



Come Play on Our Team!

www.WashingtonYouthSoccer.org
PHONE (253) 4-SOCCER · FAX (253) 925-1830 · TOLL FREE 1-877-424-4318

Washington Youth Soccer
500 S. 336th Street, Suite #100
Federal Way, WA 98003-6389

BOARD RESPONSIBILITIES IN THE CASE OF FRAUD OR EMBEZZLEMENT

Board of Directors

- Doug Andreassen President
Tom Ament Vice President
Mark Schuur Treasurer
Daren Mancini Secretary
Paula Griffin
Bill Hurme
Patrick Madden
William Nuttall
Greg Rogers
Tim Sekerak
Exequiel Soltero
Danny Vaughn
Chris Wood

District Commissioners

- Mike Todd District 1 Commissioner
Perry Woodford District 3 Commissioner
Ron Witherup Region 5 Director of Member Services
Stephanie Koerner District 6 Commissioner
Brian Cregg District 7 Commissioner

Washington Youth Soccer Office

Terry Fisher CEO

When a Washington Youth Soccer organization (district, association, club or team) discovers that one of its directors, officers, employees or volunteers has committed fraud or embezzlement, the board of that organization, as well as its parent organization, has certain responsibilities.

All Member Associations of Washington Youth Soccer are Washington nonprofit corporations and 501(c)(3) organizations. Many clubs are as well. In most cases, teams are not legal entities separate from their club. Instead, teams are delegated authority by their club to carry on its operations, often with a team manager and a treasurer. Usually, the team will have a bank account under the employer identification number of the club.

Below is a general list of considerations and recommendations which nonprofit boards should review when faced with a possible fraud or embezzlement. This list is not exhaustive, nor specific, and should not be relied on as legal advice. Any organization facing such a situation should strongly consider consulting with an attorney.

1. Board of Directors Fiduciary Responsibility. The board of directors of the affected organization has the fiduciary responsibility to resolve any situation that involves fraud or embezzlement. Because a team is a sub-unit of a club, the fiduciary responsibility for the funds that go through the team's bank account rests with the club's board of directors. Therefore, the resolution of the situation also rests with the club's board. The directors who serve on the board have legal and fiduciary responsibilities to act with diligence, care, confidentiality, in compliance with law and in the best interests of their organization in resolving the situation.

The fiduciary duty of loyalty, the requirement that a director act in the best interests of the organization, means that any member of the board who has a personal friendship with the perpetrator or whose children participate on a team with the perpetrator's child may be considered to have a conflict of interest. That is, their personal feelings of loyalty to the perpetrator may well come into conflict with their obligation to act in the best interest of the organization as a whole. Such personal interests should be disclosed to the board and the interested persons should most likely recuse themselves from the deliberation and decisions made on this issue.

The duty of loyalty also requires that the directors preserve the confidentiality of matters on which they are deliberating. This is particularly important in situations where a legal memorandum with recommendations from legal counsel is before the board. In such a case an attorney-client privilege is created, which protects the confidential nature of the contents of the memorandum. If the confidentiality is breached, the organization would lose the protection provided by the attorney-client privilege.

The statutory duty of care states that directors must exercise reasonable care when making a decision as a steward of the organization. This requires, among other duties, that the directors protect and manage the corporation's assets. As stated in the Washington State Secretary of State's Charity and Nonprofit Board Service guide, "oversight of appropriate internal controls will aid in the protection of assets and the prevention of fraud." The guide also states that "the board of directors has a duty to investigate warnings or reports of officer or employee theft or





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mismangement... In some situations the board may have to report misconduct to the appropriate authorities, such as the police or the Attorney General. Where appropriate, a director should consult an attorney or other professional for assistance."

- 2. A full accounting should be conducted to accurately calculate the amount taken, and the amount still owed.
3. It should be the primary goal of the organization's board to ensure that the perpetrator replaces all funds that were taken so that the organization is made whole.
4. It must be understood that the perpetrator has committed a crime by taking funds for his or her personal use.
5. A theft that a nonprofit organization incurs may have to be reported to the IRS on its annual Form 990. It may result in fines for the perpetrator, the organization, and the individual board members, and may risk the organization's tax-exempt status.
6. The perpetrator should be immediately removed from all bank accounts, credit or debit cards and any other access to funds that belong to the organization.
7. The perpetrator should be immediately removed from any position with the organization.
8. The board should demand of the perpetrator full repayment of all missing funds by a date certain, within a short period of time.
9. The board should strongly consider reporting the perpetrator's crime to the authorities. It is in keeping with Washington Youth Soccer's code of ethics that the perpetrator be held accountable for his or her actions and it is the appropriate model for the players. In addition, it protects the organization and its board from any accusation of complicity or failure to exercise its fiduciary duties as required by law.
10. The board should institute financial controls, or strengthen the financial controls that are currently in place, to ensure that this kind of situation cannot happen again.
11. The board should carefully document its decisions and rationale in its meeting minutes.
12. The board should notify their association and Washington Youth Soccer about the situation and its resolution. This will help ensure that the perpetrator is not appointed or elected to a position of responsibility with other soccer organizations in Washington.
13. The board may consider a team parent meeting to explain the situation and the actions taken and planned to be taken by the board. An officer, who is not a personal friend of the perpetrator or involved with the team, should chair the meeting and one or two other disinterested board members should attend.

Again, this document provides guidelines and considerations. It is not legal advice, and should not be used as such. Any organization facing such a situation should consider speaking with an attorney about the specifics of that situation.

