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Snippet #172 Duty of Loyalty

Duty of loyalty is the second of the three legal duties of a board of directors. It seems obvious: be loyal to your organization. Yet this simple concept is complicated to practice. Everywhere you look there are great temptations coming from constituencies, the board, the members – even other organizations.

Let's start with constituencies. These are often geographically-based member segments, organized to elect a representative to the board. The members from that constituency feel a connection with "their" director – the one they put there. Then a situation arises in which the constituency's wants are not the best solution for the organization as a whole. The choices are painfully clear: vote for what the constituency wants and violate the duty of loyalty to the organization as a whole. Vote for what is best for the organization, and risk not getting re-elected. Some directors try to justify their loyalty conflict by rationalizing with the statement "I have to stay here to do good." So, when is that supposed to start? Loyalty can be sold for votes?

Misguided loyalty can come from the board itself. A very real danger for boards is falling into groupthink. A board can bond too well – to the point that no one wants to disagree or look like they are not a team player. A sure sign is when the board begins to speak in "us vs. them" language, and keep such a tight lid on board business that transparency goes out the window. Groupthink destroys both the duty of care and the duty of loyalty. Members begin to get frustrated at the lack of information and the chasm deepens when the directors take a superior attitude, responding that the members "just don't understand." The next response is usually the "trust me" argument. Trust isn't demanded, trust is earned. Loyalty to the organization means the entire organization, not just to the other directors who have also lost their duty of loyalty.

The membership as a whole gets into the act when a member wins a position on the board and expects inside information. A phrase common to boards is "the board speaks with one voice." Sometimes that one voice is derived from tough deliberations and difficult debate. However, if the decision was arrived at fairly and after giving everyone an opportunity to state their opinions, it is the will of the majority that must prevail. Once the final decision is made, it is the directors' duty to respect the decision of the board and the right of the board to make it – no campaigning against the decision. This is not to say that directors can't speak factually about their feelings, perhaps by saying that they didn't have the same viewpoint but the decision was made and they respect it. What is *not* acceptable is spreading vitriol and negativity about how bad the decision was and who said what. Here is where a director must draw the line between disagreeing with and disrespecting. Disrespect harms the organization and that violates the duty of loyalty.

Another complication for directors, one that illustrates the challenges in fulfilling the duty of loyalty, is maintaining the secrecy of executive sessions. If the board is using this tool properly, the topics being covered are truly confidential. An important aspect of executive sessions is the freedom of directors to state honest opinions without the fear of being quoted. Violation of that trust harms the relationship between directors, in turn harming the organization. As an executive session is ending, it is important to make sure everyone is clear on what is confidential and what is not. The members have a right to know, but they don't have the right to harm delicate negotiations, interfere with human resource matters, or join negotiations.

Last, other organizations can interfere with the duty of loyalty. Some organizations have boards made up of leaders from other, competing, organizations. But how can a director maintain double loyalty? Simply put, they can't. Many organizations have bylaws that prohibit directors from serving on the board of a similar organization in their field. Those that don't, should. Directors can only have fiduciary and programmatic responsibility for one organization in a particular field at a time. It's a matter of loyalty.