

<b>ADMINISTRATIVE DIVISION</b> BTRU Board of Trustees		<b>POLICY NUMBER</b> BTRU 3.02
<b>POLICY TITLE</b> Fiduciary Duties of Trustees		
<b>SCOPE OF POLICY</b> USC System		<b>DATE OF REVISION</b> June 23, 2023
<b>RESPONSIBLE OFFICER</b> Secretary of the Board of Trustees		<b>ADMINISTRATIVE OFFICE</b> Board of Trustees

## **PURPOSE**

The fiduciary duties of a governing board and of each of its members are the most basic obligations of board members. The fiduciary duties of a governing board are legal duties imposed by state law and reflect many leading governance practices.

Sections 59-117-10, *et seq.*, of the Code of Laws of South Carolina (1976), as amended, define the legal fiduciary duties and authorities of the University of South Carolina (USC) Board of Trustees.

The purpose of this policy is to define the fiduciary duties of a board and its members broadly, to focus on the fiduciary duties of the USC Board of Trustees and its members specifically, and to outline the consequences for a Trustee's failure to uphold his or her fiduciary duties to the University of South Carolina.

## **DEFINITIONS**

**Board of Trustees or Board:** The University of South Carolina Board of Trustees, the governing board of the University System.

**President:** President of the University System and the University System's Columbia campus, whose powers and authorities are defined by sections 2 and 3 of Article XII of the Bylaws of the Board of Trustees.

## **POLICY STATEMENT**

The fiduciary duties of the University of South Carolina Board of Trustees are derived from the authorities and obligations given to the Board by state law, specifically by Sections 59-117-10, *et seq.*, of the Code of Laws of South Carolina (1976), as amended. This policy (BTRU 3.02) reviews the basic principles of fiduciary duty and then outlines the consequential requirements of USC's Board of Trustees in order to define effectively and efficiently Trustees' obligations as fiduciaries.

**The General Principle of Fiduciary Duties:** The term "fiduciary" derives its meaning from the Latin word *fiduciarius*: held or holding in duty and trust. As such, a fiduciary is a steward who

holds property in duty and trust, and a fiduciary duty is the steward's obligation to hold property in duty and trust. In contemporary, legal terms, "fiduciary" and "fiduciary duties" apply not only to stewardship of physical property but also to broader duties to an enterprise's physical and financial assets and to its intangible assets, including the reputation of the enterprise.

Fiduciary duties and their related effective governance principles, which complement one another, are typically defined as follows:

- A. Duty of loyalty: To act in good faith and deliberate in support of the institution and never in pursuit of personal or private interests or in support of third parties; to avoid conflicts of interest and any appearances of conflict of interest.
- B. Duty of care: To act in good faith and deliberate in the best interests of the institution; to exercise that degree of care and diligence that an ordinarily prudent person would exercise under the circumstances; to protect the institution's short- and long-term prosperity; to conduct work on behalf of the institution thoroughly, with preparation, with proper attendance, and with proper attention.
- C. Duty to maintain confidentiality: To maintain confidentiality, while serving as a fiduciary and to continue keeping confidential the matters addressed during one's service as a fiduciary even after completing one's service as a fiduciary.
- D. Duty of obedience: To ensure that the institution operates in compliance with law, policy, and other governing standards; to evaluate this compliance periodically; to evaluate periodically any standards such as mission statements that the institution imposes on itself; to ensure fidelity to the mission and purposes of the University; and to evaluate the fulfillment of fiduciaries in support of the institution.
- E. Duty to serve the public interest: To execute work in a fashion that supports benefits to the public and to ensure that the institution supports benefits to the public, especially as this may be defined in an institution's statement of mission. (This duty should not be interpreted to supersede the fiduciary's duty of loyalty, to act and deliberate in support of the institution and never in pursuit of personal or private interests or in support of third parties. A fiduciary's duty to the institution is primary. A fiduciary's duty to the public is secondary.)

A fiduciary's work and decisions are judged by a standard of reasonableness, without expectation that the fiduciary is or will become an expert regarding the details of an enterprise. As such, a fiduciary may reasonably heed the advice of committees, administrators, and experts as the fiduciary forms an opinion or decides on a course of action.

Fiduciary conduct and fulfillment of fiduciary duties are the most basic expectations of a governing board and its members. Fulfillment of fiduciary duties is necessary before a board might evolve to pursue more strategic and sophisticated work.

**The Principle of Fiduciary Duties as It Applies to the University of South Carolina Board of Trustees:** Sections 59-117-10, *et seq.*, Code of Laws of South Carolina (1976), as amended, denote many of the fiduciary responsibilities of the University of South Carolina Board of

Trustees. Article III of the Board’s Bylaws states further that each Trustee will “[h]onor his/her fiduciary responsibility to the University System and the Board as a whole.” Experts and scholars of the governance of U.S. institutions of higher education interpret the fiduciary duties of governing boards to yield the following expectations of board members, which this policy articulates as specific to the University of South Carolina Board of Trustees. As such, the Board of Trustees and its individual members are bound by duty to fulfill the following obligations:

1. Execute the legal responsibilities of the Board as articulated by Sections 59-117-10, *et seq.*, Code of Laws of South Carolina (1976), as amended, and as these statutory responsibilities are referenced or repeated in the Board’s Bylaws.
2. Execute the letter and spirit of the Board’s Bylaws.
3. Execute and adhere to all relevant University System policies and standards.
4. Act as a corporate and governing body, whereby decisions and actions are determined by Trustees as a Board in appropriate meetings and not by an individual Trustee and whereby individual Trustees act in support of the Board upon the Board’s decisions and actions thereafter.
5. Ensure generally, and with specific attention to the South Carolina Ethics Act, the legal and ethical compliance of the Board, the University System, its officers, its administrators, its employees, its students, and its practices.
6. Ensure that the Board and the University System conduct work with integrity.
7. Maintain the University System’s preparations for the challenges of the present while making certain that the University System’s future survival and its future thriving are assured due to planning and the stewardship of adequate resources.
8. Oversee the University System in a manner that promotes and enables sound financial and operational performance and planning—including but not limited to the approval of annual appropriation requests to the General Assembly and the approval of the annual budget.
9. Steward the University System’s physical assets, finances, and other resources—while simultaneously stewarding the University System’s intangible assets such as its reputation, its culture, and its values.
10. Select and retain the President while adhering to policy [BTRU 3.01 Presidential Candidate Search Committee](#) and evaluate the President’s performance on an annual basis.
11. Monitor and encourage the fulfilment of the University System’s general mission of teaching, research, and service, while applying similar attention to the more detailed mission of each individual university and branch campus of the University System.
12. Protect the academic freedom of the University System and of each individual university and branch campus of the University System. (For this purpose, “academic freedom” of

an institution may be defined as determined by the U.S. Supreme Court as the right of an independent institution to determine who teaches, what is taught, how courses are taught, and who is admitted for study [*Sweezy v. New Hampshire*, 354 U.S. 234 (1957)].)

13. Hold the Board, its Committees, and its members accountable for performance.
14. Hold the University System, its officers, and its administration accountable for performance.
15. Attend, prepare for, participate in, and engage in meetings of the Board and its Committees, along with the Board's work in general, properly and regularly.
16. Keep in strict confidence the work of the Board and the University System that requires legal and ethical protection, in accordance with the South Carolina Freedom of Information Act
17. Apply focus, interest, and knowledge to the entire University System without favoring individual campuses, colleges, schools, programs, or initiatives.
18. Demonstrate conduct and decision-making motivated solely by the best interests of the University System and never by personal interests or benefits or by the needs or opinions of stakeholders.
19. Conduct work and deliberations with reasonable judgment, relying on the expertise supplied by experts and administrators to supply facts and detail.
20. Operate in support of the interest of the public and in support of the University System's public mission, while never placing the interest of the public above the interest of the University System itself.
21. Avoid and address conflicts of interest and appearances of conflict of interest in accordance with policy [BTRU 1.18 Conflict of Interest](#).
22. Avoid undue external political influence and report any attempts at leveraging undue political influence, in accordance with policy [BTRU 1.19 Protecting the Institution from External Influences](#).

## **PROCEDURES**

Alleged instances of violations of fiduciary duties and governance practices as set forth herein should be referred to the Governance Committee of the Board of Trustees. An individual Trustee's failure to uphold his or her fiduciary duties to the University of South Carolina may be cause for the Board of Trustees to recommend that Trustee's censure, sanction, or removal, in accordance with policy [BTRU 2.03 Censure, Sanction, or Removal of a Board of Trustees Member](#).

## **RELATED UNIVERSITY, STATE AND FEDERAL POLICIES**

[Bylaws of the Board of Trustees](#)

[BTRU 1.18 Conflict of Interest](#)

[BTRU 1.19 Protecting the Institution from External Influences](#)

[BTRU 2.03 Censure, Sanction, and Removal of a Board of Trustees Member](#)  
[BTRU 3.01 Presidential Candidate Search Committee](#)  
[Sections 8-13-100, \*et seq.\*, Code of Laws of South Carolina \(1976\), as amended](#)  
[Sections 30-4-10, \*et seq.\*, Code of Laws of South Carolina \(1976\), as amended](#)  
[Sections 59-117-10, \*et seq.\*, Code of Laws of South Carolina \(1976\), as amended](#)  
[Sweezy v. New Hampshire, 354 U.S. 234 \(1957\)](#)

#### **SUGGESTED RESOURCE**

Statement on the Fiduciary Duties of Board Members (2015) of the Association of Governing Boards of Universities and Colleges Board of Directors

#### **HISTORY OF REVISIONS**

<b>DATE OF REVISION</b>	<b>REASON FOR REVISION</b>
August 14, 2020	New policy approval
June 23, 2023	Edited text to differentiate examples of fiduciary duty from examples of good governance. Applied capitalization style. Revised for clarification.