

# Fiscal Fitness: Meeting Your Fiduciary Duties as a Philoptochos Board Member

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# FISCAL FITNESS: MEETING YOUR FIDUCIARY RESPONSIBILITIES

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# Meeting Your Fiduciary Responsibilities



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- ▶ To meet your responsibilities as a member of the Executive Board of your chapter, you need to understand some basic rules.
- ▶ *Meeting Your Fiduciary Responsibilities* provides an overview of the basic fiduciary responsibilities.

# Who is a Fiduciary?

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**fi·du·ci·ar·y plural - ar·ies**

*Law.* A person to whom property or power is entrusted for the benefit of another

Many of the actions involved in operating an organization make the person or entity performing them a **fiduciary**. Using discretion in administering and managing or controlling the organization's assets makes that person a fiduciary to the extent of that discretion or control. Thus, fiduciary status is based on the *functions performed for the organization*, not just a person's title.

A legal obligation of one party to act in the best interest of another. The obligated party is typically a fiduciary, that is, someone entrusted with the care of money or property.

This is also called fiduciary obligation.

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# What does it mean to be a fiduciary?

- ▶ *An individual in whom another has placed the utmost trust and confidence to manage and protect property or money: **The fiduciary has an obligation to act for another's benefit.***
- ▶ A fiduciary relationship encompasses the idea of faith and confidence and is generally established only when the confidence given by one person is actually accepted by the other person. Mere respect for another individual's judgment or general trusting his or her character is ordinarily insufficient for the creation of a fiduciary relationship. The duties of a fiduciary include:
  - ▶ **Loyalty and reasonable care of the assets within custody.**
  - ▶ **All of the fiduciary's actions are performed for the advantage of the beneficiary.**



# Who is a Fiduciary?

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- ▶ The named fiduciary can be identified by office or by name such as a  
**Board of Directors.**
- ▶ Attorneys and accountants, for example, generally are not fiduciaries when acting solely in their professional capacities.
- ▶ **The key to determining whether an individual or an entity is a fiduciary is whether they are exercising discretion or control over the property or assets with which they have been entrusted.**



# What is the Significance of Being a Fiduciary?

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Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf their members. These responsibilities include:

- ▶ Acting **solely in the interest the members** of the organization in which they are board members.
- ▶ Carrying out their duties prudently; having a process in place to do this; and
- ▶ Paying only reasonable and proper expenses.
- ▶ Not obtaining any type of personal financial gain or benefit.




## What Are Some of the Duties of Being a Fiduciary?

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- **The duty to act prudently is one of a fiduciary's central responsibilities.** It requires vigilance and expertise in a variety of areas, such as finance. Lacking that expertise, a fiduciary will want to hire someone with that professional knowledge to assist with that function.
- **Prudence focuses on the process for making fiduciary decisions.** Therefore, it is wise to document decisions and the basis for those decisions.
- **Additionally, clear, audited financial records act not only as a preventative for abuse but also as a cross-check on day-to-day practice.**






## What Are Some of the Duties of Being a Fiduciary? (cont'd)

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### Examples:

- ▶ **Prudence in hiring:** In hiring any employee, a fiduciary may want to survey a number of potential applicants, asking for the same information and providing the same requirements. By doing so, a fiduciary can document the process and make a meaningful comparison and selection.
- ▶ Following the terms of the procedural documents is also an important responsibility. Such documents serve as the foundation for proper operation:
  - Procedural Manual
  - Protocol Manual, and of course,
  - Bylaws

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## What Are Some of the Duties of Being a Fiduciary? (cont'd)

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**Governance** – Following general policies governing the conduct of Board proceedings, record keeping, recording of minutes of meetings, conduct and recording of votes, review of minutes, proper exercise of authority and acceptance of responsibility.


**Administration** – Personnel Policy, budget and expenses, maintaining a conflict of interest policy, engagement of agents/vendors, other duties as determined under your state's not for profit laws. Maintaining careful supervision of expenditures. Obtaining and maintaining non-profit status.



## Are There Some Things that a Fiduciary Cannot Do?

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- ▶ Certain transactions are prohibited under the law to prevent dealings with parties who may be in a position to exercise improper influence over the organization.
- ▶ In addition, fiduciaries are prohibited from engaging in self-dealing and must avoid conflicts of interest that could harm the organization.
- ▶ Financial Benefit to board members, their families or the organization's staff to the detriment of the organization are strictly prohibited.



# Prohibited Transactions


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Who is prohibited from doing business with the organization? Prohibited parties (called parties in interest) include the fiduciaries, officers, and relatives of parties in interest.

Some of the prohibited transactions are:

- ▶ A sale, exchange, or lease between the organization and party in interest;
- ▶ Lending money or other extension of credit between the organization and party in interest; and
- ▶ Furnishing goods or services between the organization and party in interest.

Fiduciaries cannot receive money or any other consideration for their personal account from any party doing business with the organization related to that business.




# The importance of a written conflict of interest policy/disclosure form.

- ▶ One of the simplest safeguards is to establish a policy related to Conflicts of Interest which is signed by all board members when they join the board and, in the case of New York, signed annually.
- ▶ The conflict of interest form should require the board member to list all boards on which she serves. Additionally, there should be a requirement that the information be updated as soon as it changes (going on or off a board, for example.)
- ▶ Rather than keep these statements confidential, put the information into the directory of board members, i.e. all boards on which a member serves should be listed in the directory.
- ▶ Doing so will assist all members in avoiding conflicts or putting another member into a conflict situation.



# Conflicts of Interest/ Conflicts of Loyalties

- ▶ Nonprofit conflicts of interest are often more subtle, more multi-dimensional than classic conflicts of interest. For instance, what about a board member who also sits on the board of an organization that receives funding from the other entity?
- ▶ This does not fit the classic conflict of interest model that is anchored in direct financial benefit.
- ▶ Competition for funding or the ability to make funding decisions for an organization whose board a member sits on can make for awkward situations, to say the least.
- ▶ Such situations have also been characterized as ones with “dual loyalty” or “conflicts of loyalties”.



# What if I serve on more than one board?

- ▶ If a board member serves on two boards and there is a possible conflict of interest or conflict of loyalties, that board member is excused from the room for the discussion and the vote relating to any matter relating to both institutions.
- ▶ For example, if one board is considering a financial contribution to or its financial relationship with an entity, then a member who sits on both boards must be excluded from both the discussion and the vote regarding the matter.
- ▶ The “disclosure and exclusion” policy works well in many instances because the potential risks are disclosed and the board can make a fully informed decision.

# Limiting Liability

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- ▶ With these fiduciary responsibilities, there is also **potential liability**. Fiduciaries who do not follow the basic standards of conduct may **be personally liable** to restore any losses, or to restore any profits made through improper actions.
- ▶ However, fiduciaries can limit their liability in certain situations, One way fiduciaries can demonstrate that they have carried out their responsibilities properly is by documenting the processes used to carry out their fiduciary responsibilities.

**Board minutes are key to this process.**



# Can a Fiduciary Terminate Its Fiduciary Duties?

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- ▶ Yes, but there is one final fiduciary responsibility.
- ▶ Fiduciaries who no longer want to serve in that role cannot simply walk away from their responsibilities, even if the organization has other fiduciaries. They need to follow proper procedures and make sure that another fiduciary is carrying out the responsibilities left behind.



Questions?

THANK YOU!

**Anita B. Kartalopoulos, Esq.**

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