**NOT FOR PROFIT CORPORATE DIRECTORS HAVE DUTIES**

**BY: WILLIAM G. MORRIS, ESQ.**

Directors of not-for-profit corporations are usually volunteers. They do not get paid and many consider their position on the board more of an honor than a duty. Often overlooked is directors of not-for-profits essentially have the same duties as directors of for-profit corporations.

The Board of Directors is not responsible for the day-to-day operation of the corporation. It is responsible for establishing policies and procedures, overseeing the operation of the corporation to ensure achievement of corporate mission and goals, selecting and monitoring performance of the executive, and attending to finances to make sure resources are sufficient and properly applied. Think about that if you are a director of a not-for-profit.

A majority of not-for-profit corporations do not have paid executives or staff. In those entities, the board acts as both board and staff. That does not change the duties and responsibilities of directors, but does lead to blurring lines in many cases. With no clear separation between directors and staff (since they are the same) many directors ignore their director duties (especially those involving monitoring finances).

Duties of not-for-profit corporate directors are established by the corporation’s governing documents, common law, Chapter 617 Florida Statutes (Florida Not For Profit Corporation Act) and in some cases even federal law. The duties of a Florida not-for-profit director are generally a duty of care, a duty of loyalty, and a duty of obedience.

All of a director’s duties are wrapped with fiduciary duty. Fiduciary duty means the director must promote the corporation’s mission, purpose and activity, and make decisions in good faith and in a reasonable manner. A short look at each of the 3 general duties of a director will evidence fiduciary duty.

Duty of care means a director must be informed and actively involved. Florida Statutes define this duty as mandating a director act in good faith with the level of care expected of a “ordinarily prudent person.” That means the director must make an effort to be informed before making a decision or voting on matters related to corporate business, and act in the best interest of the corporation and not the best interest of the individual.

Duty of care includes obligation to attend Board meetings, but it requires more. It requires a director be fully informed before attending meetings and before voting. Care includes monitoring the performance of the corporation’s paid management team and in some cases staff. Care includes careful attention to the finances of the corporation. This is one area where not-for-profit directors often fail, as they leave the financial management to others.

Duty of loyalty is in addition to the duty of care. It requires a director place the corporation’s best interest above that of the director. That means the director must avoid conflicts of interest. If the director has any direct or indirect interest in the subject considered by the board, that interest must be disclosed.

The duty of obedience is exactly what it sounds like. A director must follow all of the corporation’s governing documents. A director must also follow all rules and policies adopted by the corporation. This duty has also been interpreted to include requirement that the director insure the corporation makes all necessary governmental filings, tax returns and takes action necessary to maintain the entity’s existence and status.

Florida not-for-profit directors should all read Section 617.0830 Florida Statutes That statute sets out statutory duties of not-for-profit directors and lists good faith, care and acting in the best interests of the corporation as the general duties. The statute provides that a director may rely on information provided by one or more officers or employees, accountants, lawyers and other professionals and any committee of the board as long as the director believes the information provided is within the competence of the provider and appears to be reliable.

The statute indicates a director need not dig behind the information provided by an appropriate and reliable source, but it imply the director must ask appropriate questions. It is generally accepted that a director must have reasonable information available to make a decision. That can mean more than simply relying upon a summary presentation.

Manner of presentation may raise questions of reliability. And, the director’s own knowledge is important. The statute specifically states that a director is not acting in good faith when the director has knowledge that makes reliance upon information provided by others unwarranted.

Directors of not-for-profit corporations has protection from personal liability in two ways. First is the business judgment rule which provides that directors of corporations are not liable when the directors acted within their authority and made a decision after being informed, acting in good faith and in what they believed was the best interest of the corporation.

Second, is statutory. Florida statutes provide protection for volunteers, unpaid board members of not-for-profit corporations. If those directors follow the obligations of Section 617.0830 Florida Statutes, they are only personally liable if their failure to perform their duties was a violation of criminal law, or if they obtained an improper personal benefit or if their action was reckless or an act of omission committed in bad faith with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

Directors of Florida not-for-profit corporations are rarely held personally liable by reason of service as a director. But, they are not immune from suit and should become familiar with and comply with the common law and statutory duties for directors to minimize any risk.

***William G. Morris is the principal of William G. Morris, P.A. William G. Morris and his firm have represented clients in Collier County for over 30 years. His practice includes litigation and divorce, business law, estate planning, associations and real estate. The information in this column is general in nature and not intended as legal advice.***