

Board Members for Charities Should Know Legal Responsibilities

By Beth Short, Law You Can Use

Serving on the board of a charitable organization is a demanding and rewarding job. It is a vital function, as charities work to enhance the quality of life in our communities.

But becoming a board member for a charitable organization means more than merely accepting an honorary title or helping a charity that contributes positively to the lives of people in the community. When you become a board member, you take on an important job with specific legal responsibilities.

The legal obligations of board members

Board members of nonprofit organizations have four basic obligations to the charities they serve: duty of care, duty of loyalty, duty of compliance and duty to maintain accounts and records. Observing these duties requires board members to pay attention, ask questions and take the role seriously. The top priority as a board member is to keep faith with donors and stakeholders, ensuring that the organization is able to honor and perform its mission now and in the future.

Board members are the first line of defense for ensuring the integrity of charitable organizations and the entire philanthropic sector. They are legally bound to make certain all designated resources are used effectively and efficiently for the implementation of an organization's mission and not for anyone's personal benefit. Only an active board that routinely develops and evaluates programs and policies having to do with day-to-day operations in the organization can successfully meet that obligation.

Before agreeing to serve on a board, you should ask how the board operates, whether job descriptions are available and what you will be expected to do. Examine past board meeting minutes, financial reports, by-laws and policies. Find out whether the charity carries liability insurance for its directors and board members. Ask to see the organization's annual filings with the IRS and the Ohio Attorney General's Office. The contents of these documents — or the lack of documentation — could signal potential problems or indicate how much work must be undertaken to properly establish and operate a governance structure for the organization.

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Charitable organization oversight

The Ohio Attorney General's Office regulates charitable organizations and assists board members with meeting their responsibilities. Board governance training and related materials are among the resources available at www.OhioAttorneyGeneral.gov to help new leaders of charities. Also, questions about training and resources for charitable board service and charitable fundraising can be emailed to CharitableLaw@OhioAttorneyGeneral.gov.

Publicized incidents of theft, embezzlement and other fraudulent activities have damaged the reputations — sometimes permanently — of a number of charitable organizations. Many such incidents could have been avoided had board members put in place policies and processes that uncovered wrongdoing more quickly or prevented it altogether. Donors and stakeholders deserve the assurance that their gifts and provided resources are properly protected and utilized.

The Ohio Attorney General's Charitable Law Section also investigates charitable organizations. The Section regularly receives complaints about lax controls and misuse of funds at charities and it launches investigations when problems are suspected or discovered, and the office has broad authority to take action to protect or recover charitable assets. Board members who scheme to defraud donors or charities may face civil as well as criminal actions to recover lost resources.

Complaints can be filed online at www.OhioAttorneyGeneral.gov, mailed to the Charitable Law Section at 150 E. Gay St., Columbus, OH 43215, or individuals can call 1-800-282-0515 to report any suspicious charities or solicitations.

About the Author

Beth Short handles outreach and education for the Ohio Attorney General's Charitable Law Section and has spent her career working for and with nonprofit organizations. She has worked with large and small charities as a staff member, board member, consultant and volunteer. Short's work in the Charitable Law Section focuses on the development of strategies aimed at strengthening the nonprofit sector. She is a graduate of The Ohio State University and Ohio University.

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