Fiduciary Duties Of A Corporate Officer

Fiduciary Duty of Obedience

The fiduciary duty of obedience recognizes that officers and directors have different responsibilities in a corporation. To fulfill this duty, officers and directors must carry out their duties within the scope of their delegated authority under the law and the applicable corporate governing documents.

This duty may be of particular concern for nonprofit corporations where officers and directors are tasked with carrying out their duties in compliance with their organization's charitable purposes.

Fiduciary Duty of Loyalty

Officers and directors owe a duty of loyalty to a corporation and its shareholders. They are expected to put the welfare and best interests of the corporation above their own personal or other business interests. Conflicts of interest, efforts to compete with the corporation, or making secret profits from corporate business dealings are typical examples of disloyalty.

Under the corporate opportunity doctrine, officers and directors may not secretly divert or take advantage of business options for their own personal profit.

For example, officers and directors may confidentially learn about a lucrative development opportunity being offered to their real estate corporation. Officers and directors must not secretly profit from this situation or act upon it in a manner that harms corporate interests. In some states, officers or directors may take advantage of certain opportunities if the corporation has waived its interest to such dealings in its governing documents or appropriate prior disclosures have been made to the board of directors. Violations of this duty may result in officers or directors being sued and required to turn over their secret profits to the corporation.

Fiduciary Duty of Care

In a corporate environment, both officers and directors are expected to use appropriate care and diligence when acting on behalf of their corporation. They should exercise reasonable prudence in carrying out their duties to achieve the best interests of the corporation. An officer or director may be held personally liable for failing to exercise reasonable or ordinary care under the circumstances. For example, a lack of due care may be shown when an officer or director fails to undertake a reasonable review of a corporate matter, to regularly attend board meetings, or to adequately supervise staff which ends up damaging the corporation.

Under the business judgment rule, an officer or director may not held liable for business decisions made in good faith and with reasonable care that turn out to harm corporate interests. The courts will defer to erroneous business judgments, provided that the officers or directors did not show gross negligence in their review and decision-making process. Without this rule in place, many individuals would be unwilling to serve as officers and directors and business people might be reluctant to take commercial risks that could benefit a corporation in the long run.

Fiduciary Duty of Good Faith and Fair Dealing

This fiduciary duty is closely aligned with the duties of care, loyalty, and obedience. Under this duty, officers and directors must act with honesty, good faith, and fairness when handling corporate obligations. This continuing duty runs through their daily tasks and operation of the corporation.

Fiduciary Duty of Disclosure

Candor in business discussion is important between officers, directors, and shareholders so that they may assess material risks and make informed decisions. Full and fair disclosure of material facts is essential before seeking board or stockholder approval of major corporate business transactions, such as a mergers with or acquisitions of other companies. As part of their duties of loyalty and care, officers and directors should also disclose any potential conflict of interest that may arise between their individual interests and those of the corporation.