

PARKS & TRAILS NEW YORK CONFERENCE ROUND TABLE

FIDUCIARY DUTIES OF DIRECTORS AND OFFICERS

Duties:

Broadly stated, the fiduciary duties of directors and officers are threefold:

1. Duty of care;
2. Duty of loyalty; and
3. Duty of obedience.

Duty of care:

Section 717 (a) of the Not-for-Profit Corporation Law provides in relevant part as follows: “Directors and officers shall discharge the duties of their respective positions in **good faith** and with the care **an ordinarily prudent person** in a like position would exercise under similar circumstances.” [Emphasis added.]

Duty of loyalty:

Directors and officers are charged with the duty to act in the interest of the corporation. Where the interest of the corporation conflicts with the personal interest of a director or officer, the interest of the corporation must prevail.

Duty of obedience:

Under the duty of obedience, directors and officers are obliged in the performance of their duties to obey the law and the provisions of the corporation’s organizational documents and policies.

Conflict of Interest Policy:

Section 715-a of the Not-for-Profit Corporation Law requires the corporation to establish and maintain a conflict of interest policy and prescribes the essential matters that the policy must address. The statute does not prohibit interested party transactions. Such a transaction may proceed so long as it is determined that the proposed transaction is fair and reasonable and in the best interest of the corporation. Key provisions of the conflict of interest policy: definitions of “related party” and “related party transaction”; disclosure requirements; process for applying the fair and reasonable standard; and documentation of the process.