User Agreement](#)

[Privacy Policy](#)

[California Privacy Policy](#)

The Chronicle of Philanthropy empowers philanthropy, nonprofit professionals, and everyone seeking to make meaningful change by providing insightful and valuable information and resources.