

CONVERSATIONS IN GOVERNANCE

March 28, 2021

FIDUCIARY DUTIES OF DIRECTORS



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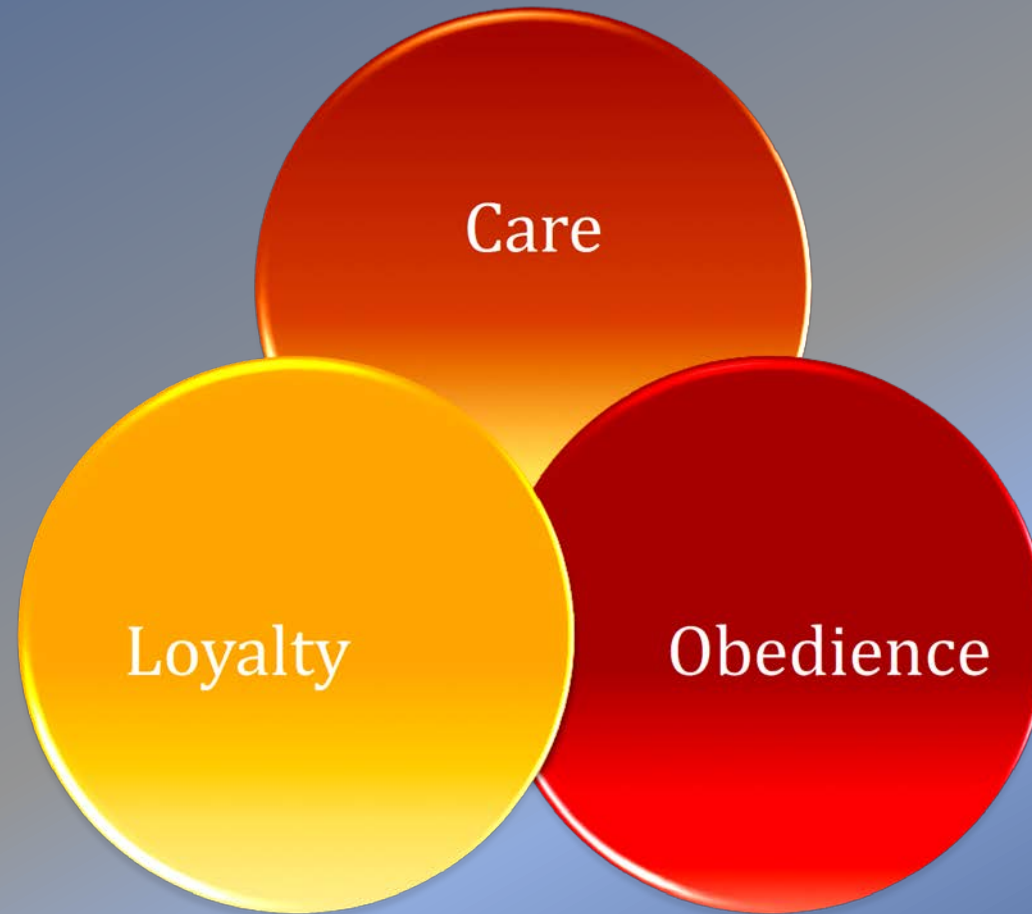
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Fiduciary Obligations of Trustees/Directors

'Fiduciary' defined:

- Someone who acts solely for the benefit of, and on behalf of another person or organization in a relationship of trust.
- The 'board of trustees' acts not in its own interest but in the interest of the 'owners' of the institution (i.e. the Church entity that sponsors the institution).

Fiduciary duties for Directors:



THE 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.
- Duty of Care can be summed up as the requirement that directors be present, informed, and engaged in the work and decisions of the Board.
- Directors must use good and independent judgment and may consult experts for trusted advice. The PROCESS of decision-making is as important as the actual decision.

THE DUTY OF OBEDIENCE:

- Faithfulness to corporate purpose, mission, and decisions.
- Obedience includes:
 - Compliance with governance documents
 - Compliance with laws
 - Fulfilling commitments (to owners, to employees, to clients, to community, to government)

THE DUTY OF LOYALTY:

- Directors must act at all times in the best interests of the institution.
- What to look for:
 - Position not used for personal advantage or economic gain
 - Conflict of interest awareness and disclosures
 - Undivided allegiance to the entity when making decisions
 - Maintaining confidentiality of privileged information

Application of Loyalty Key Components:

- They must not take institutional opportunities for their own personal gain.
- They must avoid having a personal interest in transactions between the corporation and another party.
- They must keep the corporation's information confidential and private.

Conflict of Interest:

- Any circumstance under which a director may be influenced or motivated to perform in a manner that is not in the best interests of the organization.
- A situation in which a person has multiple interests, financial or otherwise, and pursuing one interest may involve working against another.
- Conflicts of interest can compromise decision-making processes resulting in loss of integrity and reliability.

Don't Jump to Judgment on Conflicts:

- Is not an accusation
- Does not imply judgment has been compromised
- Is not inherently wrong—issue is how it is handled
- Is a **potential** breach of obligation to organization

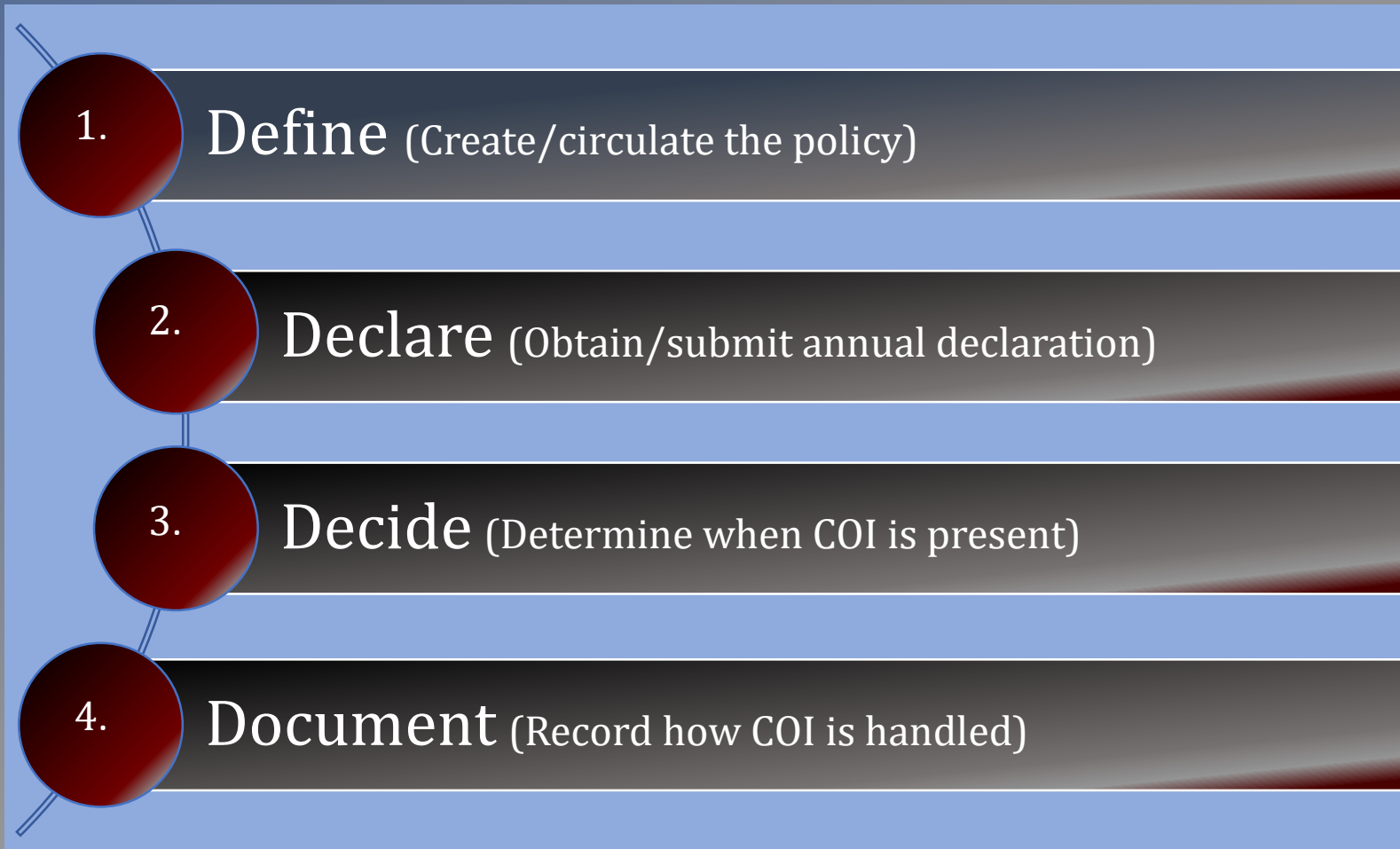
Conflict of Interest—Multiple Boards:

“Because of the common objectives embraced by the various organizational units and institutions of the Seventh-day Adventist Church, membership held concurrently on more than one denominational committee or board does not of itself constitute a conflict of interest provided that all the other requirements of the policy are met...

However, an officer, trustee, or director serving on an organization’s board is expected to act in the best interest of that organization and its role in denominational structure.”

—General Conference Working Policy E 85 05

Conflict of Interest—Four steps:



Declaration of Confidentiality:

Many organizations require employees and trustees to sign confidentiality agreements to protect against disclosure of sensitive information.

- Example 1: Protection of patient information.
- Example 2: Safeguarding of institution's business plan or negotiations with third parties.
- Example 3: Dealing with personnel items including hiring, termination and discipline.

BOTTOM LINE:

Each director is ultimately responsible and accountable for using good judgment in the course and exercise of their board service and duties in providing due care, loyalty and obedience.