

Legal Responsibilities of the Board of Directors

Boards have a fundamental obligation to the owners to protect the investment that the owners, who may be members in the case of a cooperative, have made in the company.

It is the duty of the directors to see that a company keeps within its authorized powers and obeys the law. Any intentional deviation or negligent departure from these duties to the substantial injury of the company may result in personal liability. The Minnesota state statute says, “A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the cooperative.”

Directors’ Basic Responsibilities and Role

Directors’ Business Judgement

Decisions must be made in good faith upon reasonable investigation for a lawful purpose, and in an honest belief that it is in the company’s best interests.

Directors’ Duty of Confidentiality

The director must maintain the confidentiality of board deliberations and decisions. Many matters that come before the board are confidential and must remain so.

Directors’ Legal Duties

As a director, an individual assumes fiduciary duties to the organization and its members. Fiduciary duties are the highest standard of duty implied by law and arise out of a special relationship of trust and confidence between the parties. Fiduciary duties include:

- Duty of care or diligence - to act with the care a reasonably prudent person would use under similar circumstances and to act in good faith, which implies making decisions that are financially, ethically, and legally sound. A director must obtain and review relevant information, raise any matters of concern, and cause action to be taken to resolve any problems that are identified. These decisions should be made after taking all available information into account and carried out in a matter that is in the best interest of the company.
 - » What are examples of ways directors can meet their fiduciary standards for the duty of care or diligence? Directors should use their independent judgment based upon the advice of experts, where needed. Directors should make sure to keep their skills in subjects such as accounting, finance, governance, and strategy current through educational workshops designed to increase their industry knowledge and director skills. These skills point to the need for directors to attend board meetings and educational workshops, stay abreast of industry developments, and engaged in their role as directors.

- Duty of loyalty - the “sole purpose” is to act in the best interest of members and owners, to avoid conflict of interest, to act as a fiduciary. This includes standards of fairness in handling a director’s own transactions and those of other members and owners.
 - » What are examples of ways directors can meet their fiduciary standards for the duty of loyalty? Boards should have policies in place for handling disclosures and conflicts of interest. A director must promptly make full disclosure of the conflict of interest to the qualified directors of the board. The director must disclose (a) the existence and nature of the director’s conflict of interest and (b) all facts known to him or her regarding the subject matter of the transaction or situation that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction or how to deal with the situation.
- Duty of obedience - to act in compliance with laws, regulations, charter, bylaws, contracts, and board policies. A director must be familiar with these sources and remain informed of the organization’s activities to assure management is adhering to the same. Furthermore, the director should make sure that all of the decisions being made are done in line with the mission or goals of the company.
 - » What are examples of ways directors can meet their fiduciary standards for the duty of obedience? Directors should ensure that strategic planning sessions and decisions made from these sessions lie with the mission and goals. Directors should make sure that all decisions that are made comply with the law. When in doubt, a director should consult with legal counsel. The decisions should not be inconsistent with the company mission and goals.
- Duty of oversight - to be proactive in ensuring you have full and necessary information, including adequate internal controls
 - » What are examples of ways directors can meet their fiduciary standards for the duty of oversight? Directors should monitor the General Manager or Chief Executive Officer through recruitment, evaluation, retention, and compensation decisions. Where applicable, directors should make use of third parties for employees to report possible dishonest or illegal activities that might be occurring and have a formal whistle blowing policy in place. Risk committees within the board are sometimes used to monitor the overall risk faced by the company because of transactions undertaken by management. Directors should ensure that the company has a certified audit and interviews auditors to make a choice suitable for their company. Understanding the nature of the company’s internal control process is a necessary duty for a director.
- Reliance on Others - A director cannot know everything about the company. Businesses are increasingly large and complex. A director is entitled to rely on information, opinions, reports, and statements by officers and employees of the company. A director may rely on legal counsel, public accountants, or other professionals or experts and members of their board committees.

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