



**GUIDE FOR BOARD MEMBERS**

**Fiduciary**  
**Duties of**  
**Directors of**  
**Charitable**  
**Organizations**

**FROM THE OFFICE OF  
MINNESOTA ATTORNEY GENERAL  
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## INTRODUCTION

The Attorney General's Office has prepared this Guide for Board Members to help directors understand their role and responsibilities as stewards of the charitable organizations for which they serve. Under Minnesota law, directors of a Minnesota nonprofit corporation are responsible for the management of the business and affairs of the corporation. This means that directors must supervise and govern the charity's efforts in carrying out its mission. This does not mean that directors are required to manage the day-to-day activities of a corporation. Rather, directors can appoint officers and employ individuals who effectively carry out the daily tasks of running the nonprofit organization. Directors must be active, informed, and engaged as they are considered fiduciaries, a term used for individuals who are in a position involving trust. Specifically, directors are subject to the fiduciary duties of care, loyalty, and obedience to the law. Minnesota courts have long held that the law imposes the highest standard of integrity on the bearers of these duties.

This Guide is provided by the Minnesota Attorney General's Office to assist board members with the important responsibilities assumed. It is only a guide and is not meant to prescribe exactly how board members must act in all situations. Each organization possesses a distinct composition and experiences different circumstances and outcomes. This guide is merely provided as a reference tool and an outline to assist directors in performing their duties. It does not contain all of the provisions, exceptions, limitations, and requirements of the law. For the exact requirements of the law, please refer to the source of the law itself. Many of the guidelines in this guide are taken from the Minnesota Nonprofit Corporation Act, located in Minnesota Statutes Chapter 317A. For more assistance, there are a number of resources in Minnesota that provide, at little or no cost, information, direct assistance and materials for charities, their officers and directors. A list of these resources can be obtained from the Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101, or phone 651-296-3353 or 800-657-3787. TTY: 651-297-7206 or 800-366-4812. Website: [www.ag.state.mn.us](http://www.ag.state.mn.us). Upon request this material can be made available in alternative formats. *This publication is intended to be used as a source for general information and is not provided as legal advice.*

### To Exercise the Proper Duty of Care:

The duty of care requires that directors discharge their duties in good faith, in a manner the director reasonably believes to be in the best interests of the nonprofit corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. This means:

**1. Active Participation.** A director must actively participate in the management and operations of the organization. This includes preparing for and attending meetings of the board, reading and evaluating all materials received in advance of meetings, reading meeting minutes, reviewing the performance and compensation of the Executive Director and the organization's other officers and employees, exercising independent judgment, asking questions to obtain information necessary to make informed decisions, and so on. Serving on a board is a significant commitment. Individuals who do not have the time to participate as required should not agree to be on a board of a nonprofit organization.

**2. Committees.** Directors may establish committees having the authority of the board and may rely on information, opinions or reports of these committees. These committees are subject to the direction and control of the board. As a result, directors are still responsible for overseeing these committees and should periodically scrutinize their work.

**3. Board Actions.** A director who is present at a meeting when an action is approved by the entire board is presumed to have agreed to the action unless the director objects to the meeting because it was not lawfully called or convened and does not participate in the meeting, or unless the director votes against the

action, or the director is prohibited from voting on the action because of a conflict of interest. Proxy voting, or voting through an agent, by directors is not permitted.

**4. Minutes of Meetings.** Written minutes should be taken at every board meeting. These minutes should accurately reflect board discussions as well as actions taken at meetings.

**5. Books and Records.** A director should have general knowledge of the books and records of the organization. Under Minnesota law, the organization's articles, bylaws, accounting records, voting agreements, and minutes must be made available to members and directors who wish to inspect them for a proper purpose. A board should consider adopting written document retention policies to ensure documents are properly maintained and stored.

**6. Accurate Record Keeping.** A director should not only be familiar with the content of the books and records, but should also assure that the organization's records and accounts are accurate. This may require the director to take steps to have regular audits conducted by an independent certified public accountant. At the very least, the director should be aware of what the financial records disclose and take appropriate action to make sure there are proper internal controls, or processes to assure reliable financial reporting and proper administration over charitable assets.

**7. Charitable Assets.** A director has the duty to protect, preserve, invest, and manage the nonprofit corporation's assets and property; and to do so consistent with donor's intentions and legal requirements. Instituting proper internal controls aids in the protection of assets.

**8. Resources.** A director must assist the organization in obtaining adequate resources to enable it to further its charitable mission.

**9. Investigations.** A director has a duty to investigate warnings or reports of officer or employee theft or mismanagement. In some situations a director may have to report misconduct to the appropriate authorities, such as the police or the Attorney General. Where appropriate, a director should consult an attorney or other professional for assistance.

## To Exercise the Duty of Loyalty:

Directors have an absolute duty of complete, undivided loyalty to the organization. This means that directors should avoid using their position or the organization's assets in a way which would result in pecuniary or monetary gain for them or for any member of their family. A director should put the good of the organization first and avoid engaging in transactions with the organization from which the director will benefit. This means:

**1. Conflicts of Interest.** Under Minnesota law, a conflict of interest arises when a nonprofit corporation enters into a contract or transaction with a director, a director's family member, or an organization in which the director has a material financial interest. Under certain circumstances, these types of transactions can be acceptable. If the transaction is challenged, the interested director will have the burden of establishing that the contract or transaction was fair and reasonable, that there was full disclosure of the conflict to the board of directors or members, and that the contract or transaction was approved by non-interested members or other directors in good faith.

**2. Written Policy.** Boards should establish a written policy on avoiding conflicts of interest. This policy should include written procedures for determining potential conflicts of interest and identify a course of action for when such conflicts are found by the board.

**3. Loans.** It is rarely proper for a nonprofit corporation to provide a loan or guarantee to a director or the director's family members. Such transactions raise ethical questions and typically subject the nonprofit corporation and the board to

public and government scrutiny. In limited circumstances, a nonprofit corporation may provide a loan or guarantee to a director or the director's family members if, in the judgment of the entire board, the transaction will benefit the nonprofit corporation. These decisions should be meticulously documented and tracked through means such as board meeting minutes, correspondence, ledgers, etc. to establish their propriety.

**4. Corporate Opportunity.** Directors are under a fiduciary obligation not to divert a nonprofit corporation's business opportunity for their personal gain. This means that a director may not engage in or benefit from a business opportunity that is available to and suitable for the corporation unless the corporation decides not to engage in the business opportunity and the board follows the conflicts of interest procedures set forth in the Minnesota Nonprofit Corporation Act.

**5. Internal Revenue Code.** There are additional prohibitions related to the duty of loyalty that are specified in the rules of the Internal Revenue Code regarding self-dealing. For more information, visit [www.irs.gov/charities-non-profits](http://www.irs.gov/charities-non-profits).

## To Exercise The Duty of Obedience:

Directors have a duty to follow the organization's governing documents, to carry out the organization's mission, and to assure that funds are used for lawful purposes. Additionally, directors must comply with state and federal laws that relate to the organization and the way in which it conducts its business. This means:

**1. State and Federal Statutes.** Directors should be familiar with state and federal laws relating to nonprofit corporations, charitable solicitations, sales and use taxes, FICA and income tax withholding, and unemployment and workers' compensation obligations. They should also be familiar with the requirements of the Internal Revenue Service. Directors should see to it that their organization's status with state and federal agencies is protected.

**2. Filing Requirements.** Directors must comply with deadlines for tax and financial reporting with the Internal Revenue Service, for registering with the Attorney General's Office, for making social security payments, for income tax withholding, and so on. Additionally, if an organization is incorporated under the Minnesota Nonprofit Corporation Act, directors have a duty to maintain the organization's corporate status by submitting timely filings to the Secretary of State's Office.

**3. Governing Documents.** Directors should be familiar with their organization's governing documents (including articles of incorporation, constitution, bylaws, codes of conduct, codes of ethics, and any other documents governing the organization) and should follow the provisions of those documents. Directors should ensure that proper

notice is given for meetings, that regular meetings are held, that directors are properly appointed or elected, and that the organization's mission is being accomplished.

**4. Board Training.** Directors should consider what training and education the board may need on a regular basis to ensure proper oversight of the corporation, and develop an orientation for new board members.

**5. Outside Help.** Where appropriate, directors should obtain opinions of legal counsel or accountants.

**ENFORCEMENT  
OF THESE  
DUTIES**

**RESOURCES  
FOR  
NONPROFITS**

## **Enforcement of These Duties:**

If a director breaches his or her fiduciary duties, or fails to act in accordance with the standards described above, at least 50 members with voting rights or ten percent of members with voting rights, whichever is less, or the Attorney General, may bring an action for equitable relief, including awarding attorney fees and disbursements to members.

## **Resources for Nonprofits:**

### **1. Attorney General's website**

*www.ag.state.mn.us*

The Attorney General's website has a number of useful publications, reports, links to information, and all registration forms and instructions issued by the Charities Division available to be viewed online or downloaded.

### **2. Internal Revenue Service**

*www.irs.gov*

The website of the Internal Revenue Service has useful information about required filings by nonprofit organizations and compliance to maintain tax-exempt status.

### **3. Guidestar**

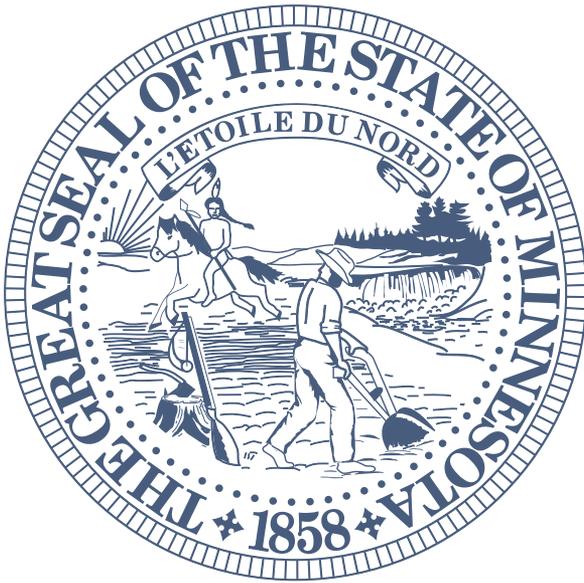
*www.guidestar.org*

Guidestar is a website which has free information on the programs and finances of more than 600,000 charities and nonprofits.

### **4. MAP for Nonprofits**

*www.mapfornonprofits.org*





## FOR MORE INFORMATION

PLEASE CONTACT:

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