

## **Board of Directors Fiduciary Duties**

The Berkshire County Board Of REALTORS®, Inc. is a not-for-profit, 501(c)3 corporation, incorporated in the state of Massachusetts and governed by an elected board of directors. Corporate directors, by statute and by court-created legal precedents, have fiduciary duties to the association. It is important that all board members understand their fiduciary obligations and the prevailing laws and other rules governing the operation of the association.

### **1. Duty of care.**

The first duty pertains to The Berkshire County Board Of REALTORS®, Inc. matters. This duty (the level of competence expected of a board member) can be defined as the care that a prudent person would exercise in a like position under similar circumstances. Hence, becoming a board member of The Berkshire County Board Of REALTORS®, Inc. carries with it an obligation to take Association matters seriously, and to devote time to consideration of issues facing this Association. Board members may not rubber stamp the proposals of the Association's officers or staff without running the risk of breaching their fiduciary duty of care to the organization.

### **2. Duty of loyalty.**

The second fiduciary duty imposed on board members is one of loyalty to the Association. Board members are required to make decisions based on what is best for the Association, not what may be advantageous to their own organizations or even to their constituency within the Association. Once the board of directors makes a decision, each board member, even those who may have opposed the course of action chosen by the board, must act consistently with that decision. Disagreement and difference of opinion are permitted and appropriate, but board member actions inconsistent with board decisions are not.

Board members are prohibited from appropriating for themselves or their organizations opportunities that could be taken advantage of by the Association. Board members seeing such a business opportunity must first bring that opportunity to the Association board for consideration; only after the board has considered and rejected such an opportunity may the board member take advantage of it. In this regard, board members stand in a different relationship to the association than do other members. Association board members must avoid actual and apparent conflicts of interest when making decisions at the board level.

Board members having a personal or business interest in a matter under board consideration must disclose that interest to the board. The board will then decide to what extent, if any, the board member disclosing the conflict may participate in discussing or voting on the matter.

### **3. Duty to preserve confidential information.**

Board members must not disclose to others information that a board has determined to be confidential, such as communication between the association board or senior staff and legal counsel, information specific to individual members, confidential information about committees, task forces and special interest groups, and minutes of executive sessions of the board.

### **4. Avoiding personal liability.**

Because Berkshire County Board Of REALTORS®, Inc. board members are volunteers, they have no interest in exposing their personal or organization's assets as a consequence of their activities on behalf of the association. Hence, board members will have no personal liability in connection with their board service, provided they have acted in good faith. Even if they exercise poor judgment, board members are not at risk for liability as long as they did not act recklessly. The federal Volunteer Protection Act of 1997 limits the personal liability of nonprofit board members, provided they are not compensated for their board service, acting within the scope of their board responsibilities, and not engaging in criminal or reckless misconduct.

### **5. Antitrust laws.**

The antitrust laws prohibit agreements that unreasonably restrain competition. Certain anticompetitive conduct is presumed to be unreasonable. Agreements in violation of the antitrust laws can be inferred from similar conduct. The Berkshire County Board Of REALTORS®, Inc. can be implicated in unlawful conduct even if the agreement is not reached during an association meeting. Therefore, the board must heed the advice of legal counsel or the association's staff to discontinue a particular discussion or not to engage in certain conduct.

### **6. Association tax status.**

Tax-exempt associations can risk their exempt status by focusing on providing services to members rather than on promoting the field in general, providing benefits to individual members that are not available to others, engaging primarily in for-profit activities, or overcompensating staff. The Berkshire County Board Of REALTORS®, Inc. tax-exempt status affects everything from its dues statements to its internal accounting procedures to its membership promotional materials to the structure of the industrial exhibit and annual meeting and publications.