

TEN COMMANDMENTS

Prudent Activities for the Board of Directors of a Not-For Profit Corporation

The directors of a not-for-profit corporation are bound by two general types of legal duties:

A duty of care

The duty to perform their responsibilities in good faith, in a manner reasonably believed to be in the best interest of the corporation, and with such care as an ordinarily prudent person would be in similar circumstances; and

A duty of loyalty

The duty to keep the interests of the corporation paramount above personal interests when acting for or on behalf of the corporation.

The following Ten Commandments provide examples of some of the actions a board of directors should take to act in accordance with its legal duties.

1

Hold Regular Meetings

The board does not have to meet each month, but it should hold regular meetings. This is the best way for the board members to keep informed of the activities of the corporation and for the board to provide the appropriate guidance to the staff and management.

2

Ensure that the corporation holds an annual meeting

The annual meeting of members is held once a year to elect new directors and vote on other matters specified by the corporation's by-laws. In most corporations, the directors should elect the president, treasurer, clerk or secretary, and any other offices at a meeting of directors immediately following the annual meeting.

3

Keep the minutes of the board and committee meetings

Minutes are important. They are a record of the care and diligence that the board exercised in arriving at its decisions and in overseeing the corporation's

business. Minutes should not be a stenographic record of the proceedings, but they should address the key factors that influenced major board decisions. They should explain the reasoning behind decisions that are especially prone to being second-guessed.

4

Ensure that all government filings are made on time

Many federal, state, and local governmental agencies will impose penalties on a corporation if required filings are not made on a timely basis. A prudent board will ensure that the penalties are avoided.

The most important filings for a Massachusetts not-for-profit corporation include the following:

- Form PC with the Attorney General's office within four and one-half months after the end of the fiscal year.
- Annual Report with the Secretary of State's office on or before November 1 of each year.
- Form 990 (tax information return) with the Internal Revenue Service.
- Form 941 and Form M-941 (employee income tax withholding) with the Internal Revenue Service and the Massachusetts Department of Revenue within 30 days after the end of each quarter.

In Massachusetts, not-for-profit corporations do not automatically have an exemption from the payment of property taxes, and applications for abatement must be filed within the applicable time periods.

5

Ensure that employment-related taxes are paid on time

Occasionally, when a corporation experiences poor cash flow, the corporation will be tempted to pay the staff salaries, but not the associated withholdings of employment-related taxes. Failure to pay employment taxes causes interest and penalties to accrue, and the officers and directors may be held personally liable for the full amount of any unpaid taxes.

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6 Adopt and follow a conflict of interest policy

A director's duty of loyalty to the corporation requires that the corporation's interests come first. A prudent board will adopt a written conflict of interest policy and follow its procedures for any transaction that may present a conflict of interest. Federal tax law imposes particular procedural rules that must be followed in order to avoid draconian monetary penalties for engaging in conflict of interest transactions. The board should ensure that these procedures, in addition to its own conflict of interest policy, are followed.

7 Approve and manage an annual budget

The board must take responsibility to adopt a written budget that projects sufficient revenues to cover the anticipated expenses of the corporation in each year – whether the revenues come from grants or gifts, or the provision of goods and services.

8 Approve the salary budget

A prudent board does not delegate this function, but rather establishes a framework in which the executive director and other managers may fix the salaries of the corporation's employees. The board cannot engage in an effective process to set and manage the annual budget unless it exercises oversight responsibility with respect to salary structure.

9 Review the audit

Massachusetts corporations with annual revenues of more than \$500,000 are required to file audited financial statements with the Attorney General's office. Massachusetts corporations with annual revenues of more than \$200,000 are required to file financial statements certified by an accountant with the Attorney General's office. The financial statements should be reviewed by the board before being filed. Further, if the corporation has a committee oversee the audit, the committee should talk with the auditor without any staff present. The auditor works for the board, not for the executive director. The audit committee should use this time with the auditor to learn about any matters of concern to the auditor that should not be communicated through the staff.

10 Approve all bank accounts and all loans

Each bank has a set of corporate votes taken by the board of directors authorizing the opening of bank accounts and the borrowing of funds, and specifying which officer can withdraw funds from the accounts. Each time an account is opened the board must formally adopt the votes for the account so that the corporation's clerk or secretary can properly execute the bank form certifying the votes. Remember: the corporation is liable for the funds borrowed.

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