

Legal and Fiduciary Obligations for Trustees



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Key legal and fiduciary rules

The Board's legal and fiduciary rules come from state corporate nonprofit law and the U.S. Internal Revenue Code, often as interpreted by guidance issued by the IRS and court cases, and by State Attorneys General. State Attorney General offices oversee not-for-profits operating in their state.



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We also look to “Best Practices”

Sources of best practices include:

- Experts in not-for-profit law, both within the Foundation’s Legal department and in firms hired as outside counsel;
- Board members and Foundation executives who have experience in executing legal and fiduciary duties in the U.S. legal context;
- Resources from nonprofit associations; and
- Outside consultants hired by the Foundation.



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Fiduciary duties

Every trustee has three legally mandated duties:

- (1) the **duty of care and good faith**,
- (2) the **duty of loyalty**, and
- (3) the **duty of obedience**.



Duty of care & good faith

Trustees must prepare for and participate actively and diligently in Board activities. Trustees must be informed on all matters coming before the Board or committee for review or decision (even if they do not sit on a particular committee), and then make reasonable decisions for the Wikimedia Foundation.

Trustees should:

- Rely on the organization's records, and presentations from officers, staff, and experts.
- Be informed about how the organization identifies and addresses risks and complies with the law.
- Ensure their conduct and that of the Wikimedia Foundation complies with the state and federal law, and corporate protocols (such as bylaws, resolutions, and policies).

Before finalizing the appointment of new trustees, current Trustees must use care and good judgment to determine whether candidates understand and are committed to carefully exercising the duty of care and good faith, which must be part of the criteria for appointment.

The duty of care requires trustees to:

- Prepare for and attend meetings
- Recruit/hire/oversee CEO:
 - Set annual goals, set reasonable compensation, review performance, convey performance review; check in regularly
- Set overarching Foundation policy and strategy
- Exercise financial oversight and oversee financial viability:
 - Review financial statements, 990s
 - Oversee audits & investments
- Review/approve proposed operating plans
- Review program impact/effectiveness
- Ensure adequate risk management
- Ensure the Foundation has a robust legal compliance function

Duty of loyalty

Trustees must place the best interests of the Wikimedia Foundation first—before their personal interests, the interests of any other organization (including movement affiliates), and other business interests.

As part of the duty of loyalty to the Wikimedia Foundation, trustees must follow the [Conflict of Interest Policy](#):

- Trustees must complete the [Conflict of Interest Questionnaire](#) annually and affirm their compliance with the policy in the [Pledge of Personal Commitment](#).
- Trustees should abstain from all Board discussions and votes on issues where they (or a close family member or entity in which they have a material financial interest or high-level position) have an actual or potential conflict of interest. Taking care to avoid the appearance of a conflict of interest and to follow both the spirit and the letter of the Policy is essential.
- If at any time a trustee believes they may have a conflict of interest, they should raise it in a timely and proactive fashion with the Board Chair, Executive Director, and Secretary, so it can be addressed appropriately.

Duty of loyalty

The duty of loyalty generally prevents three types of transactions. Trustees should not:

- **Accept gifts** and other benefits that may raise a question of actual or perceived conflict of interest.
- **Take a business opportunity** from the Wikimedia Foundation, or otherwise use their position on the Board to advance their own **competing interest** or the interest of a close family member or associate.
- Engage in **self-dealing** between the Foundation and themselves, their business partners, or family:
 - Trustees, partners, and family, for example, cannot participate in direct financial transactions (including payments, grants, and contracts) with the Foundation outside of the approval process allowed in the Wikimedia Foundation Conflict of Interest Policy.

Before finalizing the appointment of new trustees, current Trustees must use care and good judgment to determine whether candidates understand and are committed to carefully exercising the duty of loyalty, which must be part of the criteria for appointment.

Duty of loyalty

Trustees and their families may still participate in organizations or activities funded by the Wikimedia Foundation, but trustees:

- Must resign from any other positions (except unpaid advisory roles) within the Foundation or within the Wikimedia movement, including paid positions (e.g., Foundation or affiliate staff or consultant) and or paid or unpaid executive / governance positions (e.g., on other Wikimedia organization boards);
- Cannot receive any personal financial benefit from participation in such other activities or entities; and
- May need to recuse themselves from Board decisions relating to conflicted relationships or movement funding, depending on the circumstances—full, timely, and transparent disclosure is key here.

The duty of loyalty requires trustees to:

- Place the interests of the Foundation ahead of their own interests
- Never use Board service as a means for personal or commercial gain
- Always promptly and fully disclose real or perceived conflicts of interests, recuse themselves from discussion if appropriate or required, and never vote on conflicted issues

Duty of obedience

Trustees must be faithful to [the Wikimedia Foundation's mission](#) and [charitable purpose](#). Trustees cannot act in a way that is inconsistent with the organization's goals. The public trusts the board to manage donated funds in service of fulfilling the organization's mission.

To fulfill the duty of obedience, trustees must:

- Make sure that Wikimedia Foundation activities further the accomplishment of our mission
- Meet all applicable not-for-profit tax requirements
- Follow all laws and codes affecting nonprofit organizations such as the Foundation
- Follow the organization's governing documents and Bylaws

Before finalizing the appointment of new trustees, current Trustees must use care and good judgment to determine whether candidates understand and are committed to carefully exercising the duty of obedience, which must be part of the criteria for appointment.

The duty of obedience requires trustees to:

- Comply with donor restrictions
- Ensure that nonprofit resources are not used for non-charitable purposes
- Comply with organizing documents including Bylaws, Articles of Incorporation, and policies of the Wikimedia Foundation
- Comply with applicable laws and regulations

Protections for trustees

Immunity

There are federal and state protections for volunteer trustees when they meet their duties.

Indemnification

State law and the Wikimedia Foundation Bylaws provide that the Foundation will pay for legal defense of trustees in certain circumstances.

Insurance

The Board Treasurer maintains Director & Officer insurance policies for the Wikimedia Foundation.

Trustees should:

- Respect confidentiality and comply with the requirements of the [confidentiality agreement](#)
- Work collectively and collegially
- Maintain accurate, honest, and complete books and records
- Follow the [code of conduct](#) and other Foundation policies

Trustees should:

- Avoid both actual conflicts of interest and transactions that could create the appearance of a conflict of interest, and immediately disclose real or perceived conflicts if they do arise
- Avoid interference with the day-to-day operations of the organization

Trustees generally should not:

- Assign tasks in the day-to-day operations of the organization
- Act in their role on the Board as a representative of any particular Wikimedia community or organization
- Speak with staff in an official capacity, except when coordinated with the Chair or Executive Director

Trustees generally should not:

- Speak to the public, including media, in any way that is or could be construed as acting as a spokesperson for the Foundation, unless authorized and guided by the Foundation's Communications department
- Make decisions individually, except when formally delegated that authority by the Board