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Weston Hurd Client Advisory - January 2015

THE DUTIES OF CHARITY DIRECTORS; STARTING THE NEW YEAR RIGHT

Prepared by Dana A. Rose

DUTY OF CARE

The new year is a good time to remind charities and their directors of the four basic fiduciary duties owed by a director to the charity in connection with serving on its board of directors.

Although these four duties may go by other names, they are often called the following:

1. duty of care;
2. duty of loyalty;
3. duty of compliance; and
4. duty to oversee finances.

This advisory will discuss the duty of care. Subsequent advisories will address the other duties.

The duty of care requires a charity director to oversee a charity's affairs with the same care, skill and diligence that the director would use in prudently handling his or her own affairs. This essentially requires the director to keep informed as to the charity's status, needs and operations and exercise sound judgment in making decisions and voting on matters that affect the charity.

Good practices a director should follow in fulfilling this duty of care include the following:

- Advance review of materials distributed in preparation for board and committee meetings;
- Faithful attendance at meetings of the board and assigned committees;
- Asking questions to obtain information necessary to make informed decisions;
- Exercising independent judgment in making decisions;
- Regularly reviewing the performance of the charity's chief executive officer.

The essence of fulfilling the duty of care is obtaining information needed to make decisions for the charity and using that information to act in the best interests of the charity. Attending committee and board meetings and otherwise being active and present for the needs of the charity facilitates this.

The next advisory will pertain to the directors' duty of loyalty.

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Duty of Loyalty

Prepared by Dana A. Rose

DUTY OF LOYALTY

Continuing the series of advisories revisiting the four essential fiduciary duties owed by a director of a charity to that organization, this advisory discusses the duty of loyalty.

The duty of loyalty requires a charity director to place the interests and objectives of the charity above the personal interests of the board member, his family, friends and/or any third party. The director must always work in the best interests of the charity.

Good practices which the charity and its directors should follow in fulfilling the duty of loyalty include the following:

- The organization should have a written policy for dealing with conflict of interest issues. This policy should comply with the rules of the Internal Revenue Service and should include procedures for written disclosures of board members concerning business dealings with the charity that might present a conflict of interest.
- Avoid any transaction with a related person or entity that does not place the interests of the charity above all other interests.
- Approach any business relationship between the charity and a board member with caution and avoid such situations entirely unless the board formally determines that the transaction best serves the interests of the charity.
- As a board member, abstain from discussions and votes on transactions where you have some interest in that transaction other than in your service to the charity and its board.
- Avoid diverting opportunities available to the charity to others.

The next in this series of charity director advisories will discuss the duty of compliance. What will become clear is that, ultimately, all fiduciary duties of a charity director grow out of the duty of care. If care is exercised, fulfilling the duties of loyalty, compliance and the overseeing of finances of the organization will naturally follow.

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Duty of Compliance

Prepared by Dana A. Rose

DUTY OF COMPLIANCE

Third in our series of advisories reminding charities and their directors of the fiduciary duties of members of boards of directors of charities is this discussion on the duty of compliance. Charity directors have a duty to be faithful to and pursue the charity's mission, purposes and objectives. Directors must also follow governmental laws and regulations and the organizational and governing documents of the charity including its bylaws (called "regulations" in Ohio) and articles of incorporation.

Good, and perhaps required, practices for fulfilling the duty of compliance include the following:

- Read and understand the charity's articles of incorporation, bylaws, policies, and if there is one, the charity's application for tax exemption which was filed with the Internal Revenue Service.
- Have a working familiarity with state and federal laws relating to nonprofit organizations and their charitable operations and purposes.
- If there is one, annually review the organization's informational tax return (Form 990), which is filed with the Internal Revenue Service.

The next and final advisory on charity director's fiduciary duties will discuss the duty to oversee the organization's finances, sometimes referred to as managing its accounts.

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Duty to Oversee Finances

Prepared by Dana A. Rose

DUTY TO OVERSEE FINANCES

Final in our series of advisories reminding charities and their directors of the four essential fiduciary duties which a member of the board of directors bears in respect of the charity is this discussion of the duty to oversee the charity's finances which is sometimes called the duty to manage accounts. The board of directors is ultimately responsible for the charity's fiscal soundness and financial stability. This is generally accomplished by receiving regular reports as to the financial status of the organization and establishing procedures and oversight regarding the organization's finances.

Practices to accomplish this include the following:

- In concert with the charity's chief financial officer and chief executive officer, assure that policies and procedures are in place regarding financial operations.
- Develop annual budgets that provide clear direction for all organizational spending. A chief financial officer should provide regular reporting which tracks the charity's receipts and expenditures in relation to that budget.
- Ensure maintenance of accurate records of receipts, expenditures and accounts.
- Ensure that no single staff member has total control over finances to help prevent theft and/or improper spending.
- Responsibly invest assets such as any endowment funds.
- Understand and help develop fundraising goals, policies and assist the charity in acquiring funds for programming.

In overseeing a charity's finances, a director and the board are entitled to reasonably rely upon the reports of senior financial staff for the organization. Regular receipt of financial status reporting and having in place appropriate policies and procedures are the best prescription for assuring the fiscal stability of the charity.

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