

Duties and Responsibilities of a Trustee

The Family Advisor: Trustee Orientation

*by Curtis W. Meadows
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It should come as no surprise to anyone that the answer to the question, "Where is the *trust* in trusteeship?" is to be found in one word: *performance*. It is not by accident that the governing boards of nonprofit organizations are often called "trustees." And as a result of embedding that word "trust" in our title, our duties and responsibilities as trustees include expectations of ethical behavior such as: duties of undivided loyalty to the foundation; avoidance of self-interest; protection of property and assets; and obedience to laws and the governing charter.

But to whom are these duties owed? If we were talking about a business, we'd say corporate trustees have responsibilities to the shareholders, the owners or the consumers. But here there are no shareholders, no dividends to distribute and no products we sell to others. Those who govern nonprofit organizations and foundations are not elected by the public, yet they serve the public interest as well as private ones.

So at the first level, trustees of foundations are responsible to the donor, their fellow trustees and those other persons involved in the work of the foundation. In addition, since most foundations primarily dispense funding to others, we cannot fulfill our mission without a partnership based on trust with the recipients of the gifts. And still further, because foundations have been given a favored tax status with deductions and exemptions which for-profit or individuals do not have, we acquire another relationship based on trust for which we can increasingly be expected to be called to account by the press, the government and regulatory authorities. We may even have to report or explain our trusteeship actions to Congress and the public.

At its essence, the voluntary sector, of which foundations are a part, exists on a very essential and fragile base of trust-trust between a founding donor and his or her trustees; trust between fellow trustees; trust between trustees and donees to whom gifts are made; trust between trustees and the staff they hire to help them; trust between the public and a board of trustees; and finally, trust between government and those responsible for the foundation and its actions.

In its broadest sense then, what are some of the basic responsibilities and duties of foundation trustees?

The first is to ensure that the foundation achieves its purpose while maintaining loyalty to donor intent and objectives, as well as loyalty to the interests of the public and the community the foundation is supposed to benefit. The trustees are expected to provide protection for a prudent^{3/4} and some are beginning to suggest perhaps even an expert^{3/4} level of investment management of foundation assets (see "Legally Speaking," pg. 6). Trustees are expected to make

certain that the foundation complies with all pertinent laws, rules, and regulations, whether federal, state, or local. Trustees should act responsibly at all times to protect the public interest in the foundation's work and generate credibility for the field.

What steps should foundation trustees take to go about ensuring that their foundation achieves its purpose?

I think trustees should start by reviewing and becoming familiar with the past history of the foundation and the expressed intentions of the donors. You could say this would be "getting in touch with our history," the legacy and the traditions that are due our loyalty, before setting out to pursue our own vision of the foundation's future. At the Meadows Foundation, we went back and reviewed all of the giving habits of my uncle to try to understand what he had been doing and what was motivating him, because we didn't have a lot of written documentation from him. We did have an oral tradition and history that everybody claimed as the current perception of what he intended, and we had to get together as a group, debate and blend those ideas.

Trustees should develop a mission and vision for the foundation and consider what success would look like if the dream is achieved. Articulate the organizational values and principles that should guide the work of the foundation. One of the things we did as a family was sit down and talk about the principles that unite us as a family. Trustees should engage in strategic planning to develop measurable goals and provide responsible and appropriate places and polices for operations.

Trustees should identify, engage, and evaluate a chief executive officer. Remember that trustees retain full responsibility for the performance of the CEO and for monitoring and conducting oversight of the CEO's actions. It is also important that the board speak as a unified body to the CEO rather than each of the trustees attempting to influence or set the policy of the organization as if they were the one and only trustee. The trustees should approve the investment and grantmaking policies and actions and provide for periodic review of those policies to ensure their continuing relevance.

Trustees should ensure the continuation of the foundation or provide for its orderly termination. This subject is not often talked about since everyone assumes the foundation is going to go on forever, assuming it has relevance and importance when, in fact, it may have outlived its usefulness.

Trustees must take all necessary steps to ensure public accountability, such as conducting financial, legal and management audits periodically. They should ensure reporting and payment of withholding and excise taxes and, of course, encourage the issuance of annual reports and publications to the public. Trustees should establish the policies that are going to determine the way in which the foundation interacts with the public, such as our response time to inquiries. Are we going to answer every piece of correspondence that comes in? If so, within what time frame? Are these grantseekers just bothersome folk, or are they really at the very heart of what we are about?

Trustees should select qualified attorneys and accountants and meet with them and use their services regularly. This is a very complex legal field and, even though I was trained as a lawyer,

one of my main tasks was to find those potential trouble spots and get the lawyers to help us do our work within the law's framework. For example, foundations have lots of potential liability arising from some of the new laws and cases dealing with the Americans for Disabilities Act, hiring, promotion, and firing practices, as well as issues of harassment. All of these items ultimately can come back to the trustees' responsibility for oversight if there is some impropriety.

Trustees must ensure that sufficient grant and qualifying distributions are made to satisfy foundation legal requirements, build safeguards against self-dealing and prudently fulfill investment responsibilities. Supreme Court Justice Cardoza once said, "Many forms of conduct, permissible in a work-a-day world for those acting at arms' length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace."

How does a trustee deal responsibly with loyalty to donor intent in a changing world?

First of all, recognize that dealing with the tension between the "dead-hand" statements of the founder and the changing issues of a current and future world is a necessary tension and reality of trusteeship. My uncle, for example, said, "Don't give to state institutions. They have the power to tax, they just don't have the will to spend." But when we began to look at it, he also had other values, such as "Always go for excellence no matter where it is found³/₄state institutions or non-state institutions." So, in trying to reconcile how those conflicting instructions play out, there is an ongoing challenge for trustee interpretation and decision.

Foundations need to find ways to develop the practice of passing on the organization's historical values and traditions. There have been several sessions at foundation meetings talking about how to pass on the traditions and histories of the foundation. I encourage living donors to be more articulate about their desires without restricting the needed flexibility for the future. Clarify your goals, but in broad terms around values and principles.

Try to separate custom and practice from mandate in deciding what is strong donor intent and what was really intended to be contextual advice. Every previous act was not necessarily carved in stone and established as the only way things can be done. Sometimes trustees must even think in terms of termination or partition when donor intent cannot be carried out.

What are some of the issues if trustees are also staff members?

I was a trustee and staff member by virtue of requirements in our legal documents, but that sometimes creates an awkward position. Many times I would not even speak up at the board meeting to influence the outcome of trustee deliberations because as a staff member I had already done my job in bringing something before them. Only after the board debate had been fully developed would I comment on pending issues, except for clarification of factual matters.

How do you go about identifying and selecting new trustees?

Trustees must decide whether the needs of the foundation or the needs of the board take precedence in the selection process. Boards need good working relationships, so the tendency is to pick people that are like us and that we agree with, when in fact what may be needed for the

organization is the lone, independent voice that will call all of us to better decisions. Trustees should determine how they will deal with issues of trustee and staff diversity and decide if there is merit in seeking term limits or rotation of trustees.

What can be done to ensure active trustee involvement and participation in the work of the foundation?

We have found that if you bring to the meetings issues of substance and if you involve the trustees in site visits, then you have a much more engaged trustee who feels that his or her time is well spent. If all you do is bring in reports from experts, many trustees feel they don't have anything to add to the discussions and decisions and they're just largely a rubber stamp of management recommendations.

What are the objectives of training and orientation of new trustees?

Clearly it should transmit the history, mission and purpose of the foundation. It should provide orientation to existing foundation policies and how those policies were developed. Codes of ethics or agreed procedures should be reviewed. One of the things which we did and have done on several occasions is to form a partnership in a document that we called the "Rules of the Foundation." We as a body say, "This is what we expect of one another in the performance of the task of Meadows Foundation trustee." And we have a committee charged with ethical enforcement of that agreement.

Foundation boards should also be involved in the training and orientation process to try to prepare for the orderly succession of leadership. All too often that is a task left to crisis and happenstance and not one that is planned. I believe that the last great task of leadership is to provide for your successor's selection and then encourage their empowerment. The transition process is an opportunity for the whole board to think about what it is going to do in the future. It should be a time to renew and review the way we've been doing things.

Conclusion

Accepting the role of trustee in the past was often more of an honorary title. It involved a high degree of community recognition with little personal risk, time commitment or aggravation, unless you were selected to be a member of the inner circle of leadership. But today, in our litigious society, the role of a trustee requires a high degree of active participation, searching inquiry into management decisions and careful monitoring of investment activities, personnel and other operating policies.

The honor of being chosen to serve is still there or no one would ever do it. But trustees today are being held to greater accountability than ever before to maintain the public trust in the institutions they represent. "You can run, but you can't hide" should be the motto that follows the title we are given upon election. It would remind us that only ethical and responsible service can properly give us the right to be called trustees.

(This article is based on the comments of Curtis Meadows at the 1996 Trustee Workshop. Audiotapes for this session may be ordered by calling Audio Archives at 818/957-0874. Mr. Meadows is chairman emeritus of the Meadows Foundation in Dallas.)

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