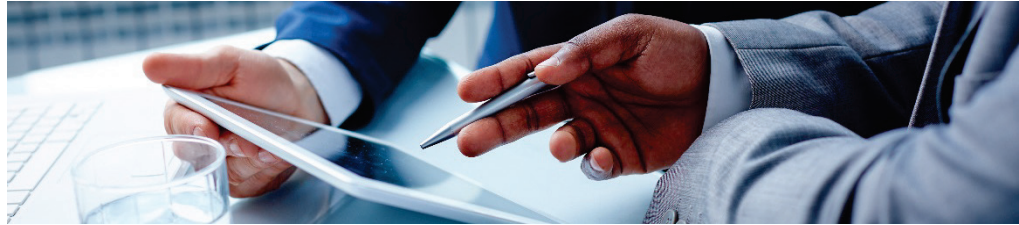


# GOVERNANCE SERIES



## UNDERSTANDING YOUR FIDUCIARY DUTIES AS A BOARD MEMBER

As a governing fiduciary, you and your fellow investment committee members are charged with acting solely in the best interests of participants and beneficiaries for the exclusive purpose of providing benefits.

**Fiduciaries must:**

- Act prudently and diversify investments to minimize the risk of large losses
- Follow the governing documents and donor intent
- Serve the client first, providing unconflicted advice
- Adhere to the duties of prudence, loyalty and care

The principles for “prudent investing” were developed over time and are enshrined in law and regulations. For example, in the early 20th century, the courts deemed common stock as an imprudent investment due to their volatile nature, but the 1930s proved that bonds could be risky and volatile investments as well.

“The Prudent Man Rule” has continued to evolve and provide fiduciaries greater latitude when it comes to investment selection. It further evolved into the “Prudent Investor Rule” focusing on portfolio total return with asset allocation as the crucial determinant of success. Today, the law governing fiduciary responsibility is the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and since 2012 it has been the law in 49 states, the District of Columbia, and the U.S. Virgin Islands. (Neither Pennsylvania nor Puerto Rico has adopted the law). The Employee Retirement Income Act (ERISA) governs retirement plans.

*This governance series is intended to help nonprofits and other organizations pursue success through understanding the role and obligations of a fiduciary. It is vital that both those who fulfill the role and those who appoint them understand their fiduciary duties for the overall health of an organization.*

UPMIFA places emphasis on the perpetuation of the original purchasing power of the fund – the concept of “intergenerational equity.” Additionally, UPMIFA guides fiduciaries to consider concepts such as:

- Understanding the resources of the institution and its charitable purpose
- Ensuring risk and return objectives are suited to the institution
- Protecting against investment decisions being made in isolation, but rather in the context of the total portfolio
- Diversifying assets of the organization (unless special circumstances exist)

Why all the fuss around the duties of a fiduciary?

Because the stakes involved are so high! For people to have confidence in nonprofits, they need to have confidence that their generous gifts are going to be handled with the utmost care. Likewise, for participants in retirement plans, they must have confidence the funds in their plan are being appropriately managed and monitored.

Failure, or even the perception of failure, to fulfill one’s fiduciary duties is serious. Besides doing harm to the long-term financial health and viability of the organization, breach of fiduciary duty can:

- Cause reputational harm to the organization thereby damaging its credibility in its community, alienating volunteers, and damaging donor relationships
- Result in civil or criminal liability for fiduciaries
- For examples, see Resources section

As a fiduciary, this may seem like a daunting set of circumstances. However, if you are joining an established nonprofit’s investment committee, a great deal of work has likely already been completed before your arrival to assist you in understanding and fulfilling your duties.

This work should have included creating long-term fundraising and investment goals as part of the organization’s strategic plan, developing an investment committee to govern the organization’s investment program, the creation of formal documents such as the investment policy statement (IPS), and the hiring of investment professionals (internal or third-party consultants) to assist in implementing your organization’s investment program.

## QUESTIONS

- Has your organization provided you any fiduciary training?
- Have you reviewed your organization’s investment policy statement? Is it clear to you?
- Are you aware of your primary responsibilities as a governing fiduciary and why they are so important?

## RESOURCES

- [Memorial Sloan Kettering Still Trying to Save Face on Conflicts of Interest.](#) *Nonprofit Quarterly*. Ruth McCambridge. April 5, 2019.
- [La Bell settles Rebecca Foundation allegations.](#) *The Bulletin*. Gary A. Warner. April 19, 2019.

#### DISCLOSURES

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201 East Fifth Street  
Suite 1600  
Cincinnati, Ohio 45202  
513.977.4400  
information@feg.com  
www.feg.com

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