

## Chapter Five: The Legal Responsibilities of a Board Member

A Board Member is a fiduciary under the law. There are two recognized legal duties associated with this role as a fiduciary. Derived generally from common law, the duties must be always borne in mind in order to properly discharge the office of Director.

The first of these duties, and regarded as the most important, is the duty of loyalty. The concept is simple: the Director is required to put the Cooperative's interests above his or her own. The way to conform to this standard is to avoid conflicts of interest, or self-dealing. Part of this duty is the responsibility to make disclosures to the Board when a conflict of interest exists, and avoiding any form of participation in the decision.

The second core duty is that of care. Generally, this requires the Director to pay attention to details, ask questions, and try to make the best decision for the Cooperative. It means doing your homework: reading the minutes, preparing for meetings, and educating yourself. Listed below are some resources to help you learn more about running a Housing Cooperative, and include attending educational conferences such as those of the Midwest Association of Housing Cooperatives and the National Association of Housing Cooperatives.

The law allows Boards to rely on the advice of its professionals as part of the discharge of this duty of care. And courts decline to second guess Boards which exercise its duty of care, instead deferring to their decisions so long as there is evidence of the Board acting with care and where appropriate, using its professionals to assist in giving advice.

Part of the duty of care is the responsibility of the Board to comply with the "law." This is sometimes referred to the "duty of obedience" and means that the Board has to stay within the bounds of the rules. It must follow its articles of incorporation, bylaws, and all the other so-called governing documents. That is why it is crucial that the new Director obtain and read these documents, and when necessary, to consult with the Cooperative's professionals for guidance.

Failure to comply with the fiduciary duties imposed on the Board may expose the Directors to personal liability, and may also jeopardize the validity of the decisions made. Thus, it is critical for the Director to always act in strict conformity with these two duties, and to seek professional help in governing the Cooperative's affairs. While it may be tempting to save money by not seeking professional advice, the risk of not doing so is enormous. After all, Cooperatives are multi-million dollar businesses, and in modern society, litigation is common place.