

BOARD OF DIRECTORS

ROLES, RESPONSIBILITIES & AVOIDING LIABILITY

All board members hold positions of trust. They have a fiduciary responsibility to uphold the mission of the organization, to abide by its by-laws, and to act in the best interests of the organization.

Policy-making Responsibilities – Board Members:

- “ Establish policies & procedures – Guidance & decision-making that help an organization meet its goals and fulfill its mission.
- “ Ensure that policies are clearly stated courses of action that can be understood by everyone. Once policy and procedures are established and implemented board members must follow the rules just as everyone else in the organization.
- “ Encourage staff participation – ask them to contribute ideas. This process increases the organizational framework and connects stakeholders for the overall mutual benefit and strength of the organization and to the fulfillment of its mission.
- “ Evaluate program needs and develop programs that are compatible with the mission.
- “ Develop a Statement of Agreement to serve as a clear cut job description for each board member. The agreement clarifies board responsibilities and limitations to their authority and “gets everyone on the same page.”

Organizational Planning Responsibilities – Board Members:

- “ Recommend management ideas in developing strategies, such as business plans, policy objectives, and business goals.
- “ Establish an ongoing planning process and set priorities and goals to advance the organization’s mission and purpose.
- “ Select and provide support for the chief executive/executive director through an appropriate process. Approve the selection, compensation, evaluation and, if necessary, dismissal.
- “ Follow through on decisions the board has made by reflectively reviewing the progress and results of those decisions.
- “ Make recommendations to management for modifications or changes to programs and/or activities. However, the board must follow procedure in making changes to established policy.
- “ Attend and participate in regular meetings to ensure effective organizational planning and advancement of.
- “ Participate in discussions to help resolve issues that affect the organization.
- “ Participate in committee work, including consistently attending meetings to help the organization meet its goals and honor its obligations.

Organizational Continuity Responsibilities - Board Members:

- “ Stay focused on their organization’s mission (purpose) and goals. Provide stable leadership and act as role models for the community.
- “ Comply with the by-laws at all times.
- “ Continue their efforts on behalf of their organization and community even when there are changes in staff or the board.
- “ Realize that no individual board member’s action can have any force or effect unless approved by the full Board. All resolutions must be adopted by the full board.

Budget Issues and Funding Responsibilities - Board Members:

- “ Acquire, allocate and manage resources for the programs they’ve identified as necessary to meet goals and objectives.
- “ Ensure that there are adequate resources with which to carry out their responsibilities. Provide for fiscal accountability to the community for all expenditures.
- “ Assist in developing the annual operating budget, implement financial controls and oversee compliance with and adherence to the plan.
- “ Search for new sources of funding and nourish relationships with existing funders.

Organizational Image Responsibilities - Board Members:

- “ Must never place their own interests above those of the organization – that would be self-serving.
- “ Must set aside any potential conflict between their personal business interests to support the well-being of the organization they serve.
- “ Ensure that the actions they take on behalf of their organization reflect well on the organization’s public image. Their performance is critical to how the organization is viewed. Board members are accountable to the community or organization that they represent.
- “ Ensure that actions they take in their professional capacity enhance the reputation of their organization.
- “ Advocate for the good of their organization. This includes putting aside differences in order to work for the good of their community.

Compensation for Board Members:

- “ Generally speaking, board members are not compensated. It is imperative that policy be established in the by-laws regarding whether or not or under what circumstances board members are compensated, financially or otherwise.

- “ Any compensation paid to board members should be established in the by-laws. THIS IS EXTREMELY IMPORTANT! There must be a source document in writing that addresses if and how board members are to be compensated.
- “ Any compensation paid must be reasonable, given the circumstances of the organization, and must be awarded only upon a demonstrated successful completion of board duties.
- “ Generally, it is unlawful for board members to accept compensation for activities outside those established in the by-laws.
- “ Requests for reimbursement for board-related activities must be accompanied by original receipts and supporting statements about the activities performed. The policy for reimbursement is also addressed within the Travel Policies of the organization.
- “ Most board members serve without expectation of financial compensation. Service to improve the general wellbeing of an organization or actions taken on behalf of a community are their own rewards, as well as the prestige that results from representing one’s community.

Selection and Composition - A Board of Directors should be:

- “ Composed of persons vitally interested in the work of the organization and in working together and represent the community.
- “ Comprised of a balance of new and experienced board members to guarantee both continuity and new ways of thinking.
- “ Comprised of members with a combination of skills (fundraising, management, legal, fiscal etc.) necessary to carry out the board’s work.
- “ Recruited and selected by established procedure and only after a thorough review process.
- “ Willing to evolve to meet changing needs and circumstances of the community.

What are the major roles for a Board of Directors?

- Chair / President: This is the principal board representative who presides over all board meetings as well as meetings of the Executive Committee. This board member also monitors annual and periodic reports, is ultimately responsible for financial transactions and has authority over making committee appointments.
- Vice Chair/Vice President: This person assists the Chairperson and, in his or her absence, performs the duties of the Chairperson.
- Secretary: This person develops and maintains a permanent record of all board proceedings, such as taking minutes at board meetings and maintaining corporate records, files and correspondence.
- Treasurer: This person is responsible for managing all organizational funds and property. He or she provides financial reports to the Chief Executive or Chairperson as requested. He or she also maintains or supervises all financial records.

Roles of boards vary. Every organization defines their board uniquely. The real powers of boards are different with each organization and the roles that board members play can also differ. However, all board members have a duty to know all the facts required to make a sound and responsible business decision. Otherwise, liability will result.

There are two fundamental responsibilities owed by Board Members that are legal duties...

Duty of Loyalty: Board members have a fiduciary duty to act in the best interests of their organization. They must set aside personal, financial and professional interests when making decisions for an organization. It is important that board members avoid even the appearance of self-dealing or impropriety.

Duty of Care: Board members must act as a “reasonable person” would under similar circumstances – they must make a reasonable effort to make informed decisions

Breach of either of these duties can result in overwhelming financial liability!

What is liability?

The concept of liability includes legal and ethical responsibilities.

- “ Board members have authority over an organization, its funds and other assets, and are **“liable”** or responsible to the organization and the community.

Corporate liability: The organization can be held liable as a corporation in a court of law for the actions of its board members.

Personal liability: Individual board members can be held liable or responsible for their separate actions.

What are the standard rules of liability?

Standardized rules are used to help courts determine liability of an organization as a whole or for its individual board members. These rules help a court determine whether or not board members, either individually or as a whole, are guilty of causing loss or injury.

What is the Business Judgment Rule?

This rule protects board members as long as they act in good faith, with due care, and within the officer or director’s authority. It means that board members have a duty to exercise due care and diligence in all their actions on the board. A board member who acts in good faith yet makes a poor business decision that results in an unfavorable outcome cannot be held liable under this rule.

What is the Prudent Person Rule?

“A board member shall perform his or her duties as a board member...in good faith, in a manner he or she reasonably believes to be in the best interests of the organization, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.”

- **Conserving approach** - An individual needs to show that he or she exercised careful judgment and did nothing rash to endanger the good name of the organization or hurt it in any way.

- **Informed approach** - The individual took the time and made an effort to learn about and know all the relevant facts before making major board decisions...in other words, he or she became fully informed prior to making a decision.
- **Rational approach** - An individual made a decision based on thinking of cause and effect – asking what decision would be most likely to help the organization fulfill its mission and achieve its goals.

Reminder: A board member must also evaluate the pros and cons of any action and be able to separate what's good for the organization from any personal or outside agenda.

Organizational Liability - If board members do the best they can when they make decisions, they cannot be held liable for making poor decisions, even those with poor outcomes unless it can be shown that they were negligent or reckless in making those decisions. Board members must always act with utmost care when making decisions on behalf of their organization or community.

Individual Liability - If a board member has specialized knowledge or background in a particular area, then that person may have greater or less experience in making decisions involving a particular area. Therefore, sometimes one board member can be held to be more accountable (responsible) than another, depending on his or her expertise and experience (or lack, thereof).

You cannot have responsibility without liability. Liability, in its simplest terms, means responsibility!

What is the “Loyal Board of Director Rule?”

“ The concept of the **“Conflict of Interest Rule”** comes from corporate law and prohibits a board member from taking advantage of an organization for his or her own personal gain. A court can hold a board member liable to the extent that his/her actions of self-interest hurt or damaged the organization.

Board members:

1. Cannot gain on a personal basis by their actions or decisions that they make on behalf of their organization. Examples include business decisions made as board members with the purpose of increasing business for themselves or making business deals that benefit their friends of other business contacts.
2. Owe their organization the **“duty of individual loyalty.”** In all board decisions, the good of the organization and compliance with its mission and by-laws must come first.
3. Have the responsibility and liability of ensuring the survival and long term health of their organization.

What can a board member do to avoid a conflict of interest and, thus, liability?

“ A board member should excuse himself or herself from voting if he or she has a personal interest in the outcome of the decision. This is called “recusal.” It’s important that there should be no participation in or discussion about an upcoming vote or some other action if there is a possible conflict.

What is the “Ultra Vires Rule?”

- “ Officers or agents (including board members) who contract for an organization **without, or in excess of, authority**, can be held personally liable.
- “ This rule can apply when board members exceed their authority to spend money, obtain a loan or even hiring or firing. Board members who violate the Ultra Vires Rule can be held liable and be made to pay personally for any damage to the organization resulting from their wrongful decision and/or action.

To avoid liability, it’s important to avoid even the appearance of any impropriety at all times!

SUMMARY of the DUTIES OF BOARD MEMBERS

- Stand by and uphold the Mission of your organization
- Be mindful of your constituency – who do you serve?
- Comply with all the by-laws
- Know the legal guidelines and requirements that govern board members
- Delegate activities and implementation to the Executive Director but do not abandon your responsibilities
- *Make informed decisions – know what’s going on*
- Avoid conflicts of interest at all times – avoid even the appearance of a conflict of interest
- Keep knowledgeable about the financial situation of your organization
- Attend meetings – join in discussions – ask questions - participate in decisions
- Insist on detailed minutes – be sure the minutes are accurate and kept on file
- Utilize legal advice when necessary
- Be accountable



Seventh Generation Fund for Indigenous Peoples
www.7genfund.org

Prepared by:
Tia Oros Peters (Zuni) Executive Director

Edited by:
Heather Freitas, Development Coordinator
Chisa Oros (Zuni/Yaqui) Community Coordinator

(March 2013)