Duties of a Nonprofit Board of Directors

Understanding the IRS rules for your organization can be a daunting task for many nonprofits. To assist each organization in ensuring they are abiding by their state rules, states have rules that are outlined through state statutes. It is the responsibility of the organization’s Board of Directors to ensure that they do not go against any state regulations.

The State Attorney General officially “owns” all nonprofit organizations. However, IRS rules are not made to benefit one individual or party. Instead they are guidelines created to support and regulate all nonprofit organizations. Because it is impossible for the attorney general to be involved with every state 501(c)(3) organization, each nonprofit must have a Board of Directors to be responsible for the activity of that organization. Board members take on fiduciary and legal responsibility for all activity within the organization, holding them accountable for any unlawful activity.

IRS Rules for 501(c)(3) Status
The IRS has outlined various rules and regulations every nonprofit organization must follow in order to keep their 501(c)(3) status. Important definitions, different types of nonprofit organizations, governance procedures, and tax and legal policies are all outlined in the IRS Codes for nonprofit organizations.

Further, within each state, there are a set of regulations for organizations that are registered to raise money there. Organizations should use these statutes as references when developing and amending the organization’s bylaws and articles of incorporation. Failure to abide by the state regulations can result in loss of 501(c)(3) status.

Although each state may have similar statutes for nonprofit governance, there can be places where states may be more or less strict in some areas than others. For example,

- For more information about Wisconsin State Statues click here.
- For more information about New Jersey State Statues click here.
- For more information about New York State Statues click here.

IRS Requirements of Boards
Any nonprofit Board of Directors functions as overseers of the activity of the organization. Their oversight includes: Duty of Care, Duty of Obedience, and Duty of Loyalty. These three duties separate a nonprofit Board from a corporate one. Each of these duties is important individually as well as collectively.

- **Duty of Care** ensures that each member has a certain level of reasonability in representing the organization. This duty primarily relates to two essential components of a nonprofit: financial management and oversight of the Executive. Because a nonprofit organization cannot be owned, the financials must be maintained and managed by the Board. It is their responsibility to ensure that the organization is using funds appropriately and wisely. Because a nonprofit does not have an owner, there is an Executive Director in place to manage the day-to-day operations of the organization. The
Executive Director carries a great deal of responsibility and power in the organization. It is the responsibility of the Board to appoint an Executive Director and evaluate him/her. The Board should have a close relationship with their Executive and be able to put full confidence in them.

- **Duty of Obedience** holds all members of the Board accountable to the IRS rules and State Statutes for nonprofit governance. The Board is not only responsible for the lawful operation of the nonprofit, but they also have responsibilities as governors to sit on the Board.

- **Duty of Loyalty** requires all members to be independent of the organization and to regard their service as a member of the Board as their top philanthropic priority. This may mean something different to each Board member but it is generally recommended that each Board member make a financial contribution annually according to their means. Part of the responsibility to raise funds for the organization involves Major Donor Cultivation. Cultivation can be anything from: bringing a donor to the organization for a tour, having a donor as a guest at an event, providing the organization with a list of names for appeal letters, etc. For more reading on the Major Donor Cultivation of Board members, read Cathedral’s paper on Major Donor Development.

- Organizations should require their members to sign conflict of interest policies to ensure they will always act in the best interest of the organization. Board members are selected by the organization because of what benefit they can bring to the organization. These members serve for the purposes of driving the organization toward success and are expected to provide insight and influence in their role.

Each organization must interpret these rules and outline them for their Board. This should be an important part of onboarding new members and aligning them with being a valuable part of the Board. The responsibilities of members are outlined in the Bylaws which act in conjunction with the Articles of Incorporation. The Bylaws allow an organization to outline responsibilities that cannot be changed except by a vote of the Board. The organization may want to expand the number of board members, number of meetings, voting methods or terms of office.

**Director Development**

Good organizations will ensure that all members of the Board are equipped with the proper training and tools to succeed in their role. Some members may have prior Board experience that they can draw on for their new Board role, but others may not be aware of any Board etiquette. Best practices would tell any organization to always hold a Board member orientation when a new member is brought on. This is a time when the Executive Director and other leaders of the organization will sit down with the new member(s). Things to be done during this meeting include: provide them with a Board Book containing all their Board materials, outlining the expectations set for them and reviewing the organization’s history and mission.

Further Board development can be done through annual Board Retreats that bring together all members and leadership of the organization to review organizational strategy and Board responsibilities. Both practices are helpful in sustaining an active and successful Board of Directors. Annual Conflict of Interest Policies should be signed by members as a way to renew their loyalty and commitment each year.

**Conclusion**

The IRS and state government entrust nonprofit organizations with a great deal of power and freedom to operate and govern. It is the responsibility of the Board of Directors to ensure that the organization is operating lawfully. The duties of Care, Loyalty, and Obedience have been outlined to help members understand their roles. The accountability for any action taken by the nonprofit falls to them. By following these duties, members should be able to govern the
organization well. Both the success and failure of the organization falls to them, making their role extremely important. To ensure that all members are in line with the required duties of their position, the organization should have proper Board training to set them up for success.

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