NACE

WHAT ARE THE DUTIES OF BOARDS OF DIRECTORS?

In carrying out their responsibilities, members of a board of directors must fulfill fiduciary duties to the organization and the public it serves. Those primary legal duties include the duties of *care*, *loyalty* and *obedience*.

Duty of Care

The *duty of care* requires a director to be familiar with the organization's finances and activities and to participate regularly in its governance. In carrying out this duty, directors must act in "good faith" using the "degree of diligence, care and skill" which prudent people would use in similar positions and under similar circumstances. In exercising the duty of care, responsible board members should, among other things, do the following:

- Attend all board and committee meetings and actively participate in discussions and decision making such as setting of policies. Carefully read the material prepared for board and committee meetings prior to the meetings and note any questions they raise. Allow time to meet without senior management present.

- Read the minutes of prior meetings and all reports provided. Make sure her or his votes against a particular proposal are completely and accurately recorded. Do not hesitate to suggest corrections, clarification and additions to the minutes or other formal documents.

- Make sure to get copies of the minutes of any missed committee or board meeting and read them timely, suggesting any changes that may be appropriate.

- Read any literature produced as part of the organization's programs.

- Encourage diversity among board members. Diversity will help insure a board committed to serve the organization's mission with a range of appropriate skills and interests.

Duty of Loyalty

Directors and officers are charged with the duty to act in the interest of the chapter. This duty of loyalty requires that any conflict of interest, real or possible, always be disclosed in advance of joining a board and when they arise. Board members should avoid transactions in which they or their family members and/or friends benefit personally. If such transactions are unavoidable, disclose them fully and completely to the board.

In order to exercise this *duty of loyalty* directors must be careful to examine transactions that involve board members or officers. The board must not approve any transaction that is not fair and reasonable, and a conflicted board member may not participate in the board vote. There should be an established code of ethics in place that is updated annually as well.

Transactions involving conflicts should be fully documented in the board's minutes, and conflicts policies and disclosure statements should be discussed and recognized by all board members.

Duty of Obedience

A board has a *duty of obedience* to insure that the organization complies with applicable laws and regulations and its internal governance documents and policies, including:

- Dedicating the organization's resources to its mission and insuring that the organization carries out its purposes and does not engage in unauthorized activities.

- Complying with all appropriate laws, complying with registration and reporting laws and other applicable laws of all states in which it conducts activities and\or solicits contributions, filing required financial reports with, the State Department of Taxation and Finance and the Internal Revenue Service, paying all taxes such as, income tax withholding (federal, state and local) and any unrelated business income tax. Board members may be personally liable for failing to pay employees' wages and benefits and withholding taxes on employees' wages.

- Providing copies of its applications for tax-exempt status (IRS Form 1023), federal reports (IRS forms 990, 990 PF, 990 EZ) and its financial reports filed with the government to members of the public who request them.