What It Means to Be a Trustee
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Fiduciary Responsibility for Governing Boards

Governing boards have both legal and fiduciary responsibilities. Many trustees take this to mean that they are responsible for ensuring that the library’s budget is spent well and fully in accordance with the library’s mission, and that the library operates within the law. Certainly, these are important aspects of their duties.

Fiduciary responsibility, however, should be viewed in much broader terms – especially in relationship to an entity as important as the public library. Stephen R. Smith, in writing about the duties of a nonprofit board, says that fiduciary responsibilities extend to duty of due care, duty of obedience, and duty of loyalty. Duty of care, he says, “requires that a director [trustee] perform his or her responsibilities as a board member in good faith and with the care that an ordinarily prudent person in a like position would use under similar circumstances.” In addition, he lists the following as requirements for acting with due care and due obedience:

- Adopting policies and procedures that provide for effective oversight of management.
- Attending board and committee meetings to which they are assigned so that they will have an opportunity to obtain the information necessary to make an informed judgment about matters on which they must make decisions on behalf of the corporation [library].
- Acting in an independent manner and exercising independent judgment in matters affecting the nonprofit.
- Ensuring that the nonprofit acts in accordance with its exempt purposes.¹

The duty of loyalty is basically one that requires that individual trustees always act in the best interest of the library and never in his or her own best interest. Because of the importance of this obligation, it is wise for boards to require that every member sign conflict of interest and ethics statements. If your board does not already have these in place, working on their development will give everyone an opportunity to reflect on their positions as well as safeguard any future actions of malfeasance by members. Examples of both are included in the resource guide for the Board Ethics video.

Directors and Officers Insurance

The subject of trustee liability is one that should be taken seriously and addressed. Federal law and state laws in many cases protect individuals from harm in a lawsuit if they have acted in good faith – even if a decision they made turned out to be one of poor judgment or erroneous. In addition, anyone bringing suit against an individual trustee or trustees has the burden of proof to show that the individuals did not act in good faith.

That’s all well and good, but protecting trustees from liability when acting in accordance with their fiduciary responsibilities won’t necessarily keep someone from trying. The cost to any individual board member to defend against a lawsuit can be very significant. Therefore, it behooves the board as a whole to indemnify members in the case of law suits. Indemnification means that the board will cover any costs for defense of a member or members if in the end there is no judgment against them.

The board can protect itself from legal defense costs by having Directors and Officers (D&O) insurance. Coverage for this insurance can be extended to individual trustees or can cover the board itself in the case where it indemnifies its trustees for reimbursement of expenses.

Some boards may well be covered by their parent organization if part of a larger government body such as the county or city. It’s a good idea to find out. If the board does not have this protection, they should look into and carefully compare D&O policies. According to Smith, the following are important steps to take:

- The nonprofit’s management should retain the services of a knowledgeable insurance broker who can ensure that the proper coverage is provided at the most affordable rate.

- Directors should review the coverage and terms with management and should ask questions regarding the proposed policy.

- The company chosen to provide the coverage should be highly rated by the insurance rating agencies.

- The policy should require the insurance company to provide the corporation and its directors with a defense to any lawsuit and to pay for that defense.

- Careful attention should be paid to the notice provisions of the policy since the failure to comply with required notice to the insurance company of a potential or pending lawsuit may, in some instances, invalidate the coverage.  

Note: Many confuse D&O with Errors and Omissions (E&O) insurance, but they are not the same. D&O insurance is concerned with the performance and duties of management and governance. E&O is concerned with performance failures and negligence with respect to your products and services. It is a good idea to have both if at all possible but if you only are able to get one kind of coverage, the best for boards and board members is the D&O insurance.

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2 Ibid.
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<td>Support the libraries</td>
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<td>Librarians a resource for libraries</td>
<td>Librarians a resource for libraries</td>
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<td>Encourage City Board and Friends to join</td>
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