

# UNDERSTAND YOUR RESPONSIBILITIES:

GUIDANCE FOR BOARD MEMBERS OF CHARITABLE  
NONPROFIT ORGANIZATIONS IN VERMONT

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Dear Friends,

Charitable nonprofit organizations play a vital role in our society, and their work touches all of our lives. Vermont's nonprofit community provides needed services to hungry and homeless Vermonters, delivers critical healthcare to patients in need, advocates for our environment, rescues and houses our animal friends, supports public art and civic engagement, and is involved in countless other activities besides. In short, it is an essential element to the way of life we hold dear.

Together with the dedicated staff and volunteers who bring its mission to life, a nonprofit's board of directors is essential to its success. A good board provides leadership, vision and wisdom to guide the nonprofit. But all boards have certain legal duties they must fulfill. The Attorney General is charged with ensuring nonprofits work for the public good, use charitable funds to further their missions, and act in accordance with Vermont law.

My office has developed this guide to provide today's nonprofit leaders with a general understanding of their duties as board members. I want to particularly thank Assistant Attorneys General Wendy Morgan and Todd Daloz, who developed these materials, with assistance from Linnea Myers. My hope is that you will find it useful whether you are a seasoned veteran of many boards, or someone interested in serving your community on a nonprofit board for the first time.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Sorrell".

William H. Sorrell  
Attorney General of Vermont

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## INTRODUCTION

The members of the board of directors of a charitable nonprofit organization perform an indispensable service both to the charity they govern and to the community at large. Along with their service, board members have critical responsibilities: they must actively govern the organization and ensure that charitable funds are used to advance the organization's mission and serve the public. While boards must rely on the staff and volunteers of the organization to further its mission, ultimately, it is the board and the individual board members that are responsible for the financial health and integrity of the organization.

Along with the services they provide, nonprofits in Vermont are also an important sector in our economy. Statistics compiled by Common Good Vermont, an organization focused on Vermont's nonprofit community, show nearly four thousand public charities operating in Vermont, accounting for \$4.1 billion in revenue annually: roughly 18.7% of the State's economy.<sup>1</sup> Additionally, those statistics show that nonprofits hold nearly \$10 billion in assets and employ over 44,000 people, accounting for 14% of the Vermont work force. Almost all of this economic activity is managed by volunteer boards.

In broad strokes, this guide lays out the central legal duties of boards and board

members, and provides some practical details about how these duties can – and should – be carried out. Whether the charity has a budget of \$1000 or \$10 million, the board's legal duties are the same. Along with presenting the legal baseline, this guide offers practical suggestions for boards seeking to adopt best practices. While some of the information and suggestions provided may not fit every size and type of organization, the bedrock principles of duty and legal responsibility remain for all board members.

### TABLE OF CONTENTS

<u>INTRODUCTION</u> .....	1
I. Executive Summary .....	2
II. Understand the Terms .....	3
III. Understand the Commitment....	5
IV. Understand the Board.....	7
V. Understand Your Duties .....	9
VI. Understand Operations .....	13
VII. Understand Fundraising .....	14
<u>CONCLUSION</u> .....	16

*Though this guide provides an overview of a board member's role, it should not take the place of competent advice from a qualified lawyer, independent certified public accountant or other professional.*

## Executive Summary

- This guide is directed at individuals currently serving, or contemplating serving, as a member of the board of directors of a charitable nonprofit organization in Vermont.
- Serving on a nonprofit board can be a wonderful and fulfilling experience, but before agreeing to join, it is important to understand the scope of the commitment and, more critically, the mission of the organization and its financial health.
- A nonprofit should endeavor to establish policies and practices that guide its structure, decision-making and operations to further its charitable mission and to promote consistency and transparency.
- Board members have a legal Duty of Care, which requires them to act with the care an ordinarily prudent person in a like position would [act] under similar circumstances. In simplest terms, this means a board member must act in a reasonable and informed manner when making decisions for the organization or overseeing its management.
- Likewise, board members also have a legal Duty of Loyalty, requiring them to exercise their authority in good faith and in a manner the director reasonably believes to be in the best interests of the corporation. Essentially this means a director has a duty to ensure that the nonprofit follows the law and, specifically, that a director cannot use her/his position for personal gain, including benefitting a family member or borrowing money.
- As a key component of their Duty of Loyalty, board members must disclose any potential conflicts of interest between them (including their family members) and the nonprofit they serve. When taking an action that raises actual or perceived conflict-of-interest concerns, a board should document decision-making procedures and rationale to provide transparency.