



September 2019 Newsletter

Protect Your Board—and Yourself **The Vital Importance of Nonprofit Fiduciary Training**



Thank you to Daryl Rees (bio below), Nonprofit and Business Law Attorney at Johnston/Thomas, Attorneys at Law, for contributing to this article.

It's an honor and a privilege to serve on a nonprofit board. It's an opportunity to express your passion and commitment to a cause, contribute your expertise and talents to your community and add to your resume. It's also a serious responsibility—and can be an equally serious risk.

All too many well-intentioned board members go into the role without any real understanding of their true duties and legal obligations, and all too many boards (even decades-long ones!) lack the necessary, strong governance policies that keep their organization and the people in it safe.

No matter how competent and conscientious a driver you are, you wouldn't drive a car without good insurance; don't participate on a board without good governance.

Knowledge is Power—and Protection

If you're currently serving or considering serving on a nonprofit board, you need to know your fiduciary responsibilities and why they're so important. It's not enough for your heart to be in the right place; when you're uninformed, you're likely to be noncompliant—and thus exposed to potential lawsuits not only against the organization but against you and your assets as an individual board member as well.

That's right: as a nonprofit board member, you take on *personal* liability.



To empower and protect yourself, you must educate yourself about nonprofit governance and compliance. The smartest and most efficient way to accomplish this is to participate in whole-board fiduciary training so that all board members and key executives are armed with a thorough understanding of board roles, responsibilities and liabilities. In an increasingly complex and litigious world, you'll gain the confidence and peace of mind in knowing that every board decision is based on a solid foundation and well within the law.

Fiduciary Training Matters

With quality fiduciary training, you'll gain a vital understanding of:

- Your ethical duties as a board member, including most notably:
 - Duty of Care
 - Duty of Loyalty
- The hierarchy of legal authority (note: none can be in conflict with any item above it):
 - California Corporations Code
 - Articles of Incorporation
 - Bylaws
 - Board resolution
 - Meeting minutes
- Whether your organization's Articles of Incorporation are correct and compliant with the nonprofit portion of the California Corporations Code and all provisions of the California Nonprofit Integrity Act
- The need for and purpose of effective bylaws
- How to develop and maintain structures for ensuring compliance with all rules and regulations set forth by the offices of the:
 - Internal Revenue Service (IRS)
 - California Franchise Tax Board
 - Secretary of State of California
 - Attorney General of California
- Ways to protect your board from liability both as an entity and as individuals, such as:
 - Instituting good corporate governance
 - Securing Directors and Officers (D&O) Liability Insurance
 - Developing an Indemnification Policy

Training can also address practical concerns and frequent misunderstandings about board organization, running board meetings, documenting minutes, voting and more, including common questions such as:

- What distinguishes officers from directors?
- What kinds of people count as “interested persons” in the IRS 49% rule?
- Who can—and cannot—vote on board resolutions?
- What counts as proper meeting notice?
- What constitutes a quorum?
- Can board members vote by email in lieu of meeting?
- Can we vote by proxy?
- What things should you consider when vetting potential new board members?



While none of these matters may seem particularly complicated, they can be and typically aren't well communicated or routinely taught. Or they're presented with so much off-putting “legalese” that most board members find it easier to ignore or gloss over them and assume the best. With proper fiduciary training, however, you can serve safely and confidently within a legal system that is already in place to protect you, your organization and the mission you serve.

Do the Good Work

Fiduciary training is likely to reveal gaps and uncover deficiencies in the way your board is currently run. While that means you do indeed have some work ahead, it also means you face an opportunity to lead the way to establishing new policies, board structures and best practices that will boost the health, strength and durability of your organization.

Many educated boards, for instance, will recognize a pressing need for new bylaws. It can feel like a daunting, overwhelming and possibly expensive prospect, but clear, thorough, compliant bylaws add priceless value to your nonprofit in the form of security. Some boards choose to borrow bylaws from other similar nonprofits; this can indeed be a great way to get started and save preliminary attorney fees. Just be sure to enlist a lawyer—one who understands nonprofit law, specifically—to review and revise the bylaws before adoption.

Once you've educated your board and put strong governance policies in place, you might also develop a nominating governance committee, onboarding process and board manual for getting new board members up to speed on your organization's foundational principles. These efforts help ensure the consistency, stability and wellbeing of your board.

Reap the Rewards

You see yourself as volunteer trying to make a difference by serving on a nonprofit board; the law, however, sees you first and foremost as the leader of a corporation. Embrace both roles! Lead the way to building an educated and empowered board and implementing strong governance policies that keep your board safe and the commendable work you do protected. You'll minimize risk and reap the personal and professional rewards of maximizing your impact now and well into the future.

Thank you to our contributor:

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Daryl's law practice focuses on nonprofit law, general business law, and estate planning. Having spent 20 years as a nonprofit executive, Daryl specializes in nonprofit law covering nearly every area of law related to nonprofit corporations, including formation, bylaws, directors and officers, board activity, solicitations, charitable giving and donations, tax-exempt matters, nonprofit operations, employment and independent contractor issues, corporate changes, and dissolution. He serves a variety of nonprofit clients throughout the San Francisco Bay Area including private charitable foundations, churches and faith-based organizations, public benefit corporations, and mutual benefit organizations.

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