

# Fiduciary Duties and Conflicts of Interest

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## Governance of Nonprofit Corporations

- The Board of Directors manages the affairs of a Texas nonprofit corporation. TBOC Section 22.201.
- A Texas nonprofit corporation must have at least three individual directors. TBOC Section 22.204(a).
- The individuals serving as directors do not have to reside in the state of Texas. TBOC Section 22.203.

## Fiduciary Duties – Directors of Nonprofit Corporations

- Each state has its own corporate statute governing a nonprofit corporation formed under the laws of that state.
- Some states allow greater flexibility, *e.g.*, the Delaware statute does not require a nonprofit corporation to have more than one director.
- However, all states impose similar fiduciary duties of care, obedience and loyalty on directors of nonprofit corporations.

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## Duty of Obedience – Directors of Nonprofit Corporations

- A director of a Texas nonprofit corporation owes a duty of obedience to the terms of the corporation's governing documents.
- Directors should be familiar with the terms of the Certificate of Formation or other formation document and the bylaws, and ensure all actions are in accordance with the Certificate and bylaws.
- If there is a conflict, the terms of the Certificate override the terms of the bylaws or other formal policies of a nonprofit corporation.

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## Duty of Care - Directors of Nonprofit Corporations

- Directors of a Texas nonprofit corporation must perform their duties as a director, including duties as a committee member, (1) in good faith, (2) with ordinary care, and (3) in the manner the director reasonably believes is in the best interest of the nonprofit corporation. TBOC Section 22.221(a).
- The director should have a proper motive and sufficient information when voting on matters.

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## Duty of Care – Directors of Nonprofit Corporations

- A director acts in the best interest of a Texas nonprofit corporation if the director reasonably believes that the action will benefit the nonprofit corporation. If a director meets this standard, the director will not be held liable to the nonprofit corporation, any member, or another person for action taken or not taken as a director. TBOC Section 22.221(b).

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