November 10, 2022

WHAT ARE A NONPROFIT DIRECTOR'S FIDUCIARY DUTIES?

Nonprofit directors should be aware that Article 8 of Chapter 55A of the North Carolina General Statutes prescribes the standard of conduct for directors of **nonprofit organizations** and specifically imposes three duties the directors hold to the company: the duty of good faith, the duty of care, and the duty of loyalty. It may come as a surprise to many nonprofit directors, therefore, that there is an additional and equally important duty the law imposes on nonprofit directors, which is not enumerated in the statute: the duty of obedience. A director's failure to act in accordance with all of these **fiduciary duties** could lead to the possibility of litigation and even personal liability. Therefore, it is key for every nonprofit director to be aware of their fiduciary duties in North Carolina.

The Three Statutory Fiduciary Duties

Section 55A-8-30(a) of the North Carolina Nonprofit Corporation Act states that:

"A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the director reasonably believes to be in the best interests of the corporation."

These fiduciary duties are typically summarized as the duties of good faith, care, and loyalty. In short, they require that a nonprofit director stay informed of the nonprofit's corporate business and use reasonable judgment in decision-making, refrain from **corporate transactions** in which he/she would benefit, and generally act in the best interests of the nonprofit corporation. A director breaches one or more of these duties when he/she acts in a way that harms the nonprofit or benefits himself/herself at the nonprofit's expense, exposing the nonprofit (and possibly him or herself) to the threat of **litigation**.

The Duty of Obedience

The duty of obedience is slightly different than those listed by statute and rarely mentioned; however, failure to abide by this common law fiduciary duty carries the same consequences as breaching the duties of good faith, care, and loyalty. The duty of obedience has developed from the well-recognized notion that a director may not act outside of the scope of or contrary to the nonprofit corporation's purpose. In other words, it captures a sense of obligation that a nonprofit director must possess to stay true to the nonprofit's primary goals. Although it is different from the other three duties, it is encompassed in them and is no less important. The duty of obedience is particularly important in the area of nonprofit corporations because many of these companies have specific, limited missions rather than the often broad, all-business-purpose missions of for-profit corporations. A nonprofit director adhering to his or her duty of obedience will therefore need to be cognizant of the nonprofit's purpose and overarching goals, such as its mission statement and any instructions related to disbursement of charitable funds. It is crucial as a nonprofit director to always keep the mission of the nonprofit in mind, not only to fulfill the nonprofit's goals but also to protect yourself from potential liability for breaching your duty of obedience.

JAH Can Help

The rules surrounding fiduciary liability for nonprofit directors are complex and breaching a duty can expose both the nonprofit and the director to liability. The corporate attorneys at JAH can navigate these complex matters so you don't have to. Contact a member of our **Corporate Practice Group** or complete our **General Contact Form** if you are in need of assistance.
