

The Duty of Care

The duty of care calls upon directors to act in a reasonable and informed manner when participating in the board's decisions and its oversight of the corporation's management.

The duty of care requires that first, directors be informed; and second, that they discharge their duties in good faith, with the care that a person in a like position would reasonably believe appropriate under similar circumstances.³

Each of the tasks outlined below requires the director's efficient allocation of time. The appropriate amount of time required to satisfy a director's duty of care must be decided by the director in his or her reasonable judgment, under the circumstances. Nonetheless, substantial compliance with the elements of care discussed below is commonly expected of the nonprofit director and may be required by law.

Elements of the Duty of Care

The duty of care requires that a director be informed and exercise independent judgment. Satisfying the duty of care may be accomplished in part by the following activities:

Attending meetings and proxy voting limitations

Regular attendance at meetings of the board of directors is a basic requirement of director service. Generally, directors may not vote by proxy.

Importance of regular attendance. All directors must remember that they act as a group, and therefore regular board meeting attendance is essential. Continuous or repeated absence may expose the director to the risk of not satisfying the duty of care. Moreover, sporadic board attendance by a director may be grounds for the director's removal. Most states permit directors to "attend" a meeting by telephone or use other mechanisms that allow all directors to hear or communicate with each other simultaneously. Therefore, even directors with busy travel schedules should be able to comply with the regular attendance standard.

Attendance at committee meetings. As discussed in *Chapter 3, Committees and Advisory Bodies*, boards typically delegate many important functions to committees. A director appointed to serve on a committee of the board is expected to regularly attend such committee meetings, and to be active in the committee's deliberations and other activities. A director must satisfy the duty of care in discharging his duties as a committee member.

Limits on attendance or voting by proxy. Generally, directors cannot designate another person as the director's proxy, to attend or vote at board or