

FAQs About Board Roles and Responsibilities

Contents

Legal Responsibilities of a Virginia Housing Commissioner.....	2
Primary Duties of a Virginia Housing Commissioner.....	2
Duty of Due Care.....	2
Duty of Loyalty.....	2
Duty of Disclosure.....	2
Examples of Board of Commissioners' Responsibilities	2
Reliance on Staff or Outside Experts	3
Appropriate Level of Board Supervision.....	3
Authority of an Individual Commissioner.....	3
Principles for Members of the Virginia Housing Board of Commissioners.....	4

What are the legal responsibilities of a Virginia Housing Commissioner?

A. All commissioners are “fiduciaries” for Virginia Housing and its purposes. That means a commissioner has a duty to act for the benefit of Virginia Housing and its purposes and must subordinate his or her own personal interests to those of Virginia Housing. A fiduciary duty is the *highest standard of duty* imposed by law, the same as that of a trustee or guardian.

Q. What are the primary duties of a Virginia Housing Commissioner?

A. Two primary duties are imposed on commissioners – a duty of *Due Care* and a duty of *Loyalty*. In addition, because Virginia Housing issues bonds, the federal securities laws impose a third major duty on commissioners – a duty of *Disclosure*.

Q. What is the duty of *Due Care*?

A. The duty of Due Care is a very broad duty, which requires that a commissioner exercises ordinary and reasonable care in the performance of the commissioner’s office. This requires that a commissioner make reasonable inquiries into matters brought to their attention and act in good faith, prudently and honestly.

Q. What is the duty of *Loyalty*?

A. This means a commissioner has a duty to avoid conflicts of interest and provide undivided allegiance to Virginia Housing’s purposes.

Q. What is the duty of *Disclosure*?

A. The SEC has officially taken the position that *individual* board members of an issuer also have a *personal* disclosure duty under the federal securities laws. The SEC said that when authorizing the issuance of securities, commissioners with *personal knowledge* of information that is material must take reasonable steps to be sure such information is adequately addressed in disclosure documents (i.e., the official statements distributed in connection with the bond sales). This rule applies to information the commissioner *actually knew* or *should have known* if the commissioner had carried out his/her duties.

Q. What are examples of the Virginia Housing Board of Commissioners’ responsibilities?

A. Examples of the responsibilities of the Commissioners, acting as a Board, are:

- directing the development of Virginia Housing’s mission and purposes

- select the chief executive officer and assess his/her performance

- ensure effective organizational planning
- ensure adequate resources
- manage resources effectively
- monitor, and strengthen Virginia Housing’s programs and services
- enhance Virginia Housing’s public standing
- ensure legal and ethical integrity and maintain accountability
- orient new board members and assess board performance
- protect any confidential information
- treat fairly, impartially and equitably members of the public who are involved in or affected by Virginia Housing’s programs and activities.

Q. Can the Board rely upon information provided by the staff or outside experts?

A. This issue is not addressed in Virginia Housing’s Act. However, with regard to corporate board directors, the Code of Virginia provides that, unless a director has information that makes reliance unwarranted, the director may rely on information and opinions presented by:

- employees whom the director believes, in good faith, to be reliable and competent in the matters presented and
- legal counsel, public accountants or other persons as to matters the director believes, in good faith, are within the person’s professional or expert competence.

This standard for corporate boards should, by analogy, apply to the boards of public entities, such as Virginia Housing.

Q. What is the appropriate level of supervision by the Board?

A. Virginia Housing’s Act authorizes the Board to appoint the Chief Executive Officer who “shall administer, manage and direct the affairs and business of Virginia Housing, subject to the policies, control and direction of the commissioners.” Thus, the Board is responsible for establishing the policies that govern Virginia Housing and for controlling and directing the Chief Executive Officer’s administration and management of Virginia Housing. The Board is not responsible for the day-to-day management of Virginia Housing.

Q. What is my authority as an individual commissioner?

A. An individual commissioner has no independent authority to bind Virginia Housing or to direct the staff. Commissioners may only act, on behalf of Virginia Housing, as a Board voting on resolutions or otherwise by taking action at meetings held in open session. To ensure full communication with all Board members, requests for information from staff members should be made:

- with the consensus or approval of the Board or the appropriate committee at an open meeting
- through the Chairman or an appropriate committee chairperson, and the information prepared by the staff should be distributed to all of the commissioners or committee members.

Q. What is required by Virginia Housing’s Guiding Principles for the Conduct of Members of the Virginia Housing Board of Commissioners?

A. The Guiding Principles, which were adopted by the Board of Commissioners on October 3, 2010, list the following principles and responsibilities:

- Service with dignity and integrity
- Performance of fiduciary duty above any personal interest or interest of any constituency- act in the best interest of Virginia Housing without favoritism or partisanship to any person, group or geographical area
- Compliance with state conflict of interest law and disclosure of related party transactions as required in the performance of the annual audit
- Authority to act only as member of Board or as authorized by the Board
- Devotion of necessary time and resources
- Foster environment of respect, cooperation and collegiality
- Compliance with open record requirements of the Freedom of Information Act and maintenance of confidentiality of protected records
- Appropriate supervision of the Chief Executive Officer

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