

## Responsibilities of the Nonprofit Board of Directors

Every organization, including churches and other faith-based entities, are generally incorporated within their state of operation and have received special exemptions that allow them to operate without having to pay income tax on their annual earnings. Being recognized as a tax-exempt organization is a privilege however that comes with certain responsibilities. Consequently, a failure to fulfill these responsibilities can lead to serious consequences for the nonprofit.

Ensuring compliance is the responsibility of all who serve at the organization. This is especially true of the members of the organization's board of directors and corporate officers, as they are the ones who will be held accountable if failures occur. And, they generally set the tone within the organization for how things will operate. Setting an example and ensuring that others within the ministry are conducting themselves appropriately is an important responsibility.

Fundamentally, the compliance obligations of a nonprofit can be condensed into four basic duties. These are the duty to:

- ensure that the charity conducts its business activities within the bounds of the "mission" for which it received its exemption,
- only uses its funds for purposes related to its exempt purposes,
- maintain its financial records in accordance with the standards of reporting that have been established for nonprofits, and
- otherwise comply with the specific federal, state, and local regulations that apply to organizations of their type.

Nonprofit organizations that fail to fulfill these duties are subject to penalties and sanctions that can be as severe as the loss of tax exempt status. So, it is important for every nonprofit, including churches, to make sure they understand and conform to the current compliance requirements.

With that in mind here are a few recommendations your board should consider when evaluating their duties and responsibilities.

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### **Basic Responsibilities**

Members of the board of directors are trustees who act on behalf of an organization's constituents, including service recipients, funders, members, the government and taxpayers. The basic responsibilities of the board of directors, when functioning as a board, include, but are not limited to:

- Determining the organization's mission and purpose.
- Supporting and evaluating the chief executive with the goals of the organization in mind.
- Ensuring effective organizational planning.
- Determining which of the organization's programs are consistent with its mission, focusing the organization on them and then monitoring their effectiveness.
- Securing adequate financial resources for the organization to fulfill its mission.
- Assisting in the development of the organization's annual budget and ensuring that proper financial controls are in place.
- Defining prerequisites for potential new board members, orienting these new members, and periodically evaluating performance.
- Adhering to legal & ethical standards and norms.
- Clearly defining and articulating the organization's mission, accomplishments and goals to gain support from the community and enhancing the organization's public image.

Overall, board members have a duty of loyalty to the organization, its staff and other board members. While differences of opinion will likely arise, board members should keep disagreements impersonal. By practicing discretion and accepting decisions made on a majority basis, the board can maintain unity and confidence in its decisions.

The board of directors should be open to self-evaluation and regularly review their own composition to ensure they have the diversity of expertise and commitment needed to fulfill their responsibilities. Boards also are responsible for evaluating and determining the performance and compensation for the senior executive. Board members should perform their responsibilities through regular meetings and a committee structure that is appropriate for the size of the board and organization. Board members are responsible for arriving at meetings well-prepared and ready to engage in thoughtful dialogue.

### **Legal Responsibilities**

The board is ultimately responsible for the performance of the organization in all areas of its work and to ensure that the organization is in compliance with state and federal law. The following is a checklist of tasks nonprofits may be legally required to perform. It is neither intended nor to be construed as legal advice.

- Annually, file information returns on the activities of the organization with the Internal Revenue Service, their state taxing authority, and the office of the state attorney general. (Churches are presently exempt from these filings).
- Complete an annual financial evaluation of the organization's total revenue using the services of an independent certified public accountant experienced in working with nonprofit organizations.
- Register with the office of the secretary of state the names and contact information of the nonprofits corporate officers.
- Make available for inspection by the general public certain information about the organization, including your exemption applications and annual information returns.
- Annually, report any "unrelated" business income activity that may have occurred and

- pay any associated taxes.
- Withhold taxes from employee wages and send withholding payments to the IRS and their state employment office as applicable.
- Comply with laws that affect all employers, including; Americans with Disabilities Act, Occupational Safety and Health Organization, Fair Labor Standards Act, Federal Insurance Contribution Acts, COBRA and the Family Medical Leave Act, etc.
- Refrain from any lobbying activities or the endorsement of, or contributions to, political candidates.
- Give receipts to donors for contributions over \$250 that meet the minimum standards currently proscribed by the IRS.
- Collect sales tax on items sold by the organization and pay “use tax” on items purchased by the organization where no sales tax was paid.
- Get prior approval from the State Attorney General and the Secretary of State before distributing any assets of the organization.
- Register with the gambling board if the organization conducts charitable gambling activities.
- Pay property taxes or obtain an exemption from the state and county where the property is located if the organization owns real property.
- Pay regular bulk mail rate or obtain a nonprofit bulk mail permit if the organization sends bulk mail.
- Comply with the terms of donations to the organization that come with specific restrictions on how the funds are to be used. [Note: promises made to donors when soliciting or accepting funds are legally binding. Funds given for specific projects or programs need to be kept separate from the general funds of the organization].
- Comply with federal and state law regarding conflicts of interest, accounting for reimbursements to staff and volunteers, record keeping, protecting documents and the rights of “whistle blowers, and fund-raising activities.
- Make sure professional fund-raisers used by the organization have complied with any state or local registration requirements and maintain a copy of the registration in the nonprofits records.
- Record detailed minutes of all official board meetings and activities.

### **Individual Duties & Responsibilities**

Individually, members of the board of directors should make their commitment to the nonprofit a high priority and then conduct themselves and their activities so as to support and best serve the organization. A few things board members should consider include the following:

- Prioritize your time to attend as many board meetings and special functions as possible.
- Stay informed about the organization's mission, services, policies and programs.
- Review agenda and supporting materials prior to board and committee meetings.
- Serve on committees or task forces and offer to take on special assignments.
- Make a personal financial commitment to the organization.
- Inform others about the organization.

- Suggest possible nominees to the board who can make significant contributions to the work of the board and the organization.
- Keep up-to-date on developments in the organization.
- Follow conflict of interest and confidentiality policies.
- Refrain from making special requests of the staff, but ensure you are receiving the information needed to help you stay informed.
- Assist the board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements.

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