

Duty of Care Policy

Purpose

Duty of Care is the duty to consider the impact our actions can have on others.ⁱⁱⁱ It is directly related to negligence.

The definition of negligence is “conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm”.ⁱⁱⁱ

Duty of Care also addresses Duty of Loyalty and Duty of Obedience.

Duty of Loyalty is defined as undivided allegiance to the association when making decisions about the association^{iv}. Officers and directors must not put personal interests above the interests of the association. Officers and directors must disclose even *potential* conflicts of interest to the board of directors, and should recuse themselves from deliberation and voting on matters in which they have personal interests.

Duty of Obedience states officers and directors are required to act in accordance with the organization's articles of incorporation, bylaws and other governing documents, as well as all applicable laws and regulations.^v

Policy

Officers and directors must perform the association’s duties in the same manner as an ordinarily prudent person would under similar circumstances.^{vi} They must act in a manner that is in the best interest for the association.

The "business judgment rule" protects officers and directors from personal liability for actions made in poor judgment as long as there is a reasonable basis to indicate that the action was undertaken with due care and in good faith.^{vii}

Procedures

- Be informed before making decisions by researching and becoming familiar with the issue.
- Be actively involved in deliberations during board meetings - asking questions where prudent and when such a need is indicated by the circumstances.
- Make decisions based on information. Don’t be hasty.
- Meeting minutes must be accurate – and reflect the vote counts (including dissenting votes and abstentions) on actions taken at meetings.
- Request that legal consultation be sought on any matter that has unclear legal ramifications.
- Request that the association's accountants assess and evaluate any matter that has significant financial ramifications.
- Review the association’s financial reports - audited and unaudited.
- Attend the association's meetings and read the association's publications carefully to keep fully apprised of the organization's policies and activities.
- Review the association's articles of incorporation, bylaws and other governing documents regularly.
- Sign the conflict of interest document associated with the conflict of interest policy.

Legal Protection

If preventive risk management fails, the liability of association officers and directors can be limited through indemnification by the association, insurance purchased by the association, and state volunteer protection laws.^{viii}

ⁱ <http://www.txinjuryblog.com/2009/11/articles/legal-news/what-is-duty-of-care/>

ⁱⁱⁱ <http://injury.findlaw.com/accident-injury-law/negligence-background.html>

^{iv} <http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12217>

^v <http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12217>

^{vi} <https://www.acc.com/chapters/houst/upload/Session1Vorys.pdf>

^{vii} <http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12217>

^{viii} <http://www.asaecenter.org/Resources/whitepaperdetail.cfm?ItemNumber=12217>