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What Does it Mean to be a Nonprofit Board Member?

I work with a lot of people who think they'd like to start a nonprofit. One of first things I usually have to remind those founders is that a nonprofit needs board members. Usually, those founders don't really know how important the board members really are.

In this article, I'm going to give you an overview of what the board does and what your legal obligations are as a member of a nonprofit board.

Our goal is to help you understand what you're asking from these folks and help board members better understand exactly what you are signing up for before you agree to serve on a nonprofit board.

First things first: what is the Board of Directors?

All nonprofits are corporations (ok, yeah some are LLCs but that's a different article – we're focusing on corporations here). And every nonprofit corporation has to have a board. They can't be run by just one person. So, actually, nonprofits have more in common with Fortune 500 companies than a "mom & pop shop," no matter how small it may feel at the beginning.

Like big companies, the nonprofit is governed by its "Board of Directors." Governing is just a fancy word for decision-making – the board is the group that makes the decisions. Most states require a nonprofit corporation to have a minimum of three people on any nonprofit board. Often, I recommend 5 or more (and always an odd number to avoid tie votes).

Unlike for-profit companies, though, nonprofit board members are volunteers and aren't paid for their service. You probably already know that nonprofits have no shareholders, stock or dividends. But, sometimes people don't realize that the board is unpaid. Why is that?

Well, if you're running a charity, you shouldn't be sued for trying to do something good. To that end, we have limited liability for nonprofit board members to protect them from that sort of thing. Howeverrrrr...that only works if you're really doing it for charity. If you're

serving on a nonprofit board without pay, it's pretty clear you're not doing it for monetary gain. So, that probably means you're serving because you're invested in the mission and trying to do some good.

Basically, if you get paid, you can get sued. That's the short version anyway.

About that whole “governing” business...what does the board do?

The board defines the nonprofit's mission (and yes, this includes the founder's participation, don't worry). The board provides leadership and strategic direction for the nonprofit. In my home state of Minnesota, the Council of Nonprofits provides a great resource for more info [about this here](http://www.minnesotanonprofits.org/nonprofit-resources/leadership-governance/board-basics/board-basics-overview) (<http://www.minnesotanonprofits.org/nonprofit-resources/leadership-governance/board-basics/board-basics-overview>).

In the beginning, this “governance” looks pretty rough. “Hey, we need money, let's raise some,” or “who can get 10 volunteers to show up at the next rally,” or “we should bring our mobile soup kitchen to the corner of 5th Street next month.” With a new nonprofit, it starts out as pretty low level, day-to-day operations stuff.

But even though you'll start out small, eventually the nonprofit board will be doing things like:

- Setting policy and ensuring the organization has the resources it needs to carry out its mission (the fancier version of “hey, we need to raise money”)
- Provide direct oversight and direction for its key staff and be responsible for evaluating their performance (instead of recruiting volunteers, now you're managing the Executive Director)
- Evaluate its own effectiveness as a governing body and as representatives of the community in upholding the public interest served by the organization (instead of worrying about ground-level decisions, you'll be focused on the 30,000-foot view)

What does it mean to have “Fiduciary Duties?”

Start Googling about boards, and you'll come across the phrase “fiduciary duty.” All corporate board members (for-profit and nonprofit) are fiduciaries. That means you have to think about what is best for the corporation and NOT simply what's best for you and your pocketbook.

If you're doing things right and “upholding your duties,” then you should be ok. But if you breach your duties as a fiduciary on the board, then you can get sued by your state's charitable law enforcement arm (often the State's Attorney General) or by members of the organization, or others.

So, since you – and I mean you personally – can get sued over it, it's worth talking about what these duties are, specifically. In most states, there are three fiduciary duties:

1. The Duty of Care

Board members have a responsibility to be active in the nonprofit corporation's affairs. What does *that* mean? Basically, you need to show up and do your job.

Being a “rubber stamp” or never showing up or never reading the documents provided – that's not doing your job. Board members uphold their duty of due care when they are prepared, show up at meetings, ask questions, follow business best practices, etc.

2. Duty of Loyalty

Board members have an absolute duty of complete, undivided loyalty to the nonprofit corporation. Whuuut?

To put it simply: you have to put the interests of the nonprofit corporation above your own (or your family and friends) interests. That means you don't abuse your position or misuse the nonprofit's money to benefit yourself.

So, you don't push for expensive board retreats in the Bahamas when a rented conference room in town will do. And if your spouse is the Executive Director, you don't vote to pay them a salary before the organization can afford it. (You would need to refrain from voting on the salary anyway because it's a conflict of interest – and that's a whole other article).

In short, don't do anything that hurts the organization or just helps you.

3. Duty of Obedience

The first part of this one is simple: don't break the law. Nonprofits have a lot of extra regulations that apply to them (including the IRS tax regulations and your state's nonprofit laws, along with all the regular “business” laws). And since you probably don't know what the law is, make sure you are getting good legal advice and assessing the risk to the organization.

The second part of this: don't break your own rules. You have to follow your own bylaws, policies and procedures. If I had a nickel for every organization I helped who didn't follow their bylaws...I'd have a couple hundred bucks. (You know, nickels don't go as far as they used to. We need to update that expression!)

If you have an elaborate nominating committee procedure to elect board members, but what really happens is you find a new board recruit and vote them in at the next meeting, we should really amend your bylaws. You're not following them, and you are supposed to!

Call me. Same goes for your internal controls, conflict policy, etc. Follow them – or revise them to be something you CAN follow.

Finally, and this is kind of in the “don’t break the law” vein, do not allow the charity’s money to be spent improperly. That means, you should only be spending the nonprofit’s money on mission delivery and mission support (or, overhead). Let’s say the Treasurer uses the nonprofit’s funds to cover a house payment, even with the full intention of paying back the nonprofit – that’s a breach of fiduciary duty. If you find out that this has happened and do nothing to fix it? You’re in trouble too.

So, now what?

What should you be doing to make sure you don’t get in trouble?

1. Don’t be a rubber stamp board member. Show up and do your job.
2. Make sure you keep good meeting minutes. It’s the one way to show you actually did #1.
3. Don’t accept payment for your service on the board (it can destroy your limited liability)
4. Make sure your nonprofit gets help from professionals for accounting, legal, strategic planning and human resources when the time comes.

If you’re feeling a little overwhelmed, it’s ok – that’s normal. Being on a board is really more responsibility than most people expect or realize. If you are thinking about board service for the first time, it’s good to take it seriously. But, don’t be scared off. If you show up and do your best, that’s mostly all that’s required.