

# Water Board Basics: Keys for Success

## Water and Wastewater Utility Board Legal Responsibilities

Water and wastewater utility boards have legal duties to the organizations they serve. Utility board members owe fiduciary duties, which include the *Duty of Loyalty* and the *Duty of Care*. Both duties are derived from common law; however, state law often imposes additional board duties. In Nevada, they are listed in NRS 82.121 through 82.136 and NRS 318.080 through 318.090.

The *Duty of Loyalty* prohibits self-dealing and requires that board members be faithful to the organizations they serve; the *Duty of Care* requires that the board exercise the degree of care that a prudent person would follow in the same or similar circumstances.

The following list details the top 10 legal board responsibilities.

**1. Ensure that your utility complies with all applicable federal, state and local laws and ordinances.**

Boards must have copies of applicable state statutes and regulations and an open meeting law manual available during meetings. It is important to have copies of these laws available, and it is essential that board members read the laws, and understand the requirements as they relate to their utility.

**2. Conduct business only as a board.**

It is illegal for individual board members to make contracts on behalf of the utility. Any decision that is binding on the utility must be made by the board as a whole.

**3. Avoid a conflict of interest and the appearance of one.**



It is imperative to avoid a conflict of interest and to remove yourself from voting on matters that may affect personal interests, including those of family and close friends. If there is a question as to whether

there is a conflict of interest, it is always better to refrain from voting on those matters.

**4. Ensure that the water system receives, records, and spends funds in accordance with acceptable accounting, purchasing and record keeping standards, and that all records are made available according to state and federal law.**

Understand what records must be maintained, and how long they must be retained.

**5. Ensure that your system revenue covers operations, plus debt service and reserves.**

Water and wastewater utilities are businesses, and it is imperative that they are operated as such. Income must meet expenditures. Un-

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der a board member's duty of care, it is critical that revenues provide for a debt service account to sufficiently fund capital improvements and infrastructure maintenance and improvements. Often, this requires regular rate increases, which may be unpopular but are critical to good management practices.

**6. Board members must remain in charge and must direct.**

A board may delegate certain tasks, such as entering into a certain sum contract or hiring employees; however, the board is always ultimately responsible for all decisions made on behalf of the utility.

**7. Board members must ensure that the organization is operating within its legal framework.**

It is essential that board members understand their responsibilities and their limitations. Federal, state and local laws require legal duties; board rules and regulations also demand additional duties. Board members must be familiar with their organization's additional rules and regulations, such as ordinances.

**8. Directors have a legal responsibility to protect utility assets.**

Board members have an obligation to know the status of their utility's assets. If assets are mis-used or misappropriated, ultimately, the board member is responsible. Ask for clarification and understand expenditures. If you are still unclear, ask questions to better understand your utility's financial status.



**9. Board members must validate all major contracts by giving and recording formal approval.**

While the negotiation of contracts can be delegated to a staff person or board member, the board as a whole must approve the contract.

**10. Members must attend most board meetings.**

Attending board meetings regularly is one of the duties of loyalty and care. Board members must act in the utility's best interest and set policy for the utility. You must attend board meetings to perform your job as a board member.



**Summary**

It is critical that board members meet all legal responsibilities. Failure to do so can result in fines and criminal liability. However, if you are aware of the decisions you make as a member of the board, act for the best interest of the utility, and assure compliance with your fiduciary responsibilities, you will effectively accomplish your role as a board member.



Put these suggestions into practice as a member of your utility board.

- ✓ Attend meetings.
- ✓ Record minutes of meetings, read minutes, and make sure they are correct.
- ✓ Record objections and debate controversial or difficult issues.
- ✓ Conduct an annual audit.
- ✓ Review financial statements and budget summaries; insist on understanding them.

*This Water Board Basic was authored by Micheline Fairbank, Rural Community Assistance Corporation.*



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