



**READY2SERVE**

**Board Oversight:  
Legal Responsibilities**

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**Legal Responsibility:  
KEY POSITIONS**

- Members
- Registered agent
- Directors
- Officers

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**MEMBERS**

- Equivalent of shareholders
- Charities may have “members” but not required to

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## REGISTERED AGENT



- Person on whom legal papers are served
- Designated by a filing with Secretary of State

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## BOARD OF DIRECTORS



- Must be at least 3
- Manages the affairs of the corporation
- “All powers are exercised by or under the authority of the board”

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## BOARD MEETINGS



- Can be in person OR
- By any means by which directors can hear each other OR
- Without a meeting IF  
UNANIMOUS WRITTEN  
CONSENT

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## CONTROLLING AUTHORITY

- Statutes
- Articles
- By-laws

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## DIRECTOR DUTY

- A board member must discharge his or her duties —
  - In good faith
  - With the care an ordinarily prudent person in a like position would exercise under similar circumstances
  - In a manner he or she reasonable believes to be in the best interests of the corporation

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## ACTING IN GOOD FAITH (examples)

- Attending board meetings
- Preparing in advance
- Obtaining information before voting
- Exercising independent judgment
- Periodically examining the performance of those who serve the charity
- Frequently reviewing the organization's finances and financial policies

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**RELIANCE ON OTHERS**  
(opinions, reports, financials)

1. Other officers or employees if believe to be reliable and competent regarding the specific matter
2. Attorneys, accountants, or others within their professional competence
3. A board committee if believes the committee merits confidence

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**CONSEQUENCE OF COMPLYING WITH DUTIES:**

- Not liable to the corporation
- To any member
- To any third person

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**CONFLICT OF INTEREST**

- Avoid liability IF either:
  - A transaction was fair at the time it was entered into OR
  - Is approved in advance by the board with the board knowing the material facts and the director's involvement
- Most boards will have conflict of interest policies and statements the directors must sign

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## OFFICER DUTY

- Same as that of a board member
- Except must also act for the good of members (if any)

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## FINANCIAL PROTECTION

- A board can indemnify a board member for a lawsuit IF the board member conducted him or herself in good faith and reasonably believed the director's conduct was in the charity's best interest
- A board can purchase "liability" insurance on behalf of board members and officers

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## Questions?

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**Nick R. Taylor, J.D. - Bio**

- Fitzgerald, Schorr, Barmettler & Brennan law firm – Tax Department Chair
- Omaha Estate Planning Council, immediate past President
- Great Plains Federal Tax Institute, board member and past president
- Nebraska State Bar Association Section on Real Estate, Probate, and Trusts, past president
- American College of Trust and Estate Counsel – Fellow
  - Member of Charitable Giving and Retirement Benefits Planning Committees
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- Board member of numerous charities, frequent speaker and legal practice directed to estate planning, charitable giving and family business planning

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