

PROTECTING ★ THE ★ UNPROTECTED

Guide for **Charity Board Members**



Honoring Commitments and Responsibilities

Charities greatly enhance the quality of life for all Ohioans. This guide explains the legal duties and responsibilities of board members.



**ANDY
WILSON**

OHIO ATTORNEY GENERAL

Dear Charitable Organization Leader,

Communities with a strong charitable presence tend to be healthier. That's why it's important for the Ohio Attorney General's Office to set clear expectations for nonprofits so they can thrive.

The Charitable Law Section of my office oversees the work of charities to help ensure that bad actors don't pollute this indispensable space and that good actors can continue to serve their communities with confidence.

A charity's strength reflects the strength of its leaders. As such, you have accepted the responsibilities that go along with making sure a nonprofit runs smoothly and flourishes.

This "Guide for Charity Board Members" can help. It explains your duties, suggests methods for strengthening your board overall, and provides resources regarding professional training as well as model standards.

Communities statewide depend on the assistance of charitable organizations. My office is here to help you and your charity succeed.

We thank you for the work you do to make Ohio a better place to call home.

Yours,

A handwritten signature in black ink, appearing to read "A. Wilson", with a stylized, cursive flourish at the end.

Andy Wilson
Ohio Attorney General

BEING A BOARD MEMBER: MORE THAN AN HONOR

Charities are required by law to have board members to ensure integrity and accountability in their governance. They may be called by different titles — board member, trustee, or director — but they have the same important responsibilities. Organizations seek community members to serve in this capacity for several reasons, including:

- Honoring an individual's previous volunteer services or commitment to those the charity serves.
- Adding credibility to the board through an individual's management and business skills.
- Strengthening an organization through an individual's significant contacts.
- Increasing the variety and level of skills on the board.

Agreeing to serve on a board comes with a great deal of responsibility and can prove highly satisfying. Before accepting such a position, prospective board members should learn more about the commitment involved so they understand the role, function and responsibilities of being a member of a charity's governing body.

A BOARD'S LEGAL DUTIES

Trustees and directors of charitable organizations have fiduciary obligations to ensure that the mission of the organization is honored and that the group's resources are used wisely in support of that purpose.

The Ohio Attorney General's Office has the duty to ensure that the interests of those who benefit from the charity's work are protected. In fact, this is one of the oldest duties of attorneys general, dating back centuries in common-law tradition. Statutory provisions expand on that authority.

The duties of trustees are also long-standing. Statutory provisions spell out those responsibilities in the Ohio nonprofit corporation code provisions (Ohio Revised Code Section 1702). For organizations that have sought and received tax-exempt status from the Internal Revenue Service, there also are federal requirements pertaining to board members' fiduciary duties.

The responsibilities center on paying attention, being good stewards and acting in the best interest of the organization. Board members are guardians of the trust, serving on behalf of the community, regardless of personal interests. These duties apply whether or not the group is formally incorporated. They apply whenever an organization presents itself to the public as honoring or advancing a charitable cause. Trustees have the same obligations to the organization whether the group's budget is \$100 or \$100 million.

Board members bring new ideas into organizations, provide oversight and guidance on mission and objectives, and help a successful group remain relevant and healthy. The lack of an active and engaged board can doom a nonprofit organization.

Failure to follow through on the legal duties of board membership can be devastating for a charitable organization. Board members who shirk their responsibilities, particularly if their action or inaction benefited them, could face civil or criminal penalties.

The fiduciary obligations of board members fall under four specific legal duties:

- Duty of care
- Duty of loyalty
- Duty of compliance
- Duty to maintain accounts

DUTY OF CARE

A trustee has a responsibility to be active in the charity's affairs. At a minimum, that means attending and participating in board and committee meetings. Additionally, board members should stay informed about organizational operations to ensure that staff members follow the board's policies.

Trustees should make good-faith efforts to establish organizational policies and revisit them regularly to review how well they are working.

Board members should conduct themselves with the level of care, skill and diligence exercised by prudent people in the handling of their own affairs.

Board members who know the facts, analyze the probable result of their actions, exercise sound judgment and keep reasonable records fulfill their duty of care. Those who regularly miss meetings, are inactive or fail to conduct adequate research before making decisions do not.

Trustees or board members should:

- Prepare for board meetings by reading and reviewing reports, minutes and other materials distributed for the meeting.
- Attend board and committee meetings and record all actions taken or decisions made.
- Ask questions and obtain the information necessary to make informed decisions.
- Review the performance of the charity's executive director or chief executive officer.
- Exercise independent judgment; do not blindly follow the staff's requests.
- Oversee the executive director and ensure that the charity's purposes are fulfilled efficiently and follow sound business standards.

DUTY OF LOYALTY

The duty of loyalty requires that the interest of the charity and its objectives take precedence over a board member's personal interests or those of family or friends.

Trustees or board members always must act fairly and in the best interest of the organization without concern for their own interests.

Trustees or board members should:

- Establish a written policy for dealing with conflict-of-interest situations. These should include procedures for written disclosures from board members concerning business dealings with the charity or those seeking to do business with the charity.
- Not engage in any transaction that hurts the charity or in any activities that compete with the interests of the charity or result in any personal advantages based on the charity's business dealings.
- Use caution when entering into any business relationship between the organization and a board member. Avoid this scenario entirely unless the board determines that the transaction is in the best interest of the charity.
- Establish and comply with a written policy for disclosing conflicts of interest, appearances of impropriety and business dealings involving board members.

- Disclose any financial interest and abstain from discussions and votes on transactions when the charity proposes to enter into a business relationship in which a board member holds an interest.
- Avoid diverting opportunities available to the charity for personal gain.

DUTY OF COMPLIANCE

Board members have a duty to be faithful to the organization's purpose and mission. They also must adhere to the organization's governing documents and to laws and regulations that relate to the charity and its operations.

Trustees or board members should:

- Understand the charity's articles of incorporation, constitution, bylaws, codes of conduct, codes of ethics and any other governing documents.
- Be familiar with state and federal laws relating to nonprofit entities, fundraising and tax-related issues as well as legal issues connected with the organization's charitable purposes and operations.
- Comply with state and federal registration and reporting requirements, including filings with the Ohio Attorney General's Office, the Ohio Secretary of State's Office and the Internal Revenue Service.

Organizations can complete their filing requirements with the Ohio Attorney General's Office online at **Charitable.OhioAGO.gov/Charity-Registration**. Additional information about the various requirements is available online or by calling **800-282-0515**.

DUTY TO MANAGE ACCOUNTS

Board members are responsible for the charity's financial stability and accountability. They accomplish this primarily by establishing procedures to help the organization operate in a fiscally responsible manner.

Trustees or board members should:

- Develop policies and procedures that protect the organization's business interests and operations.
- Develop annual budgets that provide clear direction for all organizational spending. The budget should be a blueprint of the board's program plans and should be routinely monitored, tracked throughout the year and revised as necessary.

- Ensure maintenance of accurate records of all income, expenditures, transactions and activities throughout the year — for the board and in all organizational operations.
 - Establish appropriate internal accounting systems, including checks and balances, so one staff member or volunteer does not have total control over finances and so theft and improper spending can be identified quickly.
 - Prudently invest and reinvest assets.
 - Develop fundraising goals and policies and assist the organization in acquiring resources for its programs.
 - Make certain that fundraising appeals are presented honestly and fairly by monitoring the performance of fundraising professionals and volunteers.
 - Insist on the best value for goods and services through comparisons and an informed bidding process.
 - Ensure that board minutes are kept to indicate board approval of expenditures and investments and to show that informed discussions were held before approval of such transactions.
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CONSEQUENCES FOR VIOLATING FIDUCIARY RESPONSIBILITY

Trustees can be held individually responsible for breaches of fiduciary standards within a charity. For example, if charitable assets are sold at less than their fair market value, trustees might be held accountable for any shortages. Transactions involving conflicts of interest can also result in fiscal penalties. Sometimes criminal fraud charges can result when board members and key staff members ignore their charitable obligations and personally profit from assets that should be used for community purposes.

Service on a charity's board requires being a responsible steward of its funds. Donors and the public place their trust in board members, and regulators are watching. Even when funds are not being diverted from a charity, the public can lose faith in an organization that does not appear accountable.

HOW TO KEEP A BOARD STRONG

ENSURE DIVERSITY IN BOARD MEMBERSHIP

Members should look for ways to recruit community representatives who have an interest in the charity's mission and represent diverse viewpoints or skill sets.

SET TERM LIMITS

Consider term limits and rotation off the board or to other assignments as ways to avoid stagnation, tunnel vision and the perception that the board is merely an insiders' club.

SET A SCHEDULE TO REVIEW OPERATIONS

Many groups orient new board members by reviewing governing documents, budgets, programs and policies. Some do annual assessments of how the board is operating and whether the group is adequately addressing all necessary issues.

DEVELOP A STRATEGIC PLAN

Boards might choose to engage in strategic planning to analyze the organization's strengths, weaknesses, opportunities and threats. This analysis can often uncover areas for improvement and help focus the board's policy-setting responsibilities.

TRAINING AND RESOURCES

Training opportunities for members of charity boards are routinely provided by many organizations, including the Ohio Attorney General's Office. Many books and websites address board governance and administration.

- Leaders and organizations interested in sponsoring community training sessions on responsibilities of nonprofit board members can contact the Ohio Attorney General's Help Center at 800-282-0515 or email CharitableLaw@OhioAGO.gov. Other materials that relate to nonprofit governance and operations are available at Charitable.OhioAGO.gov/Resources-for-Charities.

- The Ohio Association of Nonprofit Organizations (www.oano.org) is a statewide group that addresses nonprofit issues and provides training and resources throughout the state. Philanthropy Ohio provides training and resources for foundations and the organized philanthropic community at www.philanthropyohio.org.
- The Internal Revenue Service website has a section (www.irs.gov/charities) dedicated to nonprofit governance issues. In addition to addressing fiscal issues, the site includes helpful information on the life cycle of nonprofit organizations and their administrative challenges. Web-based training on board issues is available through the IRS StayExempt resources on its website.
- Several online resources address nonprofit governance. BoardSource (www.boardsource.org) has numerous publications and model policies specific to charity board matters. The Ohio Secretary of State's Office provides information about incorporation processes for nonprofit organizations at www.sos.state.oh.us.
- There are no universally accepted standards on the operation or performance of nonprofit organizations, but several watchdog organizations evaluate nonprofits or issue voluntary standards. The standards represent best practices within the nonprofit sector and might provide helpful guidance for board members.

Groups with model standards include:

Better Business Bureau's Wise Giving Alliance
www.bbb.org/us/charity

Charity Watch (formerly the American Institute of Philanthropy)
www.charitywatch.org

Charity Navigator
www.charitynavigator.org

Ohio Association of Nonprofit Organizations
www.oano.org

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To get news and updates about nonprofit governance, sign up for the Nonprofit News newsletter at
www.OhioAttorneyGeneral.gov/Newsletters.

Charitable Law Section
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For more information on
charitable law, visit
Charitable.OhioAGO.gov
or call **800-282-0515**.



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