

# Guide for Board Members of Charitable Corporations

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Dear Board Member:

As the state agency charged with protecting the public's interest in nonprofit corporations, the Office of the Attorney General offers this guidance to board members and prospective board members of those organizations.

This guide is meant to help you understand your rights and responsibilities during your service to a charitable organization, so that you can be a productive and effective member of your board, thus making your service as meaningful and as rewarding as possible.

Please keep in mind that this guide is not a substitute for legal advice from an attorney. While some of the guidelines state minimum legal requirements, others reflect our view of best practices. Following these practices will make your service as a board member a success.

As a board member of a nonprofit charitable organization you have the privilege and responsibility of serving the public interest. The Attorney General sincerely appreciates your willingness to serve the citizens of Maine.

JANET T. MILLS  
Attorney General

## WHAT IS A CHARITABLE CORPORATION?

All nonprofit corporations in the State of Maine are either "public benefit" or "mutual benefit" corporations. "Public benefit" corporations are organized for charitable purposes and recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code. While some of the standards described within this pamphlet are applicable to both charitable (public benefit), and mutual benefit corporations, the guidance offered in this pamphlet is for directors of charitable corporations.

Public benefit corporations vary widely in their size and purposes. There must be at least three board members to properly constitute a public benefit corporation. No matter what the size of the board, the majority of the board members must not be financially interested in the organization. This means that most of the board cannot be employed by or have relatives who are employed by the organization. Examples of charitable corporations include volunteer fire departments, social service organizations, colleges and universities, hospitals, museums and youth sports leagues. These organizations operate on an exclusively charitable basis and collect, hold and expend funds solely for the benefit of the public.

Mutual benefit corporations are corporations that benefit their members not the public. They are not subject to the oversight of the Attorney General and include organizations such as homeowners' associations, labor unions and trade associations.

## YOUR DUTIES AS A BOARD MEMBER

It is your job as a board member to ensure that the organization is faithfully fulfilling its charitable purpose. You and your fellow board members are responsible for governing the organization.

The law imposes two primary duties on board members: the duty of care and the duty of loyalty. The duty of care means that you must act with such care as an ordinarily prudent person would employ in your position. The duty of loyalty means that you must act in the best interests of the organization.

- You should keep copies of and read the organization's articles of incorporation and bylaws.
- You should attend board meetings and meetings of committees on which you serve and actively participate in board discussions.
- You should make sure that complete and accurate records of board activities are kept, including minutes of board and committee meetings and books of account.
- You should carefully read all the materials that you receive, such as minutes, reports and financial statements.

## KNOW THE CHARITABLE CORPORATION'S MANAGERS

The board of directors is responsible for overseeing the charitable corporation's managers and setting their compensation.

- As a board member, you should actively participate in selecting and evaluating the organization's executive director or chief executive officer (CEO). The entire board should make the final decision to hire the CEO. Once the CEO is hired, the board should periodically review and assess the CEO's performance.
- A public benefit corporation that receives at least 25% of its funding from the government and compensates any officer or director more than \$250,000 annually must publish that information publically.

The process for setting the CEO's compensation, the amount of such compensation, and the terms of such compensation should be approved by the entire board and should be sensitive to public concerns.

- Not all charitable corporations have an executive director or CEO. Board members of charitable corporations without an executive director or CEO should be involved in selecting and setting the salaries of any employees with authority to make decisions on behalf of the organization.

## LOOK OUT FOR CONFLICTS OF INTEREST

As a board member, you have a duty to act in the interest of the corporation. Board members must avoid transactions in which they or their family members benefit personally, unless such transactions are fair to the corporation and approved by the full board.

- The board of directors may approve (before or after the fact) transactions which are fair to the corporation, even if a member has a personal interest, if the other board members know of that interest and the details of the transaction. Such approval requires a vote by a majority of the board members who have no direct or indirect interest.
- If the board is unable to make a decision regarding a transaction in which a board member has a personal interest, one or more board members may request that the transaction be approved by the Attorney General or by the Superior Court.
- The board should consider adopting a conflict of interest policy to help guide decision making when faced with conflict issues.

Because the interests of the organization as a whole are paramount, Maine law requires that no more than 49% of the individuals on the board of directors may be "financially interested persons." An individual who has received or is entitled to receive compensation for personal services rendered to the corporation by that individual within the previous 12 months is a financially interested person. The spouse, brother, sister, parent or child of the board member is also considered in determining financial interest.

The board should consider requiring directors to complete annually a disclosure statement listing other organizations or businesses in which they have a personal or financial interest.

Finally on the topic of conflict of interest, Maine law prohibits loans from charitable corporations to its directors or officers.

## SAFEGUARD CHARITABLE ASSETS

The board of directors is responsible for insuring that charitable funds are used only to promote the corporate mission. In order to insure that the assets are properly managed, you as a board member should (with professional guidance if necessary) at a minimum:

- Make sure that the board develops an annual budget and maintains records of account.

- Require and review monthly financial reports (such as income and expense statements and budget status reports) from those charged with the day-to-day operation of the organization.
- The board should consider requiring dual check-writing authority and select one board member or person employed by the organization without authority to sign checks to reconcile the organization's bank statements on a monthly basis.
- Make sure that restricted gifts are used only for the purposes for which they were donated and keep separate track of restricted funds.
- Make sure that no transfer:
  - i. directly or indirectly benefits any board member, unless the transfer is fair to the corporation and properly approved by the board; or
  - ii. is to a board member or other person with influence over the organization if that person receives a benefit beyond its fair market value.
- Make sure that any transactions with for-profit entities (such as mergers and joint ventures) receive appropriate legal scrutiny since special rules apply.
- Be aware of the Uniform Prudent Management of Institutional Funds Act if your charity manages permanent endowment funds and the Uniform Trust Code if your charity manages or is the beneficiary of any trust funds.

## FILING AND REPORTING REQUIREMENTS

- Public benefit corporations must file an exempt organization return with the Internal Revenue Service - IRS Form 990ez, 990 or 990-PF. (990-PFs must also be filed with the Office of the Attorney General, 6 State House Station, Augusta, ME 04333-0006). ***For more information on federal income tax requirements please contact the IRS at 877/777-4778 or visit the IRS website at [www.irs.gov/](http://www.irs.gov/).***
- All corporations must file certain documents with the Secretary of State, such as amendments to articles of incorporation and an annual report, which must be submitted by the 1st of June. ***For more information on Secretary of State requirements please contact the Secretary of State at 101 State House Station, Augusta, Maine 04333-0101; 207/624-7752 or visit [the Bureau of Corporations, Elections and Commissions website](#).***
- Any charity that solicits contributions, directly or indirectly, must register with the Maine Department of Professional and Financial Regulation, unless specifically exempted. ***For more information on charitable solicitation registration requirements please contact the Office of Licensing and Registration at 122 Northern Avenue, Gardiner, Maine 04345; 207/624-8624 or [visit the PFR website](#).***
- Certain acts of the organization, such as major proposed amendments to the articles of incorporation, adoption of the provisions of the Uniform Prudent Management of Institutional Funds Act, or a merger with, or sale or conversion to, a for-profit entity, must be reported to the Attorney General

## YOUR RIGHTS AS BOARD MEMBERS

As a board member, you must be able to make informed judgments about important matters affecting the charitable corporation and the community it serves. The law entitles board members to reasonably rely on information (such as opinions, reports, or statements, including financial statements and other financial data) from the charitable corporation's staff, outside advisors and board committees, to discharge duties. As a board member, if you do not have adequate information you have the right to get it.

- You have the right to reasonable access to management.
- You have the right to reasonable access to internal information of the organization. With at least five-business days notice, any board member may inspect all books and records of the organization for the purpose of fulfilling his or her duties.
- You have the right to reasonable access to the organization's principal advisors, such as its attorney or accountant.
- You should know that the organization has the power to purchase and maintain directors' and officers' insurance to cover your expenses if you are sued in connection with your service on the board. Even if such insurance has not been obtained, the organization must reimburse the expenses of any board member who is sued and successfully defends the lawsuit. Furthermore, the corporation has the authority to reimburse a board member in the event of a lawsuit, so long as the board member acted in good faith, regardless of the outcome of the lawsuit.

## NEW DIRECTOR INFORMATION PACKET

The Office of the Attorney General recommends that boards provide all new directors with an information packet including, at a minimum, the following:

- Copies of the organization's articles of incorporation and bylaws.
- Copies of any conflict of interest policy adopted by the board and corresponding disclosure statements.
- A copy of this Guide for Board Members of Charitable Corporations.

**This Guide was prepared by the Consumer Protection Division of the Maine Attorney General's Office to assist board members of charitable organizations with important responsibilities. It is only a guide and is not intended to prescribe how board members must act in all situations.**

**Copies of this Guide can be obtained from the Office of the Attorney General at 6 State House Station, Augusta, Maine 04333-0006; 207/626-8502.**

**Laws pertaining to nonprofit organizations including charitable or "public benefit" corporations, are found in Title 13-B of the Maine Revised Statutes, the Maine Nonprofit Corporation Act, and can be viewed and/or downloaded at [www.mainelegislature.org/legis/statutes/](http://www.mainelegislature.org/legis/statutes/).**