

# Board Member Basics

By Rollie Dimos, CIA, CISA, CFE

**Y**ou've just been asked to serve on the church board. It is a humbling but exciting prospect. The position offers a chance to serve alongside ministry leaders, advance the kingdom of God and fulfill a sense of purpose in your life.

The church board fulfills an important role in the life of a church: the board helps advance the goals of leadership, fulfills the mission of the church, and provides accountability and stewardship over church finances. The church board desires to honor God and govern in a way that adds value to the organization. And an effective board will have the ability to work as a team, the ability to communicate (and listen) well, and learn from one another.

But as you consider this role further, you imagine from a governance standpoint that a few key responsibilities of the board will include assisting in:

- Strategic planning
- Risk management
- Financial management
- Regulatory compliance and reporting

Your emotions quickly swing from excitement to fear as you realize you may be unprepared for this role. You're not alone. These responsibilities can be difficult and confusing for many board members.

But let me encourage you with this: As the

members of the board and church leadership work together, much more can be accomplished from the collective wisdom and experience that each brings to the table. And Proverbs 11:14 reminds us that in a multitude of counselors, there is safety.

## Fiduciary Duties

The multifaceted role of church governance presents challenges to board members and often surprises board members when they realize the significance of their legal and fiduciary responsibilities.

As you embark on this new role, I want you to concentrate on the

following two responsibilities of board members. Each board member has a fiduciary duty to the organization that includes:

- The duty of loyalty: a board member should not put his or her interests ahead of the interests of the organization.
- The duty of care: a board member must act in good faith, act in the best interest of the organization, and exhibit reasonable inquiry, skill and diligence.

Make these a core part of your decision making process, because if board members act contrary to their fiduciary duties, there could be legal ramifications.

For example, did you know churches, their directors and officers (i.e., board members), and

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## Board Member Basics (cont.)

their volunteers, can be held liable for gross negligence, willful or criminal misconduct, and reckless misconduct?

### Legal Risks for Board Members

Rich Hammar, legal counsel for the Assemblies of God, has noted many cases where church boards have been sued for negligent activity. Based on his research of legal cases, Rich has identified several areas of risk for churches and their board members that include:

- Negligent selection of church workers.
- Negligent retention of church staff.
- Negligent supervision of church staff and activities.
- Negligent and irresponsible counseling practices.
- Failure to report child abuse.
- Securities law violations.
- Violation of employment laws.
- Exerting undue influence in estate matters.

This list isn't meant to scare you, but it does highlight the due diligence and care required when acting in the capacity of a board member. Thankfully, most states immunize uncompensated directors and officers from legal liability for ordinary negligence committed within the scope of their official duties. Since many church boards are staffed with volunteers, their legal liability may be limited.

Similarly, the federal Volunteers for Children Act provides limited liability to volunteers who work for charities. If the volunteers are acting within the scope of their volunteer responsibilities, and they are properly licensed or certified (if required by applicable laws), they will not be liable for ordinary negligence.

However, directors and officers may be liable for "willful and wanton" conduct or "gross negligence." Consider three recent cases:

- A nonprofit board in New York was accused of gross negligence and fined \$5.5 million. The nonprofit provided low-cost housing to students, but the board members were accused of failing to look closely at conflict of interest and excess compensation issues. The New York attorney general found the board members' lack of due diligence and conduct was egregious and fined the nonprofit, its president and its board members \$5.5 million.
- Board members at one church were sued for failing to provide and enforce a sex offender policy after knowing a sex offender attended the church. The plaintiff argued that the board members committed gross negligence because they had no regard for the safety of others.
- California's attorney general sued a nonprofit and its board members for improperly using restricted funds. In this case, the attorney general argued that the board members failed in their duty to act in good faith and make reasonable inquiries on how the nonprofit's director and employees were using restricted funds.

These cases highlight this important lesson: the role of a church board member is more than just a discussion of the financial statements or a rubber stamp of the chairman's decisions. It is a vital role that requires thoughtfulness, due diligence and care.

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## Board Member Basics (cont.)

### Resources

How would you answer the following questions?

1. *Does our church board act with loyalty and put the interests of the church ahead of their own interests?*
2. *Does our church board perform their duties in good faith, with due diligence, and act in the best interests of the organization?*
3. *Does our church board have adequate information and perform due diligence to preclude negligent activity?*
4. *Does our state provide limited immunity for our directors, officers and volunteers?*

If you are unsure or would like to delve deeper into this discussion, consider the following resources:

- Richard Hammar, *Ten Legal Risks Facing Churches and Church Leaders*, *Enrichment Journal*, Winter 2004.

- *Pastor, Church & Law* (4-volume set), available at [MyHealthyChurch.com](http://MyHealthyChurch.com).
- *2013 Church & Clergy Tax Guide*, available at [MyHealthyChurch.com](http://MyHealthyChurch.com).
- *4-Hour Legal Training Program for Church Boards*, available at [YourChurchResources.com](http://YourChurchResources.com).

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### About the Author:

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