

DUTIES AND LIABILITIES OF TRUSTEES

The standard of conduct that applies to Trustees of commercial corporations also applies to Trustees of nonprofit corporations.

This general standard has three elements: A Trustee must perform duties as a Trustee (1) in good faith, (2) in a manner the Trustee believes is in the best interests of the corporation, and (3) with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

This standard applies regardless of whether Trustees are compensated for their services.

Requirement of Good Faith

This requirement has a well-defined and generally understood meaning. It is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, faithfulness to one's duty or obligation.

Requirement of Belief That Action is In Best Interests of Corporation

The best interests of a nonprofit corporation are its charitable purposes.

Requirement of Care and Inquiry

The care required of a Trustee of a nonprofit corporation is that degree of skill and attention, which an ordinarily prudent person in a similar position of responsibility would use under similar circumstances. Attention requires a Trustee to devote sufficient time to the corporation affairs to be reasonably acquainted with them and with the matters of policy and management needing attention at the board level. Attention involves faithful attendance at meetings and review and understanding of reports and other data made available to members of the Board. The requirement of attention implicitly requires, and the statute also articulates the requirement, that a Trustee make reasonable inquiry. Whenever Trustees are put on notice by the circumstances, where they should be aware that they do not have an adequate basis for action or where they should develop questions, which they feel, need answers, they are required to make a reasonable inquiry.

Application of General Standard

While the law requires that all corporate power shall be exercised "by or under the direction of the Board," the Board is specifically authorized to delegate the management of the activities of the corporation to individuals or committees.

Reliance by Trustees on Information From Others

Section 5231(B) states the law. This right of reliance recognizes the practical necessity that Trustees must rely on others. It should be noted that, in order to rely on something, the Trustee must have read it, or have been present at the meeting at which it is presented, or otherwise received and understood it.

Further, the Trustees must not have any pertinent knowledge, which would cause reliance thereon to be unwarranted or the Trustee to believe that the person who has prepared or presented it is not an appropriate source. Another essential element for reliance is actual belief in the material relied upon as an appropriate basis or component of the basis for the related action or inaction.

Effect of Satisfying General Standard of Performance

A person who performs the duties of a Trustee in accordance with the statutorily defined standard of conduct, including the permitted reliance on others, has no liability based upon any alleged failure to discharge his or her obligation as a Trustee.