

**Memorandum on the Duties, Powers and Responsibilities of
NSSAR Trustees**

**From
Judge Tom Lawrence
President General (2015-2016)**

August 24, 2024

**Part I
NSSAR Handbook**

**NATIONAL SOCIETY
SONS OF THE AMERICAN REVOLUTION**

CONSTITUTION

Article IV - Officers and Trustees *Section 2.* There shall be a Board of Trustees with a total membership of not less than forty (40), who shall be elected annually at such time and in such manner as shall be fixed in the Bylaws as required by the Charter. Said Trustees shall hold office for one year and until their successors are elected and qualified, and they shall each serve without compensation. The election of members of the Board of Trustees shall be conducted after the election of General Officers has been completed unless the delegates present, by a two-thirds vote, provide for some other order of business.

**NATIONAL SOCIETY
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BYLAWS

Bylaw No. 3 - Officers; Powers and Duties

The duties of the General Officers shall be such as usually appertain to their respective offices, such other duties as may be hereinafter imposed, and such powers as shall be delegated to them by an Annual Congress or by the Board of Trustees. The General Officers shall report at the Annual Congress and at such other times as may be required by the Board of Trustees.

Bylaw No. 15 - Professional Staff

Section 1. Executive Director

Section 2. The Executive Director shall:

(c) perform all administrative acts for the General Officers of the Society and such other functions, consistent with the Constitution and Bylaws, which may be delegated to him by the President General, the Executive Committee, the Board of Trustees, or by an Annual Congress;

Bylaw No. 16 - Board of Trustees

Section 1. The Board of Trustees shall be composed of the following:

- (a) One (1) member from each of the State Societies who is nominated by his State Society and then elected by the delegates and delegates at-large at the Annual Congress for a term of one year;
- (b) Any General Officer who was just elected at the Annual Congress may be nominated at that Congress as a Trustee and may be elected to the Board of Trustees at that Annual Congress for a term of one year;
- (c) All living Former Presidents General, who are nominated by a State Society or nominated at the Congress, may be elected by the delegates to the Annual Congress as a Trustee for a term of one year;
- (d) Any member of the Executive Committee, who is not included in a, b or c above, and who has been approved by the Board of Trustees, may be nominated as a Trustee and may be elected as a Trustee by the delegates at the Annual Congress to the Board of Trustees for a term of one year.

Section 2. The names of the nominees for Trustee and Alternate Trustee to represent each of the State Societies shall be communicated to the Secretary General at least thirty (30) days prior to the Annual Congress. The President of the State Society shall be considered the nominee for the Office of Trustee to represent his State Society if the society timely fails to notify the Secretary General of a nominee. The State Society's Alternate Trustee shall function as Trustee if the elected Trustee cannot fulfill the duties of this Office. The nominees for the Board of Trustees pursuant to the above subsections shall be elected to the Board of Trustees by an affirmative vote of a majority of the delegates and delegates at-large at the Annual Congress.

Section 3. The Board of Trustees shall be the legal custodian of all National Society property, both real and personal. It shall manage the business and the affairs of the Society, and perform such other duties as may be assigned to it at any meeting of the National Society; with the proviso that the Board of Trustees shall not have the power to sell, convey or encumber any real estate which belongs to the National Society, nor shall it incur any liability other than for ordinary current expenses of the Society, unless so ordered by an Annual Congress or by an affirmative vote of three-fourths of the members of the Board of Trustees present and voting.

Section 4. The Board of Trustees shall have the power to admit or reorganize as a State Society any association of fifteen (15) compatriots residing within such State. Such State Societies so admitted, organized, or reorganized, shall continue to exist until such time as such State Society charters are revoked, altered, or amended by the Board of Trustees. Any such action is subject to appeal at the next Annual Congress.

Section 5. The Board of Trustees may authorize the Executive Committee to perform such duties of the Board it may deem necessary between meetings of the Board of Trustees. However, the

Executive Committee may not assume any of the obligations or responsibilities set forth in Section 3 of this Bylaw.

Section 6. The President General may call meetings of the Board of Trustees at any time he may deem necessary. He shall call meetings of the Board of Trustees when requested to do so upon the written request of any eleven (11) members of the Board of Trustees. Not less than ten (10) days notice of the time, location and purpose shall be given when such a meeting is called.

Section 7. The Board of Trustees shall be authorized to consider and act upon proposed amendments to the Constitution and Bylaws of the Society, resolutions and the adoption or changing the location of an Annual Congress by the use of a ballot in lieu of a meeting. The Secretary General shall be contacted to carry out this ballot/solicitation in accordance with his duties set forth in Bylaw 6, Section 2 of these Bylaws.

Section 8. A quorum of Trustees at the Spring and Fall National Society meetings, special meetings and Trustee meetings at the Annual Congress shall consist of twenty (20) members of the Board of Trustees except as otherwise provided in these Bylaws.

Bylaw No. 17 - Executive Committee

Section 2. (b) In addition the Committee shall perform such duties as may be committed to it by an Annual Congress of the Society, or by the Trustees.

Bylaw No. 18 – Standing Committees

(d) *Handbook Committee.* The Handbook Committee (i) reviews, revises and compiles the official SAR Handbook in accordance with policies approved by the Executive Committee for implementation and (ii) maintains and publishes the latest rules on SAR protocol as well as advises on issues relating to protocol.

(4) *Duties.* The duty of this Committee is to edit, organize, and submit for approval by the Executive Committee the SAR Handbook; to suggest changes, alterations or additions to the Handbook and to keep abreast of any changes in this Handbook that may be made by the National Trustees, the SAR Congress, or the Executive Committee.

THE NATIONAL SOCIETY **SONS OF THE AMERICAN REVOLUTION**

HANDBOOK Volume II

NATIONAL TRUSTEES

The Charter of the National Society SAR states that the property and affairs of the Society shall be managed by not less than forty (40) Trustees who shall be elected annually at such time as fixed by the Bylaws. The Constitution provides that the affairs of the National Society shall be administered by a Board of Trustees consisting of the General Officers, living Former Presidents General, one member from each state society and members of the Executive Committee not in the first three categories.

A Trustee is expected to assume all duties and responsibilities of the office, which requires

considerable time and interest. The capabilities of a nominee and his availability to serve should be the prime factors in his election.

Each state society nominates a Trustee who is elected by the National Society at the Annual Congress. An Alternate Trustee also is nominated and elected in the same procedure. The Alternate Trustee functions in the absence of the Trustee.

A Trustee is junior in rank to national officers, and senior to state officers. There is no expense allowance for Trustees. A National Trustee represents his state society at the national level, but his representation should be with the advice and consent of the state president and the state society. It is normal procedure, but not required, that the immediate Former State President serve as National Trustee, and that the office is frequently rotated.

A Trustee:

1. Attends all of his state society's functions, including meetings of his state society's Board of Managers, and aids the state president in hosting national officers.
2. Attends district meetings.
3. Attends and represents his state society at all meetings of the Trustees.
4. Encourages his state society to recommend qualified compatriots for national committees. These recommendations should be submitted to the National Executive Director by May 1st, who will transmit them to the newly elected President General.
5. Forwards copies of all chapter and state society adopted resolutions to be considered by the next Annual Congress to the National Chairman of the Resolutions Committee.
6. Invites and encourages his state president to attend National Leadership Meetings so that they may collaborate upon the issues presented. Normally visitors are permitted to speak on an issue, but not to vote.
7. Maintains a close and constant relationship with the Vice President General of his district.
8. Obtains copies of the constitution and bylaws of the chapters within his state.
9. Serves as liaison between state society and the National Society.
10. Submits to the Board of Managers of his state society a detailed report of the business enacted and actions under consideration by the Board of Trustees.
11. Cooperates with the state officers, and especially his state president, in performance of his duties.

Part II

State of Kentucky Laws Governing Nonprofit Directors

Kentucky Revised Statutes Chapter 273

Nonstock, Nonprofit Corporations

Emphasis Added

Section 273.163 - Applicability(1) The provisions of KRS 273.161 to 273.390 relating to domestic corporations shall apply to:(a) All corporations organized hereunder; and(b) All nonprofit corporations heretofore organized under any act repealed by 1968 Acts, ch. 165, for a purpose or purposes for which a corporation might be organized under KRS

273.161 to 273.390.(2) *The provisions of KRS 273.161 to 273.390 relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under KRS 273.161 to 273.390.*

KRS 273.163

Section 273.207 - Board of directors

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

Section 273.211 - Number and election or appointment of directors - Classes - Terms - Removal

(1)(a) The board of directors shall consist of three (3) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws, except as to the number of the first board of directors which shall be fixed by the articles of incorporation. **(b)** The articles of incorporation or bylaws may establish a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed by the board of directors, within the minimum and maximum, in the manner provided in the articles of incorporation or the bylaws. **(c)** No decrease in number shall have the effect of shortening the term of any incumbent director. **(2)** The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one (1) year, and until his successor is elected and has accepted his election. **(3)** Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified. **(4)** A director may be removed from office pursuant to any removal procedure provided in the articles of incorporation or bylaws. **(5)** Every director of a corporation, by acceptance of election or appointment as a director, including by service, shall be deemed to have consented to the jurisdiction of the courts of the Commonwealth of Kentucky for any action by, in the name of, or on behalf of the corporation.

KRS 273.211

Amended by 2018 Ky. Acts ch. 193, § 2, eff. 7/14/2018. Effective: 7/12/2012

Amended 2012 Ky. Acts ch. 81, sec. 100, effective 7/12/2012. -- Created 1968 Ky. Acts ch. 165, sec. 17.

Section 273.215 - General standards for directors **(1)** *A director of a nonprofit corporation subject to the provisions of KRS 273.161 to 273.387 shall discharge his duties as a director, including his duties as a member of a committee: (a) In good faith; (b) On an informed basis; and (c) In a manner he honestly believes to be in the best interests of the corporation.* **(2)** Such director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporations, or into a particular action to be taken or

decision to be made.(3) In discharging his duties such director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) One (1) or more officers or employees of the corporation whom the director honestly believes to be reliable and competent in the matters presented;(b) Legal counsel, public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or(c) A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.(4) A director of a nonprofit corporation shall not be considered to act in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.(5) In addition to any other limitation on such director's liability for monetary damages contained in any provision of the corporation's articles of incorporation adopted in accordance with the provisions of KRS 273.248, any action taken as a director, or any failure to take any action as a director, shall not be the basis for monetary damages or injunctive relief unless: (a) The director has breached or failed to perform the duties of the director's office in compliance with this section; and(b) In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.(6) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of subsection (5)(a) and (b) of this section, and the burden of proving that the breach or failure to perform was the legal cause of the damages suffered.(7) Nothing in this section shall eliminate or limit the liability of any director for any act or omission occurring prior to July 15, 1988.

KRS 273.215

Effective:7/15/1988

Amended 1988 Ky. Acts ch. 224, sec. 12, effective7/15/1988. -- Created 1988 Ky. Acts ch. 23, sec. 245, effective 1/1/1989.

Section 273.217 - Quorum of directors - Prohibition on director voting by proxy(1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws.(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously communicate with each other during this meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.(3) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by KRS 273.161 to 273.390, the articles of incorporation or the bylaws.(4) Irrespective of whether or not the corporation has members, a director may not vote by proxy.

KRS 273.217

Amended by 2018 Ky. Acts ch. 193,§ 6, eff. 7/14/2018.Effective:6/24/2015

Amended 2015 Ky. Acts ch. 34, sec. 70, effective6/24/2015. -- Created 1968 Ky. Acts ch. 165, sec. 19.

Section 273.219 - Conflict-of-interest transaction(1) A conflict-of-interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict-of-interest transaction shall not be the subject of equitable relief on the ground of the director's interest in the transaction if: (a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors, or a committee of the board duly constituted under KRS 273.221, and the board of directors or the committee authorized, approved, or ratified the transaction; or (b) The transaction was fair to the corporation.(2) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:(a) Another entity in which he or she has a material financial interest is a party to the transaction; or (b) Another entity of which he or she is a director, officer, general partner, manager, trustee, or person in a similar position is a party to the transaction, and the transaction is or should be considered by the board of directors of the corporation.(3) For purposes of subsections (1)(a) and (2)(b) of this section, director authorization, approval, or ratification is effective if done by a majority vote of the directors who do not have a direct or indirect interest in the transaction within the meaning of this section, even if the majority is less than a quorum, but a transaction may not be authorized, approved, or ratified by a single director. Director authorization may be delegated to a committee under KRS 273.221, provided that no director appointed to the committee has a direct or indirect interest within the meaning of this section. Director action under this section shall be done by a higher number than a majority, if the articles of incorporation or bylaws so provide.(4) For purposes of subsection (1) of this section, a director who has a direct or indirect interest in a transaction with the corporation shall bear the burden of proving that the transaction was fair to the corporation.

KRS 273.219

Amended by 2018 Ky. Acts ch. 193, § 5, eff. 7/14/2018. Effective: 7/15/1988

Created 1988 Ky. Acts ch. 224, sec. 13, effective 7/15/1988.

Section 273.223 - Place and notice of directors' meetings(1) Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. If the bylaws are silent as to the required notice of a meeting of the board of directors, meetings of the board of directors shall be preceded by at least two (2) days notice of the time, date, and place of the meeting.(2) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors needs to be specified in the notice or waiver of notice of such meeting.(3) Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.(4) The Circuit Court for the county where a corporation's principal office or, if there is none in this state, its registered office is located may order a special meeting of the board of directors on the application of one-third (1/3) or more of the incumbent directors. The court may fix the time and place of the meeting, prescribe the form and content of the meeting notice, and enter such other orders as are necessary to accomplish the purpose of the meeting.

KRS 273.223

Effective: 6/24/2015

Amended 2015 Ky. Acts ch. 34, sec. 71, effective 6/24/2015. -- Amended 2010 Ky. Acts ch. 133, sec. 16, effective 7/15/2010. -- Created 1968 Ky. Acts ch. 165, sec. 21.

Part III

Generally Accepted Duties and Responsibilities of Nonprofit Directors

Is there a difference between a board of governors, a board of directors, and a board of trustees?

Legally and in practice, all of these definitions describe the same governing body of a nonprofit. The term “trustee” originally referred to the person who has the fiduciary duty for a charitable trust or a foundation. By tradition, higher education institutions also tend to refer to their board members as trustees.

Boards of directors of nonprofit corporations may be designated by other names:

- trustees
- regents
- directors
- council.

But regardless of the name, **if management of the nonprofit corporation is placed with the board, the board has legal and ethical duties that cannot be delegated to others.**

The board must follow the fiduciary duties of *care*, *loyalty*, and *obedience* to the nonprofit.

Basic Board Member Duties

This starts with an understanding of the fundamental legal duties of each individual board member, which include:

- **Duty of Care** — Each board member has a legal responsibility to participate actively in making decisions on behalf of the organization and to exercise their best judgment while doing so.
- **Duty of Loyalty** — Each board member must put the interests of the organization before their personal and professional interests when acting on behalf of the organization in a decision-making capacity. The organization’s needs come first.
- **Duty of Obedience** — Board members bear the legal responsibility of ensuring that the organization complies with the applicable federal, state, and local laws and adheres to its mission.

Duty of Care

Duty of care means that board directors must give the same care and concern to their board responsibilities as any prudent and ordinary person would manage their personal matters.

At a minimum, the following fiduciary responsibilities fall under this duty:

- Participating actively in board meetings
- Serving on at least one committee
- Working to advance the nonprofit’s mission and goals
- Practicing oversight of programs and activities
- Monitoring the budget and financial reports
- Questioning expenditures

- Engaging in strategic planning and goal setting

Duty of Loyalty

Duty of loyalty means that board directors must place the interests of the organization ahead of their own interests at all times. Board members are required to publicly disclose any conflicts of interest and not use board service as a means for personal or commercial gain.

Duty of Obedience

Duty of obedience means that board directors must make sure that the nonprofit is abiding by all applicable laws and regulations and doesn't engage in illegal or unauthorized activities. The duty of obedience also means that board directors must carry out the organization's mission in conjunction with the purpose stated in their nonprofit organization's registration forms.

In General

The board generally ensures that it is operating in accordance with its mission and the purpose for which it was granted tax-exempt status. Are board members checking that the mission is tied to all of the organization's activities?

As safeguards of the public trust, board members generally are responsible for protecting the organization's assets.

The board should ensure legal and ethical integrity and maintain accountability.

What Constitutes a Breach of Fiduciary Duty?

Before there can be a breach of fiduciary duty, there must be an established relationship between the fiduciary and the beneficiary. In the case of a nonprofit, the board members are fiduciaries, and the nonprofit is the beneficiary.

A board member is considered to have breached a fiduciary duty when they did or said something that was not in the nonprofit's best interest. In a legal sense, the breach must also have resulted in some loss for the nonprofit. Furthermore, the breach must have directly caused the damage.

Assessing Your Board's Understanding of Their Fiduciary Duties

Often, nonprofit board directors recruit and accept anyone willing to serve on the board.

Recruiting board directors with little or no board experience can be an excellent way to refresh a board, as long as they get proper training about their duties and responsibilities. The best way to do this is to include a section on fiduciary responsibilities for nonprofit organizations in your board orientation program.

The practice of an annual board evaluation is a good time to assess whether each board director understands their fiduciary duties. Board evaluations should also reveal whether directors understand how their fiduciary responsibilities relate to strategic planning, risk management and oversight.

While it's vital to ensure that new board members understand what fiduciary duties are and why they are important, it's common for situations to come up where fiduciary duties come into

question. When a fiduciary responsibility is in question, board members must be willing to call them to the board's attention and discuss them openly.

While this discussion is specifically related to the NSSAR Board of Trustees many, if not most, of the concepts would directly apply to a state society board of managers.

**Respectfully submitted,
Judge Tom Lawrence
President General 2015-2016**