

# The Essential Elements of a Fiduciary's Duties in Managing a Charity's Investment Portfolio and Advanced Considerations during Economically Challenging Times

Kathleen (Katie) Gerber  
Thompson & Knight

Danika H. Mendrygal  
Mendrygal Law, PLLC



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## First, Set the Stage

- Understand what you have
- Overall Structure
- Jurisdiction
- State entity form
- Tax Status – Federal and State
- UPMIFA – Texas, Model Code, Other States



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## “Fiduciary”

The term derives from the Latin word “*fiduciarius*,” relating to something held in trust. One court explained:

“The term “fiduciary” ... is derived from Roman law and means “a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.” Moreover, one is acting in a “fiduciary capacity” when the business which he transacts, or the money or property which he handles, is not his own or for his benefit, but for the benefit of another person, as to whom he stands in a relation implying or necessitating great confidence and trust on the one part and a high degree of good faith on the other part.” *In re Benites*, 2012 WL 4793469 (N.D. Tex. 2012).



“Adherence to the fundamental character of a nonprofit corporation is intended to be insured, in part, by the fiduciary duties imposed on officers and directors of such corporations. It is well established that officers and directors of a for-profit corporation owe a fiduciary duty to the corporation and its members. Directors and officers of corporations are bound to the exercise of the utmost good faith, loyalty, and honesty toward the corporation. The directors of a corporation have to see to it that the corporation had the benefit of their best judgment and act solely and always with reasonable care in good faith to promote its welfare.” *Summers v. Cherokee Children & Family Services, Inc.* 112 S.W.3d 486 (Tenn. App. 2002).



Excerpt from U.S. Supreme Court: “...to say that a man is a fiduciary only begins analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary? In what respect has he failed to discharge these obligations?” *SEC v. Chenery Corp.*, 318 U.S. 80, 85-86 (1942)

New Jersey Supreme Court: “A director is not an ornament, but an essential component of corporate governance. Consequently, a director cannot protect himself behind a paper shield bearing the motto, “dummy director.”” *Francis v. United Jersey Bank*, 432 A.2d 814 (N.J. 1981)



## Fiduciary Duties – Directors of Nonprofit Corporations

- Duty of Care
- Duty of Loyalty
- Duty of Obedience



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