



TOOL KIT #3

LEGAL RESPONSIBILITIES OF BOARDS

FAQ – The “3 Ds”: Duty of Care, Duty of Loyalty, and Duty of Obedience

1. What are the 3 Ds and why are they important?

The “3Ds” provide a framework for the legal responsibilities of Boards. Individual Board members must meet certain standards of conduct and attention in carrying out responsibilities to the organization.

Several states have statutes adopting some variation of these duties that would be used in court to determine whether a Board member acted improperly. These standards are usually described as the Duty of Care, the Duty of Loyalty, and the Duty of Obedience.

How are they defined, and how can Board members apply them in day-to-day operations?

1. Duty of Care

The Duty of Care requires that a nonprofit Board member participate actively in governance and oversight of an organization’s activities. This includes attending Board and committee meetings, reviewing and understanding the organization’s financial documents, helping to frame strategic plans, identifying and managing risks as well as opportunities, and taking prudent steps to advance the organization’s mission and goals. Some practical examples:

- Ask questions, be prepared, and seek out training in areas where help is needed.
- Review materials thoroughly before Board meetings. Ask for more information when needed, and make suggestions based on your best advice.
- Duty of Care changes and has different standards when circumstances change. For example, the quarterly financial report may be a routine item, or may require a deep dive if revenue or expenditures are off plan. Similarly, loss of a major grant, partnership, or other change in the environment may require additional attention.

2. Duty of Loyalty

The Duty of Loyalty requires that a nonprofit Board member act in the best interest of the organization at all times. This means that a Board member can never use information obtained as a Board member for personal gain, but must act in the best interests of the organization. Some practical examples:

- Consider whether Board members have other Board commitments that make it difficult to keep the organization as a top priority. It can be a problem if Board members are asking their contacts to support too many different causes.
- Keep donor lists, Board deliberations, and organizational issues confidential.
- Ensure that all Board members understand, sign, and abide by the Conflict of Interest policy.
- Disclose conflicts as they arise and assure that the Board member will not participate in any decisions from which they, their family members, and others may derive financial benefit.



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3. Duty of Obedience

The Duty of Obedience requires that a nonprofit Board member work to ensure that the organization complies with applicable laws and regulations, acts in accordance with its own policies, and carries out its mission appropriately. Board members should ensure that the organization carries out its purpose and does not engage in unauthorized activities. Some practical examples:

- Board policies are developed for compliance with laws, rules, and regulations, including the IDEA requirements for Parent Centers.
- Budgeting and financial management policies assure that funds are allocated consistently with the restricted or charitable purpose of the funds.
- All personnel policies comply with federal, state, and local requirements for nondiscrimination, and are compliant with FSLA (federal wage and hour) and other policies.

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