

*Protecting Ohio's Families*

## **Honoring Charity Board Members' Commitments and Responsibilities**

Charities greatly enhance the quality of life for all Ohioans. This guide explains the legal duties and responsibilities of board members.



*Guide for*

# **Charity Board Members**



**MIKE DEWINE**

OHIO ATTORNEY GENERAL



***Dear Charitable Organization Leader,***

Ohio's charitable organizations do great work every day by lending a helping hand to fellow Ohioans who are struggling. The ability of charities to deliver vital services, however, depends on the careful and conscientious administration of these organizations.

The Charitable Law Section of the Attorney General's Office ensures that donor dollars are used as intended and, at the same time, safeguards beneficiaries' interests. An actively engaged board of directors is key to keeping charities accountable.

I hope beginning and veteran board members will find helpful information in this guide to assist them in undertaking their important duties and responsibilities. Board membership is both an honor and an obligation. If you become aware of questionable actions, please contact my office. Our Charitable Law Section will investigate suspected fraud, theft, or other activities that diminish the good work of charities.

Ohioans have a long history of dedicating their time and resources to helping and enriching the lives of their fellow citizens. Thank you for your service and leadership.

Very respectfully yours,

A handwritten signature in black ink that reads "Mike DeWine". The signature is written in a cursive, flowing style.

Mike DeWine  
Ohio Attorney General

## **BEING A BOARD MEMBER: MORE THAN AN HONOR**

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Charities are required by law to have board members to ensure integrity and accountability in their governance. They may be called by different titles — board member, trustee, or director — but they have the same important responsibilities. Organizations seek community members to serve in this capacity for several reasons, including:

- Honoring an individual's previous volunteer services or commitment to those the charity serves.
- Adding credibility to the board through an individual's management and business skills.
- Strengthening an organization through an individual's significant contacts.
- Increasing the variety and level of skills on the board.

Agreeing to serve on a board comes with a great deal of responsibility and can provide a very satisfying experience. Before accepting, prospective board members should investigate what the commitment will entail in order to understand the role, function, and responsibilities of being a member of a charity's governing body.

## **A BOARD'S LEGAL DUTIES**

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Trustees and directors of charitable organizations have fiduciary obligations to ensure that the mission of the organization is honored and that resources of the group are used wisely in support of that purpose.

The Ohio Attorney General's Office has the duty to ensure that the interests of those who benefit from the charity's work are protected. In fact, this is one of the oldest duties of attorneys general and goes back centuries in common law tradition. Statutory provisions expand on that authority.

The duties of trustees also are long-standing. Statutory provisions spell out those responsibilities in the Ohio nonprofit corporation code provisions (Ohio Revised Code Section 1702). For organizations that have sought and received

tax-exempt status from the Internal Revenue Service, there also are federal requirements pertaining to board members' fiduciary duties.

The responsibilities center on paying attention, being good stewards, and acting in the best interest of the organization. Board members are guardians of the trust, serving on behalf of the community, regardless of personal interests. These duties apply whether or not the group is formally incorporated. They apply whenever an organization presents itself to the public as honoring or advancing a charitable cause. Trustees have the same obligations to their organization whether the group's budget is \$100 or \$100 million.

Board members bring new ideas into organizations, provide oversight and guidance on mission and objectives, and help a successful group remain relevant and healthy. The lack of an active and engaged board can doom the future of a nonprofit organization.

Failure to follow through on the legal duties of board membership can have devastating consequences for a charitable organization. There also may be civil or criminal penalties levied against board members who shirk their responsibilities, particularly in situations in which they have benefitted from their action or inaction.

The fiduciary obligations of board members fall under four specific legal duties:

- Duty of care
- Duty of compliance
- Duty of loyalty
- Duty to maintain accounts

## **DUTY OF CARE**

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A trustee has a responsibility to be active in the charity's affairs. At a minimum, that means attending and participating in board and committee meetings. Additionally, board members should stay informed about organizational operations to ensure that staff members follow the board's policies.

Trustees should make good-faith efforts to establish organizational policies and revisit them regularly to review how well they are working.

Board members should conduct themselves with the level of care, skill, and diligence exercised by prudent people in the handling of their own affairs.

Board members who know the facts, analyze the probable result of their actions, exercise sound judgment, and keep reasonable records fulfill their duty of care. Those who are regularly absent from meetings, who are inactive, or who fail to conduct adequate research prior to making decisions do not.

**Trustees or board members should:**

- Prepare for board meetings by reading and reviewing reports, minutes, and other materials distributed for the meeting.
- Attend board and committee meetings and record all actions taken or decisions made.
- Ask questions and obtain the information necessary to make informed decisions.
- Review the performance of the charity’s executive director or chief executive officer.
- Exercise independent judgment rather than blindly follow the staff’s requests.
- Oversee the executive director and ensure that the charity’s purposes are fulfilled efficiently and follow sound business standards.

**DUTY OF LOYALTY**

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The duty of loyalty requires that the interest of the charity and its objectives take precedence over a board member’s personal interests or those of family or friends.

Trustees or board members always must act fairly and in the best interest of the organization without concern for their own interests.

**Trustees or board members should:**

- Establish a written policy for dealing with conflict-of-interest situations. These should include procedures for written disclosures from board members concerning business dealings with the charity or those seeking to do business with the charity.

- Not engage in any transaction that hurts the charity or in any activities that compete with the interests of the charity or result in any personal advantages based on the charity's business dealings.
- Use caution when entering into any business relationship between the organization and a board member. Avoid this scenario entirely unless the board determines that the transaction is in the best interest of the charity.
- Establish and comply with a written policy for disclosing conflicts of interest, appearances of impropriety, and business dealings involving board members.
- Disclose any financial interest and abstain from discussions and votes on transactions when the charity proposes to enter into a business relationship in which a board member holds an interest.
- Avoid diverting opportunities available to the charity for personal gain.

## **DUTY OF COMPLIANCE**

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Board members have a duty to be faithful to the organization's purpose and mission. They also must adhere to the organization's governing documents and to laws and regulations that relate to the charity and its operations.

### **Trustees or board members should:**

- Understand the charity's articles of incorporation, constitution, bylaws, codes of conduct, codes of ethics, and any other governing documents.
- Be familiar with state and federal laws relating to nonprofit entities, fundraising, and tax-related issues as well as legal issues connected with the organization's charitable purposes and operations.
- Comply with state and federal registration and reporting requirements, including filings with the Ohio Attorney General, the Ohio Secretary of State, and the Internal Revenue Service.

Organizations can complete their filing requirements with the Ohio Attorney General's Office online at [www.OhioAttorneyGeneral.gov/Nonprofits](http://www.OhioAttorneyGeneral.gov/Nonprofits). Additional information about the various requirements is available online or by calling 800-282-0515.

## **DUTY TO MANAGE ACCOUNTS**

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Board members are responsible for the charity's financial stability and accountability. They do this primarily by establishing procedures to help the organization operate in a fiscally responsible manner.

### **Trustees or board members should:**

- Develop policies and procedures that protect the organization's business interests and operations.
- Develop annual budgets that provide clear direction for all organizational spending. The budget should be a blueprint of the board's program plans and should be routinely monitored, tracked throughout the year, and revised as necessary.
- Ensure maintenance of accurate records of all income, expenditures, transactions, and activities throughout the year — for the board and in all organizational operations.
- Establish appropriate internal accounting systems, including checks and balances, so one staff member or volunteer does not have total control over finances and so theft and improper spending can be identified quickly.
- Prudently invest and reinvest assets.
- Develop fundraising goals and policies and assist the organization in acquiring resources for its programs.
- Make certain that fundraising appeals are presented honestly and fairly by monitoring the performance of fundraising professionals and volunteers.
- Insist upon getting the best value for goods and services through comparisons and an informed bidding process.

- Ensure board minutes are kept to indicate board approval of expenditures and investments and to show that informed discussions were held prior to approval of such transactions.

## **CONSEQUENCES FOR VIOLATING FIDUCIARY RESPONSIBILITY**

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Trustees can be held individually responsible for breaches of fiduciary standards within a charity. For example, if charitable assets are sold at less than their fair market value, trustees may be held accountable for any shortfalls. Transactions involving conflicts of interest also can result in fiscal penalties. Sometimes criminal fraud charges can result when board members and key staff ignore their charitable obligations and personally profit from assets that should be used for community purposes.

Service on a charity's board requires being a responsible steward of its funds. Donors and the public place their trust in board members, and regulators are watching. Even if funds are not being diverted from a charity, the public can lose faith in an organization that doesn't appear accountable.

## **HOW TO KEEP A BOARD STRONG**

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### **Ensure diversity in board membership**

Members should look for ways to recruit community representatives who have an interest in the charity's mission and represent diverse viewpoints or skill sets.

### **Set term limits**

Consider term limits and rotation off the board or to other assignments as a means of avoiding stagnation, tunnel vision, and the perception that the board is merely an insiders' club.

### **Set a schedule to review operations**

Many groups orient new board members by reviewing governing documents, budgets, programs, and policies. Some do annual assessments of how the board is operating and whether the group is adequately addressing all necessary issues.

### **Develop a strategic plan**

Boards may elect to engage in strategic planning to analyze the organization's strengths, weaknesses, opportunities, and threats. This analysis often can uncover areas for improvement and help focus the board's policy-setting responsibilities.

## TRAINING AND RESOURCES

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- Training opportunities for charity board members are routinely provided by many organizations, including the Ohio Attorney General's Office. Many books and websites address board governance and administration.
- Leaders and organizations interested in sponsoring community training sessions on nonprofit board member responsibilities can contact the Ohio Attorney General's Help Center at **800-282-0515** or e-mail **CharitableLaw@OhioAttorneyGeneral.gov**. Other materials that relate to nonprofit governance and operations are available at **www.OhioAttorneyGeneral.gov/Nonprofits**.
- The Ohio Association of Nonprofit Organizations (**www.oano.org**), a statewide group that addresses nonprofit issues, provides training and resources throughout the state. The Ohio Grantmakers Forum provides training and resources for foundations and the organized philanthropic community at **www.ohiograntmakers.org**.
- The Internal Revenue Service website (**www.irs.gov/charities**) has a section dedicated to nonprofit governance issues. In addition to addressing fiscal issues, the site includes helpful information on the life cycle of nonprofit organizations and their administrative challenges. Web-based training on board issues is available through the IRS StayExempt resources on its website.
- Several Web-based resources address nonprofit governance. BoardSource (**www.boardsource.org**) has numerous publications and model policies specific to charity board matters. The Ohio Secretary of State's Office provides information about incorporation processes for nonprofit organizations at **www.sos.state.oh.us**.
- While there are no universally accepted standards on the operation or performance of nonprofit organizations, several watchdog organizations evaluate nonprofits or issue voluntary standards. The standards represent best practices within the nonprofit sector and may provide helpful guidance for board members.



# Guide for Charity Board Members

## Groups with model standards include:

American Institute of Philanthropy  
[www.charitywatch.org](http://www.charitywatch.org)

Better Business Bureau's Wise Giving Alliance  
[www.bbb.org/us/charity](http://www.bbb.org/us/charity)

Charity Navigator  
[www.charitynavigator.org](http://www.charitynavigator.org)

Ohio Association of Nonprofit Organizations  
[www.oano.org](http://www.oano.org)

*To get news and updates about nonprofit governance, sign up for the Nonprofit News newsletter at*  
**[www.OhioAttorneyGeneral.gov/Newsletters](http://www.OhioAttorneyGeneral.gov/Newsletters).**



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or call **800-282-0515**.