



Fiduciary Duties

Texas VFW
Officer Training
Seminar

Fiduciary Duties

- The concepts of Fiduciary Duty is a requirement for those involved with a non-profit organization, such as the VFW.
- As VFW officers and members, you are a fiduciary and certain duties are imposed by law.

Fiduciary Duties

- Fiduciary from the Latin fides – Faith – A fiduciary must always act in good faith in his/her relation to the organization.
- Officers and Members have an obligation to act primarily in the interest of the organization rather than personal interests or the interests of a particular constituency.
- Three Specific Duties: Care; Loyalty; Obedience (or Fidelity to Purpose).
- Comprise the legal doctrine of the Business Judgment Rule.

Business Judgment Rule

- Applies to the “business” of decision-making by nonprofit associations.
- Related to all three fiduciary duties.
- It is based on the presumption that in making a decision affecting the association, the members of the members have acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the association.
- If all three aspects of this presumption are correct, any “business” decision made by the members is accorded a high degree of respect.

Duty of Care

- Duty to Exercise Due Diligence in managing the organization’s affairs.
- Three Elements:
 1. Must act in Good Faith – Intellectual Honesty – Can’t ignore or hide important facts – Duty to Inquire.
 2. Must act with the same care that an ordinarily prudent person would use in a similar position under similar circumstances.
 3. Must act in what you reasonably believe is the organization’s interest.

**Practical Steps to Satisfy
Duty of Care**

- Retain Competent Help.
 - You don’t have to be an expert in everything, so rely on others.
- Rely on Management.
 - Get recommendations from HQ staff.
- Use Committees.
 - Allow committees to gather information and make recommendations.
- Create a Record of the decision-making process.
 - Detailed minutes of meetings can be helpful.
- Promote open debate and record dissent.
 - Let the minutes reflect dissenting views.

Duty of Loyalty

- Act with undivided loyalty to the organization and in the organization's interest rather than any personal interest or interest of some other person or organization.
- Prohibits Conflict of Interest.
- Absolute Duty to Disclose Financial Benefit from a transaction.
 - Sitting quietly and/or abstaining is not enough.
- Best to avoid even the perception of impropriety.

Practical Steps to Satisfy Duty of Loyalty

- What's in it for me?
 - Consider if you (or someone you know) will personally benefit from a decision.
- Disclose potential conflicts of interest.
 - Is your gain a loss to the organization?
- Abstain from votes if there could be a conflict.
 - If the conflict is strong enough to influence you, or may reasonably appear to look that way, abstain.
- Seek counsel.
 - Getting legal advice can be helpful and demonstrates good faith in resolving the conflict.

Duty of Obedience

- An officer and all members have a duty to assure that the organization is operated:
 - To fulfill its Mission.
 - In accordance with all federal & state laws.
 - In compliance with all VFW By Laws.
- Duties are imposed individually and collectively and you can be held personally liable.

Practical Steps to Satisfy Duty of Obedience

- **Review Charter and By-Laws.**
 - **Have a thorough understanding of our general purpose.**
- **Consider whether proposal is consistent with our Purpose.**
 - **The activity should be covered by at least one of the seven stated purposes in Title 36 USC § 230102. (VFW Congressional Charter)**
- **Annually Review Activities.**
 - **Each year, review activities for conformity with our mission and objectives.**

Fiduciary Duties Conclusion

- **Common Sense Rule – In accepting a position of leadership we understand that:**
 - **We must always be thinking about, and focusing on, priorities of the VFW, and not that of ourselves or another organization.**
 - **We must represent the VFW in a favorable light.**
 - **We must use good judgment in handling the VFW's business.**
 - **We must act in the interests of the VFW as a whole and not our own self interests.**
 - **We must follow the rules if we expect others to follow the rules.**
