



## BOARD BRIEF: Legal Duties of Board Members

Board Briefs are "at-a-glance" resources that help board volunteers better support their Boys & Girls Club. They are designed to occur as five-minute education opportunities at board meetings.

### SUMMARY

Board members are legally required to oversee the governance and official actions of an organization. For Boys & Girls Club boards, this requirement is complex, involving both federal and state regulatory compliance in addition to the ever-present imperative to ensure child safety, donor stipulations, and Boys & Girls Clubs of America membership requirements. This brief details the scope of duties and presents practices to more effectively govern.

### TRUSTEESHIP

A person who has a relationship of trust or confidence with another is called a trustee. A trustee's relationship with an organization is one-sided: the relationship meets only the needs of the organization with the trustee acting without regard to his or her own needs. Boys & Girls Club board members are trustees who are principally concerned about the performance of the nonprofit and that its interests are pursued faithfully.

A board member's central purpose is to ensure that the organization's resources are used to achieve its purposes through the duties of care, loyalty and obedience.

#### Duty of Care

Board member decisions must be informed, meaning that they are based on relevant, available facts. The duty of care requires board members to ensure that a data and reporting system exists. Furthermore, the system must be able to produce information needed to be in compliance with applicable laws and BGCA membership requirements.

#### Duty of Loyalty

Board members must set aside their own interests, whether professional or personal, or the interests of any other organization when acting on behalf of their Boys & Girls Club. A board member cannot seize an opportunity for his or her own gain. Even if it is only part of the organization's future plans, the opportunity must be presented to the organization first. Similarly, the duty of loyalty requires preserving the confidentiality of the organization's affairs. Disclosing opportunities to outside individuals may lead to loss of opportunity for the organization.

#### Duty of Obedience

Board members have a responsibility to be faithful to the organization's stated mission and not to act or use its resources in incompatible ways or purposes. Complying with these obligations can protect a nonprofit board. As long as decisions of the board members are made on an independent and informed basis, in good faith, and in the best interests of the corporation, they

are not subject to challenge in court. This presumption is called “the business judgment rule,” and applies unless there is evidence showing a board member has an interest in the transaction or dispute or was otherwise disloyal, uninformed or lacked independence.

## KEY ACTIONS TO REDUCE LIABILITY

### 1. Establish appropriate policies.

To avoid breaching the duty of loyalty through conflicts of interests, boards should adopt and follow a written conflict of interest policy. The policy prohibits board members from engaging in either business or financial transactions with anyone directly connected to the organization. Boards also should adopt a code of conduct that is adapted to the organization’s specific needs. It may include a commitment to ethics and compliance and organization standards (for conduct, employees, business practices). Leadership insurance is a BGCA membership requirement.

### 2. Establish appropriate committees and governance structure.

In addition to policies, the board should consider establishing committees to allow detailed review of board-level matters not possible during board meetings due to time constraints. Such committees might include:

- Executive and Board Development Committees
- Audit and Finance Committees
- Resource Development and Planned Giving Committees
- Human Resources, Strategic Planning, Program, Facilities Committees

### 3. Establish measures for effective board performance.

The board should hold annual planning meetings to ensure the organization’s direction is mission focused. The process is informed by a self-evaluation and can include a survey of staff or board members regarding success metrics. Additional success metrics can be discussed with your DOD. The board should track compliance with BGCA various metrics as well, including Formula for Impact metrics, and membership and attendance data.

### 4. Review organizational resources.

Board members should maintain copies of the organization’s mission statement, bylaws, budget, annual plan, strategic plan (if one exists), program overview and staff roster. These resources can be a useful reference when considering how to fulfill the charitable purpose of the nonprofit.

## FINAL THOUGHTS

The standards to which a trustee is held are the highest imposed by law, and nonprofit board members are required to meet them. To do so, and ensure the continuing success of the nonprofit, board members must understand both the mission and the operations of the organization and take practical steps to uphold their fiduciary duty. Youth members must come first in every decision.