



U.S. Futsal Federation 2007

Directors' Duties

Standards of Conduct

Directors of a not for profit corporation act as fiduciaries for the corporation and are subject to three primary obligations:

- Duty of Care
- Duty of Loyalty
- Duty of Obedience

Duty of Care

Under California law, directors are required to “discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.”

Duty of Care

The Duty of Care has been interpreted to have essentially three component parts:

- Informed and independent judgment
- Reliance
- Delegation

Informed and Independent Judgment

Each director shares in all the responsibilities and powers of the directors, regardless of how that director was selected to serve on the board.

- The law views a board of directors as an entity, each member of which shares the same rights and duties, and each member of which is accountable to the same constituency.
- Even if other parties may regard a director as representing a particular group or interest, these considerations do not affect his or her duties as a director which are to the entire organization.
- Each director should exercise his or her independent judgment on all corporate decisions.

Reliance

In discharging their duties, directors may rely in good faith on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;
- Counsel, public accountants or other persons as to matters which the directors or officers believe to be within the person's professional or expert competence; or
- A committee of the board upon which they do not serve, duly designated in accordance with a provision of the certificate of incorporation or bylaws, which committee the directors or officers believe to merit confidence.

Delegation

The board of directors is not expected to operate the day to day functions of the corporation. The board “manages” the affairs of the corporation and delegates the day to day operations to the President & CEO.

- To properly delegate matters, the board should set policies and oversee corporate agents.
- Note that an individual director may not delegate his or her responsibilities as a director.

Business Judgment Rule

A director exercising good faith judgment will usually be protected from liability to the corporation or to its membership under the Business Judgment Rule.

- *The Business Judgment Rule* -- In an action brought by the corporation or its internal constituencies, a court will not re-examine the actions of a director in authorizing or permitting corporate action if such director's action was undertaken in good faith in a manner reasonably believed to be in the best interests of the corporation, and with an independent and informed judgment

Duty of Loyalty

The second principal duty of a director is that of undivided loyalty to the interests of the nonprofit organization's mission and basic well being.

- The Duty of Loyalty requires that directors not use their positions to further other conflicting interests -- individual, family, or corporate -- including the interests of other nonprofit organizations with which directors may be affiliated.
- The best interests of the corporation must prevail over a director's individual interests or the particular interests of the constituency selecting the director.

Duty of Loyalty

The Duty of Loyalty generally has been interpreted to include three primary factors:

- Conflicts of Interest
- Corporate Opportunity
- Confidentiality

Conflict of Interest

A conflict of interest is present whenever a director has a material interest, directly or indirectly, in a proposed contract or transaction to which the corporation may be a party.

- While the Duty of Loyalty requires a directors “undivided” loyalty, it is understood that directors will have “conflicts of interest” with the corporation.
- Conflicts of interest involving a director are not inherently illegal nor are they to be regarded as a reflection on the integrity of the board or the director.
- What is critical is how the individual directors and the board deal with conflicts when they arise; a director must be conscious of the potential for conflicts and must address them with candor and care.
- US Futsal has adopted a detailed policy addressing conflicts of interest and it is critical that this policy is observed by everyone.

Corporate Opportunity

A corporate opportunity arises when a director knows that he or she can participate in a transaction which would plausibly fall within the corporation's present or future activities.

- In order to avoid usurpation of a corporate opportunity, a director should disclose the transaction to the board of directors in sufficient time and detail for the board to act or decline to act with respect to such opportunity.

Confidentiality

In the regular course of business, a director should not disclose information about the corporation's activities unless they are already known by the public or are of public record

- The individual director is not a spokesperson for the corporation; disclosure to the public of corporate activities should only be made through the corporation's designated spokesperson.

Duty of Obedience

A significant and distinct responsibility of directors of nonprofit corporations is to insure that the nonprofit organization operates in furtherance of its stated mission.

- While granted significant latitude and protection from liability in deciding the best means and overall strategy to fulfill the organization's purposes, the directors are held ultimately responsible to insure that the organization substantially adheres to its particular purpose.