

Weston Hurd Client Advisory - January 2015

THE DUTIES OF CHARITY DIRECTORS; STARTING THE NEW YEAR RIGHT

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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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