

## Back to Basics – Fiduciary Fitness

How is your organization performing?

Laura S. Orr, Owner / Consultant Forward Governance Consulting

Non-profit boards have a responsibility to many stakeholders, an obligation to protect the community asset for which they serve. To that end, non-profit boards are legally responsible for carrying out three fiduciary roles. It is important to recognize that an incoming board member is rarely fully versed in these essential responsibilities, and to embed these duties into orientation and onboarding for all new trustees. More experienced trustees can also benefit from a fiduciary refresher from time to time. Use common language and organization specific examples to bring these duties to life for your board.

Consider your governing body's level of fiduciary fitness for each duty below and reflect on where there may be opportunities to strengthen the core responsibilities.

1

**Duty of Care.** *"I understand my role as a trustee, and I commit to fulfilling those responsibilities."*

The duty of care requires board members to commit the time, attention and curiosity required to be actively engaged and knowledgeable in order to advance the organization's mission. Today, there is a much discussion and emphasis placed on the level of board engagement – how to assess it, how to improve it, etc. The duty of care encompasses much of how we define board engagement. Trustees who are carrying out the duty of care are those who:

- Prepare for, attend and actively participate in meetings
- Ask questions and seek clarification to ensure they have adequate information to take action
- Serve as an ambassador for the organization in the community

Questions to consider:

- If asked, could your trustees articulate the duty of care?
- Have you assessed board engagement as a collective and for individual trustees?
- Do you have individual engagement plans for each trustee?

2

**Duty of Loyalty.** *"I put the interests of the organization first."*

The duty of loyalty requires members of a governing body to put the needs and interests of the organization above individual interests at all times. Members must disclose any potential conflicts of interests and their board role should not be motivated by a desire for personal or professional gain. Successfully carrying out the duty of loyalty does not

mean conflicts of interest will not occur, instead it requires any potential conflict to be disclosed and for the board to have a clear process for determining if a conflict of interest indeed exists and, if so, how to manage it.

Questions to consider:

- If asked, could your trustees articulate the duty of loyalty?
- Do you have a thorough vetting process when recruiting trustees to understand any potential conflicts of interests?
- Do you have a formal governance process to disclose and manage potential conflicts of interests?
- Do you conduct an annual conflict of interest assessment for each board member and report that information to the full governing body?

### 3

**Duty of Obedience.** *"I protect the core mission of the organization and ensure compliant practices."*

The duty of obedience requires a board to ensure the organization is working to carry out its stated mission and doing so in compliance with regulatory and legal requirements. Performing this duty requires trustees to be knowledgeable of key laws and regulations and how they relate to and impact the organization. While trustees are not required to understand every minute detail of a law or regulation, they should have a high-level understanding and be aware of any risks of non-compliance. Ultimately, trustees must ensure processes are in place to comply with laws and regulations. It is also the board's responsibility to ensure the governing body is operating in accordance with the organization's bylaws. Over time, bylaws become antiquated and should be revisited periodically to evaluate if amendments may be needed.

Questions to consider:

- How do you educate trustees on important laws or regulations?
- Are your trustees well versed in the by-laws? What is the process to bring awareness to and address any non-compliance?
- What is the role of each board committee in helping the full governing body to carry out the duty of obedience?

During a time when organizations are managing through great complexity and experiencing an increased pace of change, it is important to reground in governance basics and not lose sight of the fiduciary obligations of the governing body. As you reflect on the three duties and the questions outlined above, identify where your organization could strengthen its fiduciary fitness.