

LEGAL DUTY

YOUR FIRST PRIORITY

As a board member, your greatest legal responsibility is to put your association's interests above your own.

BY JERALD A. JACOBS

BEING ELECTED or appointed to an association's board is an honor and a compliment as well as a business or professional advantage. Less obvious is that the role carries legal responsibility and sometimes legal risk.

As an association board member, though serving voluntarily and usually without compensation, you are held to strict legal obligations and duties. Courts have held board members personally liable when calamities have occurred to their organizations that might have been prevented by a more conscientious and attentive board.

FIDUCIARY DUTY

The overriding legal principal is that association board members must put the association's interests first in all debate and decision making, putting its welfare ahead of any potential personal or business gain. While you may be elected or appointed to represent some section of your organization's constituency, you must still put the organization's overall well-being ahead of other considerations.

CONFLICTS

Putting the organization first means that you must not carry on debate and decision making while privately harboring other interests that could divert your focus and judgment. The competing interests might be personal

or for your company or family. Conflicts must be disclosed as requested by your organization, and if you have a conflict, you might have to recuse (sit out) or resign (withdraw completely).

CONFIDENTIALITY

Association boards often deal with confidential matters including employment-related decisions, litigation strategy, advocacy goals, and transaction negotiation. The association is not well-served, and its interests could be severely damaged, if you disclose what you learn about confidential issues in the course of your board service.

OPPORTUNITIES

Once in a while, board members might be asked to consider some financial or program prospect for the organization. This could be the purchase of real estate, the pursuit of a joint venture, or a pitch to a sponsor. Once again, loyalty to the association demands that you not go after that prospect for yourself or your company unless the association waives off on it.

PREVENTION

To honor your fiduciary duty as a board member and avoid personal legal risk, pay unswerving attention to what's best for your organization and not what's best for you or your family, friends, or firm.

Make sure your association has the broadest possible indemnification provision, whether in its bylaws or in a board policy; that way, the organization is committed to defending and protecting you from personal liability if someone alleges wrongdoing. Ask if your organization carries liability insurance that covers board members in those circumstances as well. Finally, be sure that the organization has access to knowledgeable attorneys and consultants who themselves are looking out for the best interests of the association and its board.

JERALD A. JACOBS is a partner at Pillsbury Winthrop Shaw Pittman, LLP, in Washington, DC, and general counsel to ASAE and the ASAE Foundation. Email: jerry.jacobs@pillsburylaw.com

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Legal Duties for Directors: An Association Board Member's Guide to Avoiding Risk While Advancing the Mission, by Jerald A. Jacobs (2014, Association Management Press), is available in the ASAE Bookstore.