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In addition to state reporting requirements or regulations of charities, nonprofit corporations and their boards are subject to federal good-governance regulations. While they are not as heavily regulated as for-profit companies, certain standards apply to nonprofit corporations.

**Responsibilities of Nonprofit Boards**
The board of directors is the body ultimately responsible for all decisions made by a nonprofit organization. A corporation’s nonprofit status does not excuse its board members from the same general responsibilities and duties as their for-profit counterparts. Board responsibilities include:

- Selecting and evaluating the CEO.
- Reviewing and adopting long-term strategic directions and objectives.
- Ensuring the organization has the necessary resources to fulfill its mission.
- Monitoring the performance of the organization’s management.
- Ensuring that the organization operates effectively and efficiently.
- Finding suitable board candidates and carrying out an effective system of board governance.

Nonprofit board members have a fiduciary responsibility to ensure that the organization’s assets are being used for the public’s benefit. As fiduciaries, board members have a duty to act unselfishly and to give the organization the benefit of their knowledge and skill.

Board members must exercise this duty in good faith. This duty can be breached in two ways – by failing in the duty of attention or failing in the duty of care. The duty of attention is breached when a director fails to supervise the corporation. The duty of care is breached when a director fails to make an informed decision.

As with for-profit boards, a nonprofit board member can be protected from breaches of the duty of care by the business judgment rule. Thus, if a board member acts in good faith with the requisite level of care and within his or her authority, he or she is not liable even if the decision
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turns out to be the wrong one for the organization. Nonprofit boards should adopt policies and procedures that promote accountability and transparency.

References:
National Council of Nonprofits Guide to Boards and Governance
Principles for Good Governance and Ethical Practice
Revised Model Nonprofit Corp Act of 1987
National Council of Nonprofits Financial Management Resource Center

Sarbanes-Oxley Act of 2002 and Nonprofit Corporations

Generally, all provisions of the Sarbanes-Oxley Act of 2002 apply only to publicly traded companies that are regulated by the U.S. Securities and Exchange Commission. Two sections of the act omit this limitation, indicating that the law could apply to nonprofit corporations in those sections. Section 802 makes it a crime to knowingly alter, destroy, conceal or falsify any record or document with intent to impede, obstruct, or influence a federal investigation or the administration of any other federal matter.

Section 1107 provides protection to whistleblowers and also applies to tax-exempt entities. This section makes it a felony to retaliate against an individual for providing law enforcement authorities with truthful information relating to the commission, or possible commission, of any federal offense. That statute does not require a nonprofit corporation to develop a whistleblower policy; but as a method of avoiding liability and ensuring good governance, a nonprofit board of directors may want to adopt such a policy.

Broadly speaking, the law was intended to promote good governance and transparency. The inclusion of nonprofit corporations under these provisions should be viewed as an intentional act to promote those principles.

References:
Hurwit & Associations Sarbanes-Oxley and Nonprofit Organizations
Sarbanes-Oxley Act of 2002