Legal Obligations of Non-Profit Board Members

According to nonprofit corporation law, a foundation trustee or director should meet certain standards of conduct and attend to his or her responsibilities to the organization-otherwise referred to as the duty of care, the duty of loyalty, and the duty of obedience. Many organizations circulate an explicit code of duties and responsibilities. Trustees review and sign the document upon taking office and review the document annually, with an oral pledge to uphold its tenets. (The TREE Fund has not yet established this document.)

Duty of Care. Foundation trustees have the duty to care for the interests of the foundation. The trustees must be diligent and prudent in the management of the organization, the investments of its funds and the pursuit of its charitable mission. The duty of care does not require that trustees make the right decision in all cases, only that they make decisions in a fashion in which another prudent person would act. The duties of care include:

Awareness. The trustee must be familiar with the following:

- The foundation's organizational documents
- Minutes of meetings
- IRS documents and filings
- Nature and extent of asset holdings
- How funds are invested and administered
- The performance of these investments

Participation. Care requires; that trustees take an active role in the foundation's activities. This includes attending meetings, reading reports, participating in committee work, and representing the foundation in the community. Trustees are responsible even for those meetings they do not attend. Participation also extends to acknowledging areas where the foundation and its work have not succeeded; being ignorant of a policy failure or violation is not a proper defense.

Duty of Loyalty. Foundation trustees must serve the best interest of the foundation, not their own well-being. This issue addresses but is not limited to, breaches such as:

- Conflicts of interest. Conflicts of interest arise when a trustee has a personal or professional interest in a proposed transaction. The duty of loyalty requires that the trustee excuse himself/herself from discussion, abstain from voting, and not attempt to influence the vote of other managers.
- Self-dealing. Self-dealing addresses particular transactions between the foundation and its "disqualified persons," such as a spouse, parent or child of a foundation trustee.
- Misuse of assets. Such actions (or inactions) include knowledge of theft, embezzlement, excessive compensation or rent, and/or personal use of the assets, facilities, or services of the charitable organization.
- Usurping opportunity. A trustee must not use her or his position of trust to take advantage of an opportunity presented to the foundation.

Duty of Obedience.

Trustees must follow the principles established in the organization's Trust Agreement and avoid any action that may jeopardize the organization's tax-exempt status. Duties of obedience include paying taxes and following the public disclosure rules.

Association of Small Foundations
Trustee Handbook 2007
Legal & Tax Issues Adapted from Ronald S. Webster, "A brief Overview of Fiduciary Duties for Foundation Board Members," Fizer, Beck, Webster, Bently & Scroggins.