

## **An Introduction to Fiduciary Responsibilities for Tribal Council Members: A Panel Discussion Topic at the Native American Finance Officers Association Spring Conference 2008**

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A fiduciary is defined in the dictionary as a “Person standing in a special relationship to trust, confidence or responsibility to another.” [*Encarta, North American, 2007*]. For Tribal Council members, their role as a fiduciary covers a range of issues and interests, and generally falls into three broad categories: being a Decision Maker, a Protector and a Leader. Because of the varied interests and issues demanding their attention, many Tribal Council members find it difficult to tell whether they are meeting their fiduciary responsibilities. The key is to establish a well-defined process that can be applied to nearly every situation. The goal for the fiduciary should be to follow that process, so that, regardless of the outcome, there is a standard for evaluating their responsibilities. If the process is followed, then the fiduciary responsibility has been met. This is extremely important because fiduciary liability arises when the process is not defined and/or is inconsistently applied.

An ideal process is one that Tribal Council can apply to almost every situation: a circular process that has four steps. First, it starts with developing and following a mission statement, goals or vision. Second, it means taking action steps and evaluating the results of those steps. Third, it involves interpreting the results and taking corrective actions, if needed. And finally, it requires revisiting the goals or vision and evaluating whether adjustments need to be made to the overall mission.

When developing your own structured process, it helps to look at some specific applications where it might be used. One helpful example is to outline a process a Tribal Council can use with its tribal programs. Though it may be the process you already have in place, you should ask the following questions:

1. Does each of our programs have clear goals and objectives?
2. Does each program have a specific action plan to meet its goals and objectives? How are the programs evaluated and how often? What information is the Tribal Council provided to evaluate the success of each program in meeting its objectives? Is it sufficient to evaluate success; if not, why not?
3. What steps can be taken to make the program more successful? What is a reasonable timeframe for making changes?
4. Do the goals and objectives of the program need to be revised?

A second example is with the Tribal Council’s financial management. Sound financial management is important to every person, government, corporation and organization. Some tribes have adopted codes relating to investment fiduciary responsibilities, but every Tribal Council should at least have a well-documented process dedicated to its maintaining its finances. This should start with outlining the tribe’s financial goals and objectives. These could be as simple as protecting and growing the financial assets of the Tribe, or they could be more detailed with specific goals for individual accounts. A great tool for the Tribal Council is an Investment Policy Statement (IPS). A Tribe’s IPS serves to document the process by outlining, among other considerations: the Tribe’s financial goals and objectives; investment risk

parameters; the action steps for investing the Tribe's funds, the performance review process, including performance benchmarks; and the procedure and authorizations for making changes.

While not necessarily a fiduciary responsibility, communicating the process and providing as much information as possible to the Tribe is important because it adds to a more mutual understanding between a Tribe and its leadership.

With a well-defined process in place, it is easier to evaluate the Tribal Council's actions against its fiduciary responsibilities. It is also important to evaluate whether a Tribal Council member meets these additional fiduciary qualities:

1. A fiduciary should be objective and fair, loyal and avoid conflicts of interest.
2. A fiduciary should be engaged and knowledgeable, seeking staff and outside assistance when needed.
3. A fiduciary must follow all applicable laws, rules and regulations.

It is important to note that the Tribal Council should have access to the tools, information and support it needs to meet its fiduciary responsibilities. Tribal Council members can look to their staff to help collect the information they need to do their job. Outside auditors and advisors can also help the Tribal Council with information and education. Written policies and procedures will help the Tribal Council manage Tribal staff and outside advisors to ensure the Tribe operates effectively and that there are adequate checks and balances in place. A clear delineation between Tribal Council and staff roles and authority is essential.

The decisions made by the Tribal Council today will shape the Tribe – and its people – for years to come. By establishing and following a well-defined process that can be applied to nearly every situation, you can help ensure that the decisions made by the Tribal Council are always in the best interest of the Tribe.

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