



Legal Responsibilities of Nonprofit Directors

Business Volunteers Unlimited: The Role of the Board

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Directors' Authority

Except where the law, the articles, or the regulations require that the action be otherwise authorized or taken, **all of the authority of a corporation shall be exercised by under the direction of its directors.**

-- Ohio Rev. Code § 1702.30(A)

Fiduciary Relationship

Fiduciary: A person in a position of authority who is obligated to act on behalf of another in good faith and with care, candor, and loyalty in fulfilling the obligation.

Directors are fiduciaries of their nonprofits.

Fiduciary Duty

A duty to act with loyalty, honesty, and **in the best interests** of the beneficiary of the fiduciary relationship—your nonprofit.

Source of Fiduciary Duties

“A director shall perform the duties of a director . . . in good faith . . . in . . . the best interests of the corporation, and with the care that an **ordinarily prudent person** in a like position would use under similar circumstances.”

--Ohio Rev. Code § 1702.30(B).

Fiduciary Duties

Director is entitled to rely upon information presented by:

- Directors, officers, or staff
- Counsel, accountants, or other experts
- Committee of directors

-- Ohio Rev. Code § 1702.30

Fiduciary Duties

- Duty of Compliance
- Duty of Care
- Duty to Manage
Accounts
- Duty of Loyalty

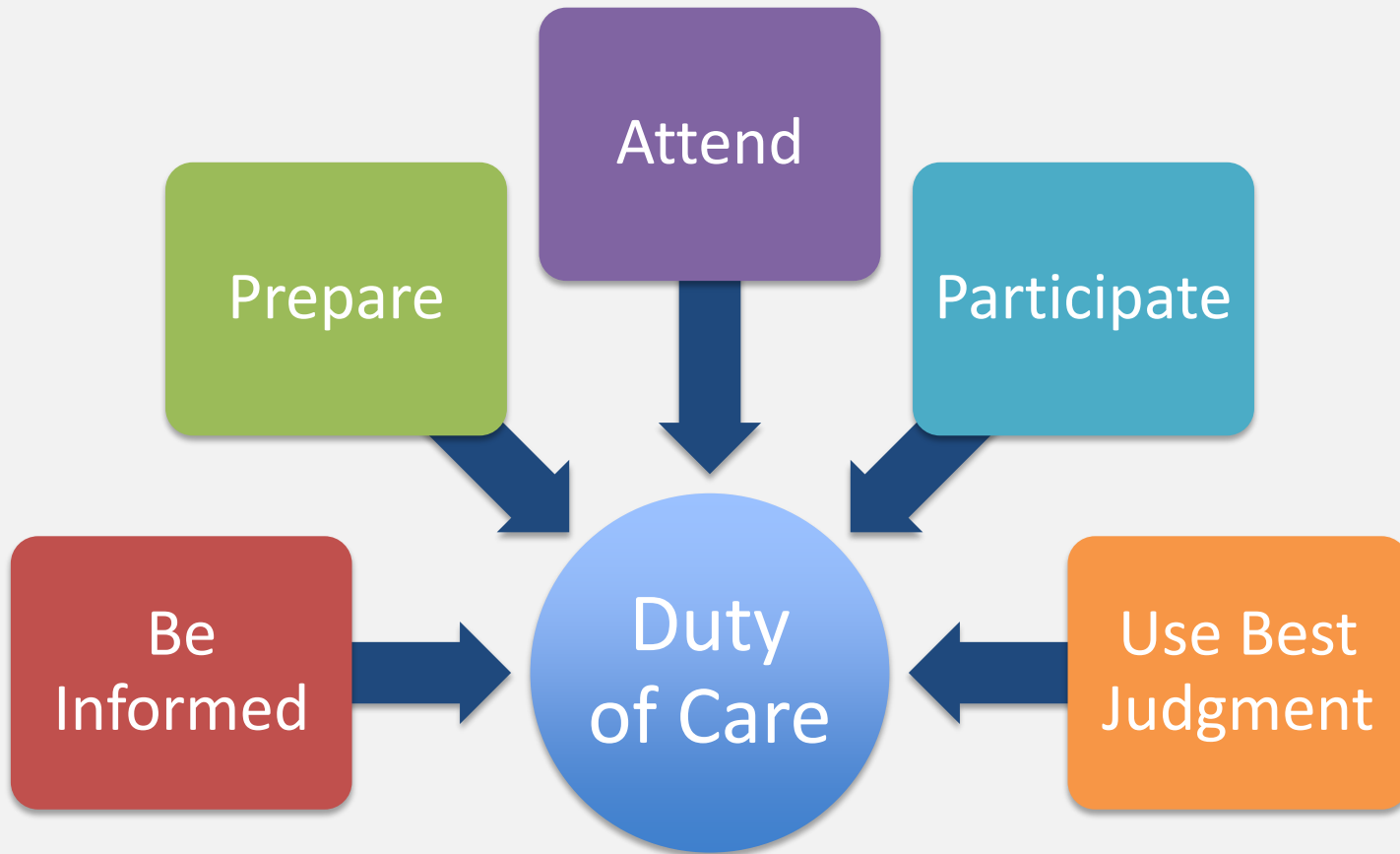
Fiduciary Duties

**A useful corollary:
DUTY OF INQUIRY**

Duty of Compliance



Duty of Care



Duty of Care: Be Informed



Organizing Documents



Board Committees and Members



Website, Policies, Financials

Duty of Care: Prepare



Review Agenda

Research Complex Issues

Understand the Issues

Duty of Care: Attend the Meetings



Show Up to Do
Business

Duty of Care: Actively Participate



Listen to Discussion



Ask Questions



Vote

Duty of Care: Use Your Best Judgment



Interests of the Organization Come First

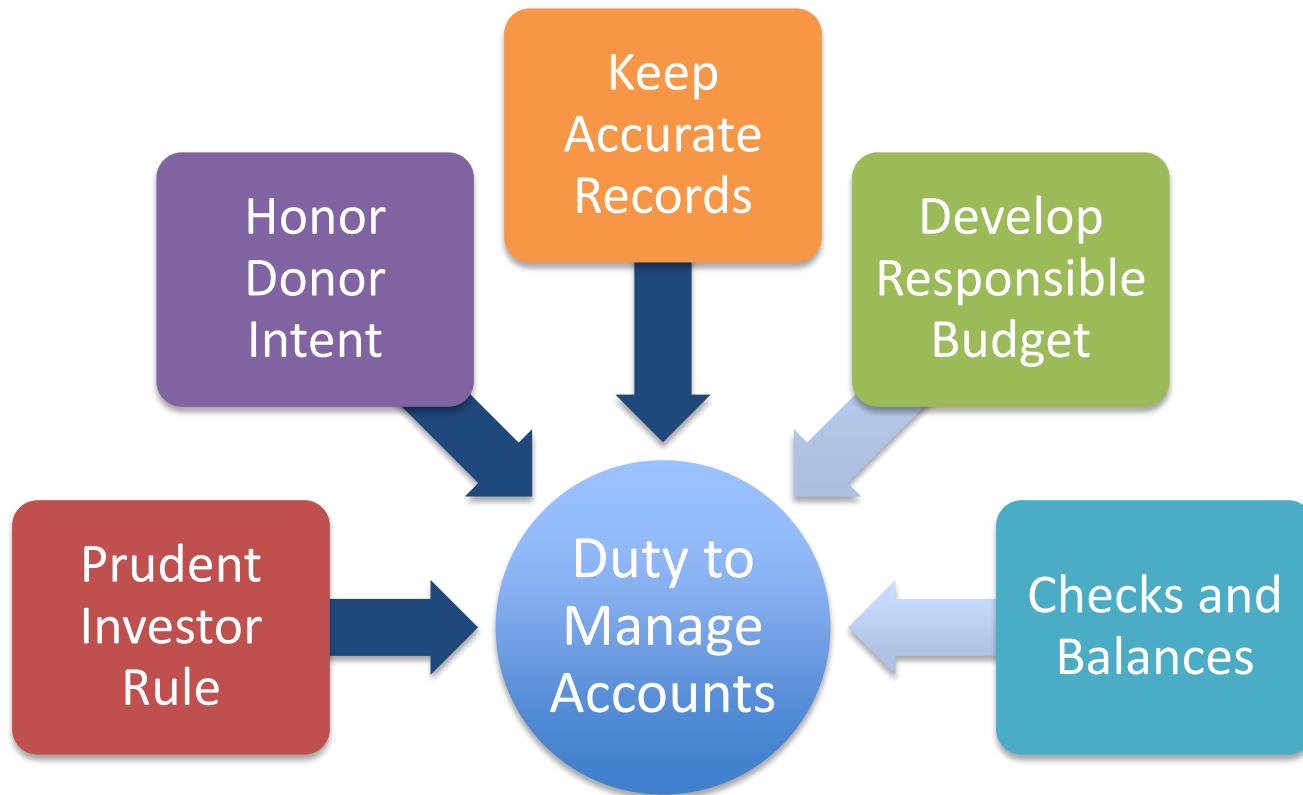


May Be Contrary to Personal Desire

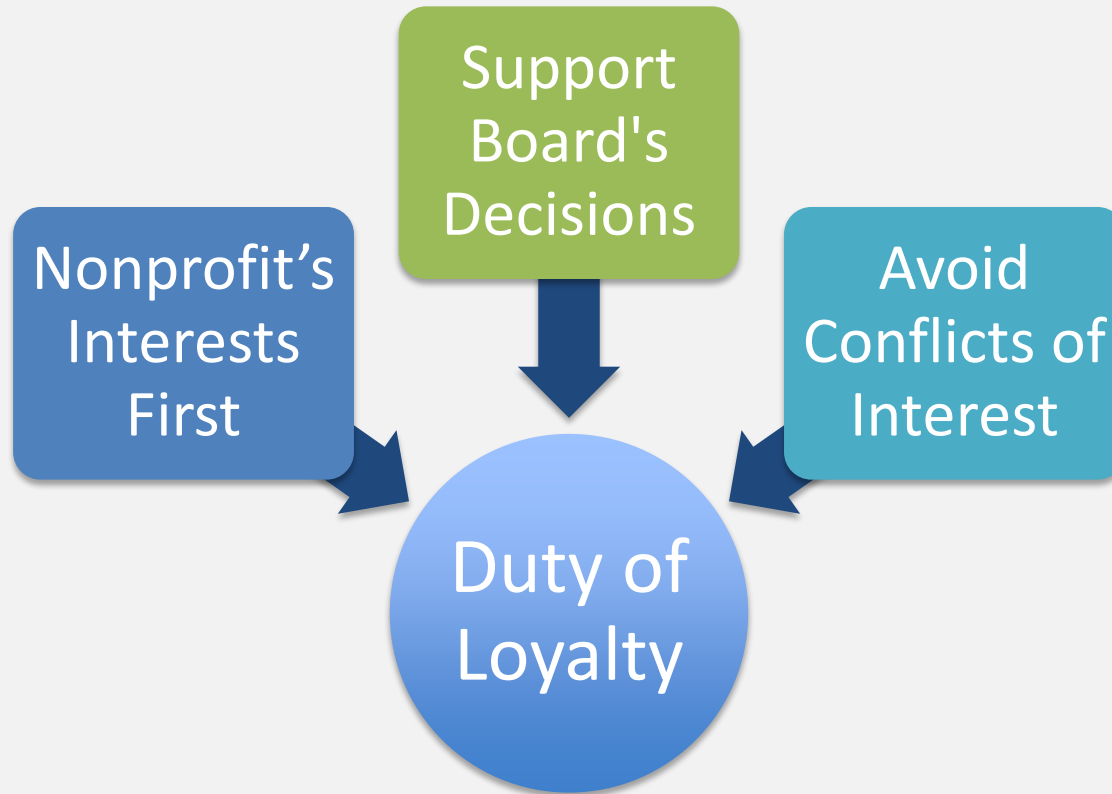


May Be Contrary to Staff/Other Board
Members

Duty to Manage Accounts



Duty of Loyalty



Protections from Liability

- Higher burden of proof for claim of breach of fiduciary duty: Ohio Rev. Code 1702.30(D)(1)
- Business Judgment Rule: presumption in favor of directors
- Protection for volunteers against personal injury: Ohio Rev. Code 2305.38
- Indemnification
- D&O insurance policy

Best Practices

- Prepare for and attend meetings; ensure accurate recordkeeping.
- Ask LOTS of questions: no rubber-stamping.
- Be familiar with governing documents and insist on adherence.
- Oversee the CEO (do not micromanage).
- Approve budget and monitor financial condition.