

"Fiduciary Duties":

What is owed to Corporations or Associations by their Directors or Officers

“A fiduciary within an organization is a person who maintains a position of trust. Where such a position exists, there is a higher standard of care. Directors ... are subject to common law fiduciary obligations. The imperative of these obligations in the corporate context requires the person to act honestly and in good faith; to be loyal to and to act in the best interests of the corporation; to avoid any conflict of interest; and to subordinate every personal interest to those of the corporation. This duty, when it exists, applies to all organizations in all jurisdictions.

One of the most important features of the fiduciary duty is the obligation to avoid acting in such a way that personal interests conflict with the interests of the corporation, and more specifically, those interests of the corporation that the director must protect. For this reason, a breach of fiduciary duty can occur even in cases in which a director is acting in good faith.

Even where the by-laws ... permit its directors to enter into contracts with the corporation that would otherwise result in a conflict of interest, the fiduciary obligation of the director may prevail over the permission contained in such by-laws.” (Kelly & Fredrick, p. 14)

Performance standards expected of board members include:

- ✓ Being loyal to the organization and its membership
- ✓ Acting in good faith and in the best interest of the organization
- ✓ Avoiding participation in discussions or decision-making about a matter that may benefit them or someone close to them (i.e., avoiding ‘conflict of interest’)
- ✓ Not exercising *individual* authority over staff or the society
- ✓ Dealing with the public, clients, staff, and each other in a fair, ethical, and straight-forward manner
- ✓ Maintaining confidentiality of board business
- ✓ Speaking positively of the organization to the public

Sources:

- Kelly, H.M., & M.R. Frederick, 1999. Duties and responsibilities of non-profit corporations. Toronto, ON: Canadian Society of Association Executives.
- AB Community Development. (Sept. 98). “Roles and responsibilities of Not-for-Profit Boards”
- “Duties
- http://www.boarddevelopment.org/display_document.cfm?document_id=72
- <http://www.osler.com/resources.aspx?id=8349>
- <http://www.floridacdc.org/forms/fiduc.html>