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# Translating Fiduciary Duty into Effective Board Conduct

In order to ensure that college and university board members are well prepared to effectively carry out their roles as fiduciaries, good governance tools may be developed to provide clarity as to expectations and strategies for action. Fiduciary duties will apply by law even if an institution does nothing more to implement them, but governance is improved when board members and presidents share a mutual understanding of the standards that define the fiduciary role, including the balancing of interests necessary to carry out the institution's mission and strategic priorities.

## CORE PRINCIPLES FOR EFFECTIVE BOARD CONDUCT AS FIDUCIARIES

### 1. FULFILL THE FIDUCIARY DUTY OF CARE BY:

- ☞ Acting at all times in good-faith and with the appropriate diligence, care, and skill required under the circumstances.
- ☞ Acting in a manner reasonably believed to be in the best interests of the institution.
- ☞ Actively attending and participating in all board and committee meetings, reading and evaluating the materials presented, and asking questions about unexplained results and unfamiliar issues.
- ☞ Retiring from board service (or declining nominations) if one is no longer able to satisfy the time, effort, and attendance expectations for the institution's governing body members.
- ☞ Relying, when appropriate, on experts who serve the board by evaluating complex matters, while questioning their reports when their advice is inconsistent with expectations.

### 2. FULFILL THE FIDUCIARY DUTY OF LOYALTY BY:

- ☞ Faithfully pursuing the interests of the college or university and its charitable or public purposes rather than one's own interests or the interests of another person or organization.
- ☞ Actively disclosing existing or potential financial conflicts of interest and dual interests, and recusing oneself from board discussions and votes on transactions or policy matters, in accordance with the institution's conflict-of-interest policy.
- ☞ Maintaining complete confidentiality about any matters presented to the governing board at all times, unless otherwise directed by the board and subject to state transparency laws applicable to public institutions.
- ☞ Retaining the governing board's independence from external and internal stakeholders in the conduct of its oversight and policy responsibilities.

### 3. FULFILL THE FIDUCIARY DUTY OF OBEDIENCE BY:

- ☞ Ensuring that the institution is acting at all times in accordance with its mission and purposes.
- ☞ Ensuring that the college or university, in all of its activities, is acting in legal and ethical compliance with the law and applicable internal and external rules.
- ☞ Instituting effective internal controls to achieve compliance and to identify and address problems.

## EFFECTIVE GUIDELINES FOR PUTTING THESE PRINCIPLES INTO PRACTICE

- ☞ Implement a year-round director-recruitment program in which a pool of prospective candidates is developed and vetted, and in which candidates have an opportunity to learn more about the institution and are educated as to the needs and expectations of the institution for their board service, and their prospective fiduciary responsibilities.
- ☞ Engage in thoughtful and advance planning regarding board development and composition to avoid conflicts of interest, ensure adequate independence of board members, and secure an appropriate balance of skills and experience among board members.
- ☞ Establish meaningful orientation programs for new board members (and a refresher for long-serving members) that include: an explanation of fiduciary duties; a discussion of the institution's mission, vision, and strategic plan; an explanation of related board policies, such as conflict of interest and confidentiality; an explanation of relevant portions of the college or university bylaws that pertain to board members' conduct; the expectations of board members as to active participation on the board and in board committees; an explanation of the potential for personal liability for board members in the event of a breach of fiduciary duty; and the identification of resources for further study.
- ☞ Develop and implement an up-to-date conflict-of-interest policy that: makes the disclosure and recusal process clear; identifies standards for materiality and compelling benefit; explains and addresses financial interests, dualities of interest, and rules of conduct when the interest is adverse; and includes an effective form for disclosing material financial and dual interests. The governing board or a board committee will establish a process for review of disclosures of interest and forwarding of identified conflicts to the board for appropriate action.
- ☞ Ensure appropriate communication between the governing board and college or university legal compliance officers and programs and provide orientation for all board members regarding their role in such programs, including whistleblower policies, investigations of allegations, and complaint resolution.
- ☞ Secure on a timely basis the advice of knowledgeable experts who can increase the level of understanding and competence of board members on key issues, which may include compensation of the president, strategic planning, academic quality, construction of new facilities and development of property, marketing and communications, advocacy, legal compliance, fundraising and endowment management, and risk management.
- ☞ Commission board committees to regularly assess, through self-evaluation and review of board-member conduct, the effectiveness of the board in adhering to its fiduciary duties. Such committees may include the executive committee, the governance committee, and the audit committee.