QUICK GUIDE · DIRECTORS' DUTIES

The Seven Duties of a Director

MINNIKIN
GOVERNANCE FOR STRATEGIC ADVANTAGE

Whether elected, appointed or volunteer, every director takes on the same legal duties to the organization, as a board and as individuals. Here they are at a glance.

1 Fiduciary duty

Act honestly and in good faith, with a view to the organization's best interests.

- The foundation of every other duty, set out in most governing statutes.
- Indemnification generally isn't available to a director who hasn't acted honestly and in good faith.
- In practice: confidentiality, avoiding conflicts, and disclosing what should be disclosed.

2 Duty of loyalty

Your loyalty is to the organization, not to whoever appointed or elected you.

- Often misunderstood, especially on boards with nominated or representative seats.
- Whoever nominated you, your duty runs to the organization as a whole.

3 Duty of care

Bring the care, diligence and skill of a reasonably prudent person.

- Measured against what a reasonably prudent person would do in similar circumstances.
- Expertise raises the bar: an accountant or lawyer may be held to a higher standard in their field.

4 Duty of diligence

Exercise appropriate oversight rather than simply relying on others.

- Read the package, ask good questions, and follow up.
- Relying on management and advisers is reasonable; relying on them blindly is not.

5 Duty of collegiality

Work as one board.

- Speak frankly and respect the group.
- Support decisions as if they were your own.
- Once a matter is decided, let it rest rather than reopening it.

6 Duty to manage (oversee)

See that the organization is well run, without running it.

- Understand how the organization is structured, and expect timely, quality information.
- Keep a close eye on key areas: audit, compensation, risk and the environment.
- Follow up on resolutions, and attract, assess, retain and motivate strong leadership.

7 Duty of independence and conflict

Be free of constraints that prevent you from acting in the organization's best interest.

- Know all direct and indirect relationships with the organization.
- Arrive free of personal promises about how you will vote.
- Keep board matters confidential.

No authority unless duly constituted

The board's authority exists only when it meets as a board. Even the Chair acts only as the board authorizes. Individual directors don't direct staff or speak for the board unless asked to.

The hardest part of being a director? All of the obligations. All of the time.

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Putting the Duties into Practice

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BEFORE EVERY MEETING

- Read the whole package and come with questions.
- Scan the agenda for anything that could put you in a conflict.
- If something is missing, ask before the meeting rather than during it.

IN THE BOARDROOM

- **Say what you think.** You owe the board your honest view; staying silent isn't an option.
- **Listen closely to your fellow directors**, and let their thinking shape your own.
- Ask the questions others may be thinking.
- Speak frankly; challenge ideas, not people.
- If you disagree strongly, you may ask to have your dissent recorded. Once the meeting ends, you still support the board's decision.
- If a proposal of yours isn't approved, a good rule of thumb is to let it rest for 18–36 months, unless an outside body or regulator brings a material change.
- Make sure decisions are clearly stated and minuted.
- **Send minor corrections ahead of time.** Typos and wording changes are best sent to the Chair or secretary before the meeting, keeping the board's time for substantive matters.

BETWEEN MEETINGS

- Keep board matters confidential, including from friends and colleagues.
- Speak with one voice: once the board decides, support the decision publicly.
- Work through the Chair and CEO rather than directing staff.
- Follow through on what you said you would do.

3D© We all do better on boards when we are 3D©.

We are most engaged when we are:

Delivering value

Deriving value

Developing as a director

HANDLING A CONFLICT OF INTEREST

1. **Declare** the interest as soon as you are aware of it.
2. **Leave the room** for the discussion, unless the board asks you to stay to answer questions.
3. **Do not vote** or try to influence the outcome.
4. **Make sure it is recorded** in the minutes.

If you find yourself recusing more than a few times a year, it may be worth asking whether you can be fully effective on this board.

If you have to ask? Just don't.
In law, a conflict of interest can be argued. In governance, even a perceived conflict is a conflict: if someone could reasonably believe it might be one, it is. Disclosure costs little; keeping quiet can cost the organization its reputation.

QUESTIONS EVERY DIRECTOR SHOULD BE ABLE TO ANSWER

- What is our financial position, and what is our runway?
- What are our top risks, and who is managing each one?
- Is the CEO performing, and how do we know?
- Are we on track with our strategy?
- Are we meeting our legal and regulatory obligations?
- What would we least like to read about ourselves in the news?

PROTECTING YOURSELF AND THE BOARD

- Directors' and officers' (D&O) liability insurance suited to your risks.
- Indemnification provisions in your bylaws, within what the law allows.
- Good records: minutes, board packages and your own notes.
- Recorded dissent when you strongly disagree.
- Reliance in good faith on qualified management and professional advice.
- Orientation and ongoing governance education.

Guiding principles are better than rules
Even the best rules meet situations no one could foresee. The duties are principles: when the rules run out, ask what a loyal, careful and diligent director would do.

This guide is general information, not legal advice. Directors' duties are set by your governing legislation, articles and bylaws, and by the courts. For specific questions, consult your organization's legal counsel.

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