

Board Members of Charitable Organizations: Take Note of New Guidance From the Massachusetts Attorney General

As 2022 came to a close along with Governor-Elect Healey's term as Attorney General of Massachusetts, the Office of the Attorney General published an updated *Guide for Board Members of Charitable Organizations* (the "Guide"). Last published in 2015, this Guide has served as a road map for members of governing boards of Massachusetts charitable organizations.

The newly-revised edition follows a similar format, but with heightened emphasis on board members' duties to (1) be educated and informed, (2) carry out the organization's charitable mission, and (3) pay close attention to the organization's financial matters. The revised Guide also emphasizes the importance of diversity and inclusion in all of the organization's actions – from board member recruitment and selection to the conduct of the organization's activities.

The Guide is organized into the same nine sections as its prior version. Those sections – and material that is highlighted or emphasized in the new edition – are noted below:

I. Board Members Have Responsibilities

- The Guide retains the importance of understanding a board member's duty of care and duty of loyalty to the organization – and that carrying out these duties takes time and energy
- New emphasis is placed on a board member's responsibility to carry out those duties considering the organization's charitable purpose and that these fiduciary duties should be viewed as ***"duties you owe to the charitable mission of the organization at least as much as, and in some circumstances even more than, to the organization itself."***
- The Guide recommends that the board periodically complete self-assessments about board effectiveness

II. Educate Yourself

- Emphasis is placed in the updated Guide on understanding the risk management aspects of the charity in addition to its governing documents
- The Guide now recommends regular board member trainings on fiduciary duties and organized access to relevant board materials

III. You Have the Right to Information

- No significant changes

IV. Pay Close Attention to Financial Matters

- Board members are fiscal stewards and regularly need to consider the organization's short- and long-term financial health and act accordingly

- Boards should adopt gift acceptance policies and have a way to identify and reject restricted gifts that could impair an organization's ability to carry out its mission (e.g., restrictions that could exacerbate racial and ethnic inequities)

V. Make Sure Your Board is Vital and Diverse

- Emphasis is placed on having board recruitment practices that encourage a diverse pool of candidates who reflect diverse racial and ethnic backgrounds, experiences, and skills and that include individuals who are connected to and reflective of the community served by the organization
- Term limits are highlighted to allow for rotation of board members and ensure equitable and inclusive practices

VI. Choose and Evaluate Your Organization's Leadership Carefully

- The importance of equity and diversity in hiring and retaining an organization's leadership is prioritized

VII. Get Involved in Setting Executive Compensation

- The Guide warns not to rely solely on compensation consultant recommendations, but to consider comparable compensation data in light of any potential reputational harm to the organization and in light of an individual's total compensation (both from the organization and from outside sources)
- There is a reminder that board members, in certain circumstances, can bear personal liability if executives of charitable organizations are paid excessively or benefit unduly from the organization's assets and activities

VIII. Beware of Conflicts of Interest

- The importance of identifying and addressing potential financial conflicts of interest remains in this Guide, but there is new emphasis on the importance of identifying and addressing potential conflicts from serving on other boards that may have competing goals

IX. Other Resources to Assist You in Your Responsibilities

- The Guide has an expanded list of guidance on good governance and board accountability from local and national organizations such as the Council of Nonprofits, Board Source, Association of Governing Boards of Universities and Colleges, Lawyers Clearinghouse, and Massachusetts Nonprofit Network

Please reach out to any member of Nutter's Nonprofit and Social Impact practice group for more information on matters or board governance or charitable organizations in general.

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