



## Board of Directors/Trustees Duties

### **"Corporate responsibility" is not a new concept for board members**

There have been a variety of scandals in both the nonprofit world (e.g. United Way) as well as the for-profit world (e.g. Enron). The federal government has responded to the for-profit scandals with Sarbanes-Oxley legislation which has become relevant to the governance of nonprofit corporations as "best practices" or even threshold expectations. New York State's Attorney General has passed a Sarbanes-Oxley-type corporate governance standards initiative directed at nonprofit corporations. The IRS incorporated some of these ideas in its changed application for recognition of tax exempt status in July 2007 and significantly changed the annual report for nonprofits on Form 990 starting in 2008. While these events have not yet changed the core standards of a nonprofit director's or trustee of an educational or religious organization's fiduciary duties, they draw attention to the corporate responsibility environment in which all governing boards operate.

#### **Duties and Constituencies**

Directors of nonprofit corporations and trustees of educational and religious organizations, as with directors of for-profit corporations, owe important duties to the organizations they serve. These duties include: "duty of loyalty" and a "duty of care" and "duty of obedience".

#### **The Duty of Loyalty**

This duty requires that directors/trustees place the interests of the corporation above their own and act in what they reasonably believe is the best interest of the organization. The IRS requests information about organizations' conflict of interest policies.

#### **The Duties of Care and Obedience**

These require that directors/trustees take adequate steps to inform themselves in making decisions and also requires that each director/trustee act as an ordinary prudent person would act in the same circumstances. The IRS is requiring that the Form 990 be signed and certified by organizations' officers. It also means that directors/trustees must ensure among other matters that the nonprofit/educational/religious organization uses its income and assets for the mission of the organization and that the organization is obeying or complying with all applicable laws.

While the duties owed by directors/trustees are largely equivalent to the duties owed by directors of for-profit entities, the constituencies to whom directors/trustees are accountable are not. Directors/Trustees may be held accountable by any number of groups – the organization's members, other directors/trustees, New York State's Attorney General, the Internal Revenue Service, and city, state and/or federal contracting or investigation agencies.

Nonprofit, educational and religious corporations are set up to be forever. They are to last beyond any one person's lifetime and involvement. The directors/trustees are involved in a "relay race" of stewardship. They need to expend their time, energy and expertise to keep the organization "alive and growing" and to hand on the "baton" of the health of the organization to the next set of Board members. Decisions about requirements for Board members are very important to the health of such organizations. The reputation of such organization are in part a reflection of the make-up of Board.