

# Montana Nonprofit Association (MNA)

## Board Governance Policy

### I. Purposes of this Policy

- A. To provide a framework within which directors and officers of the Board of MNA will be guided in the execution of their fiduciary duties on behalf of the MNA.
- B. To help assure awareness by directors and officers of the Board of MNA of their basic fiduciary duties under state law and of their obligations related to federal tax exemption granted MNA.
- C. To help assure that the decisions and conduct of the directors and officers of the Board of MNA are at all times consistent with their duties and obligations and with the charitable mission of MNA.

### II. Obligations of the Board and Individual Directors

- A. Mission: MNA is operated exclusively for the exempt purpose established in its mission, and shall engage primarily in activities which further that mission.<sup>1</sup>
- B. Directors' Role:
  - 1. The directors are those persons with voting power on the Board of Directors responsible for the operation of MNA. All corporate powers are exercised by or under the authority of the Board and the affairs of MNA are managed under the direction of the Board.<sup>2</sup>
  - 2. The directors do not manage the day-to-day affairs of MNA, but delegate that function to others. Directors must, however, exercise reasonable and prudent oversight with respect to corporate officers, agents and employees to whom such affairs are delegated.
  - 3. In the performance of his or her duties, a director may rely on information and reports received from officers or employees of MNA whom the director reasonably believes to be reliable and competent in the matters presented, as well as on professional advisors (e.g. attorneys, public accountants) and other persons with regard to matters the director reasonably believes are within the person's professional or expert competence. A director may also rely upon a committee of

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<sup>1</sup> Treas. Reg. §1.501(c)(3)(1)

<sup>2</sup> MCA § 35-2-414.

the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.<sup>3</sup>

#### 4. Core Fiduciary Obligations of Directors

##### a. Duty of Care

- (i) A director shall discharge his or duties as a director, including duties as a member of a committee:
  - (a) In good faith;
  - (b) With the care of an ordinarily prudent person in a similar position would exercise under similar circumstances; and
  - (c) In a manner the director reasonably believes to be in the best interests of MNA.<sup>4</sup>
- (ii) The duty of care implies a duty of reasonable inquiry. Each director is obligated to ask questions and demand information to allow that director to have sufficient information and understanding to make decisions he or she reasonably believes are in MNA's best interests.
- (iii) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance on advice from employees, officers, advisors and consultants, or other directors or board committees unwarranted.<sup>5</sup>

##### b. Duty of Loyalty

- (i) Each director is obligated to exercise an undivided and unselfish loyalty to MNA. Each director must exercise his or her obligations and powers in the best interests of MNA and its charitable mission, not in his or her own interests or in the interests of another person or entity (even if charitable in nature).
- (ii) Each director must serve the best interests of MNA and may not narrow his or her board role to serving the interests of a particular member, non-voting affiliate, or narrow segment or constituency within the community of nonprofit organizations served by MNA.

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<sup>3</sup> MCA § 35-2-416.

<sup>4</sup> MCA § 35-2-416 (1)

<sup>5</sup> MCA § 35-2-416 (3)

(iii) Each director shall fully comply with MNA's conflict of interest policy and code of ethics.

(iv) Each director must refrain from taking corporate opportunities that rightfully belong to MNA. A corporate opportunity is a business or personal opportunity that is known to the director because of his or her position as a director. A director may not personally benefit from an opportunity that rightfully belongs to MNA. Each director is obligated to affirmatively protect the interest of MNA and to refrain from doing anything that would deprive MNA of profit or advantage which the director's skill or ability might bring to it.

c. Obedience to Purpose

(i) Each director is obligated to further the mission of MNA, to be faithful to its purposes and goals, and to act in conformity with all laws affecting MNA.

### III. Manner of Governing

- A. The Board shall enforce upon itself whatever discipline is needed to govern with excellence.
- B. The Board shall cultivate a sense of group responsibility. The Board, not the staff, is responsible for governing with excellence. The Board will use the expertise of individual members to enhance the ability of the Board as a body, rather than allowing individual expertise of directors to substitute for judgments that should be made by the Board as a body.
- C. The Board shall follow the Bylaws in implementing a governance structure and operations that are accountable to MNA's members and its mission. In particular, it shall do the following:
  - 1. Establish standing committees with charters and require that directors actively participate in such committees in accordance with the committee charters.
  - 2. Conduct regularly scheduled board meetings and expect that directors will attend (unless they have an excused absence) and actively participate.
  - 3. Adopt and monitor policies that assure adequate oversight of the affairs of MNA, including of its officers and employees, adequate implementation of its programs, and compliance with the law.

- D. The Board shall assess its performance and the performance of individual directors at least annually. This self-assessment shall include monitoring of Board and director performance against policies related to governance and to relationships to the Executive Director and staff. This assessment may be conducted by a committee of the Board initially, especially with regard to the performance of individual directors, but the Board shall engage in a discussion and self-assessment of its performance at least annually.
- E. The Board shall engage in periodic evaluation of whether it is fulfilling its obligations by asking for member input or by conducting a survey of the nonprofit community in Montana and of parties interested in the nonprofit community in Montana.
- F. The Board shall direct, control and inspire MNA through careful organizational planning to assure that MNA is effectively pursuing its mission. The Board shall review its organizational plan at least annually and shall update it as needed to effectively pursue MNA's charitable mission.

Adopted by the Board on April 17, 2008.

Reviewed and Reinstated on May 16, 2017