

INTRODUCTION

Over the past several years, many groups and organizations have placed a great emphasis on nonprofit governance. Watchdog groups, such as the Better Business Bureau’s Wise Giving Alliance and Charity Navigator regularly rate charities based in large part on the organization’s governance structure. State regulators also require nonprofits to provide more information about their governance structures, and donors, foundations and the press also have placed a greater emphasis on nonprofit governance. In fact, many of the recent nonprofit scandals have been traced back to insufficient oversight of the charity’s operations by the organization’s board of directors.

Public Counsel wants to assist you with strengthening your organization’s Board governance. One of the most critical ways to assist Board members is by educating them about their fiduciary duties. As the Independent Sector states in its *Principles for Good Governance and Ethical Practice[[1]](#footnote-1)*:

The board should establish an effective…process for educating …board members to ensure they are aware of their legal and ethical responsibilities, are knowledgeable about the programs and activities of the organization, and can carry out their oversight functions effectively . . . Every member should be made aware of the broad oversight responsibilities of the board and of the specific legal and ethical responsibilities of individual members. The board should establish and include in the orientation process clear guidelines for the duties and responsibilities of each member.

To help you with this task, Public Counsel is happy to provide you with the attached orientation manual for new directors. This manual has been adapted for use by California nonprofits from a work originally created by the D.C. Bar Pro Bono Program for nonprofits incorporated in Washington, D.C. We are grateful to the D.C. Bar Pro Bono Program for permission to revise and distribute this material for use by nonprofit organizations incorporated in California.

PURPOSE OF MANUAL

The purpose of this manual is to provide your organization with a template that will help you develop an orientation manual for new (and existing) directors. This manual:

* Allows you to set forth the mission and goals of your organization;
* Sets forth the basic legal responsibilities of members of the Board of Directors;
* Discusses the Board’s role in overseeing the financial and fundraising practices of the organization;
* Describes the safe harbor requirements for setting executive compensation;
* Emphasizes the importance of evaluating the performance of management and the board; and
* Discusses the Board’s role in risk management and strategic planning.

HOW TO USE THE MANUAL

This manual is a template for you to adapt to meet the needs of your organization. You will need to add certain information about your organization, so that it meets your needs. As you read through the manual, you will notice that there are blank sections for you to complete. For example, in Section 1, you will need to add information about your organization’s programs, history and major accomplishments. Occasionally, you will need to consult your organization’s bylaws in order to properly fill in the missing language (e.g., the organization’s notice procedures, as outlined in its bylaws). Optional language is bracketed and noted as optional.

Each time you see words in brackets and in bold type, this means you need to substitute the correct words for the bracketed words. For example, when you see **[Name of Nonprofit]**, you should replace the bracketed words with the name of your nonprofit. Thus, if your organization’s name is The Very Useful Charity of Los Angeles, you should replace **[Name of Nonprofit]** with The Very Useful Charity of Los Angeles every time it appears in the text.

You will also see **[chief paid staff member].** Replace this term with executive director, CEO, or whatever other title you use for the most senior member of your staff. Similarly, when you see **[chief financial officer]**you may want to keep that title, if that is what you call your top finance staff member, or you may want to replace it with Treasurer, Director of Finance, or another title.

The manual occasionally includes footnotes which explain when a particular sentence or section should or should not be included in the final manual. Please delete all such footnotes before finalizing the manual.

Finally, in the footer at the bottom of each page, please insert the month, day, and year that you prepare the manual, and change the date every time that you update the manual. This will allow you to keep track of when the manual was last updated, and you will know if the manual has been changed to incorporate any changes in your structure, policies, etc.

**Before you adapt this manual for your organization’s use, you should consult with an attorney. The attorney will help you adapt the manual so that the information is legally correct and is best suited for your organization.**

APPENDIX

In addition, we have prepared a sample appendix, with a suggested list of documents and policies you should provide new directors for their reference. Throughout the manual you will see references to various policies and procedures that your organization may want to adopt.

The appendix contains samples of such policies, such as conflict of interest and record retention policies. If your organization has already adopted one of these policies, you should include your own organization’s policy in the appendix, rather than the sample. If there is a policy that you have not adopted but want to adopt, you may use the sample policy in the appendix as a template for developing a policy for your organization. If there is a reference in the manual to a policy you do not wish to adopt, you should delete the reference when it appears in the manual.

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**Orientation Manual for New Directors**

**of**

**[Name of Nonprofit Organization]**

**Table of Contents**

**Introduction**

1. [**History and Mission of [Name of Nonprofit]**](#_History_and_Mission_1)
2. [**Legal Responsibilities of a Board Member**](#_Fiduciary_Responsibility_of)
3. [**Fundraising**](#_Fundraising)
4. [**Board’s Responsibility for Financial Oversight**](#_Board’s_Responsibility_for)
5. [**Overseeing the Performance and Compensation of Management**](#_Overseeing_the_Performance)
6. [**Risk Management and Directors’ and Officers’ Insurance**](#_Risk_Management)
7. [**Board Evaluation**](#_Board_Evaluation)

[**Conclusion**](#_Conclusion)

[**Appendices**](#_Appendices)

**Introduction**

Welcome to the Board of Directors. We appreciate your willingness to serve. **[Name of Nonprofit]** fills an important need in our community, and we believe that you will find serving on the Board a rich and rewarding experience.

As a director, you are responsible for overseeing the operation of **[Name of Nonprofit].** Along with your fellow members of the Board of Directors, you are responsible for maintaining the commitment to our organization’s mission, establishing our strategic direction, ensuring our compliance with all applicable legal requirements, and maintaining our organization’s financial well-being. This involves a great deal of responsibility. The purpose of this manual is to help you understand your rights and responsibilities as a director so that you can effectively carry out these duties. We encourage you to refer to it whenever you have questions about your Board service.

# History and Mission of [Name of Nonprofit]

1. Mission Statement**: [Name of Nonprofit]** is a California nonprofit public benefit corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code whose mission is:

**[Mission statement]**

As a director, your first job is to serve **[Name of Nonprofit]**’s mission and to ensure that activities carried out by the organization help further that mission. When reviewing the organization’s budget and future activities, you should evaluate them against the mission statement and determine whether the proposed use of **[Name of Nonprofit]**’s assets is consistent with the organization’s mission, as stated in its articles of incorporation and bylaws, and with its tax-exempt status under the Internal Revenue Code and the California Revenue and Taxation Code.

1. History of the Organization**: [Name of Nonprofit]** was founded in \_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## Programs and Services:

## Recent Accomplishments:

1. Elevator Pitch:An Elevator Pitch is a short summary used to quickly and simply define a profession, product, service, organization, or event and its value proposition. The name “elevator pitch” reflects the idea that it should be possible to deliver the summary in the time span of an elevator ride, or approximately thirty seconds to two minutes. When speaking to potential donors, volunteers, or the general public, it is imperative that Board members are consistent with what we say about **[Name of Nonprofit].** Here are the key points that should always be conveyed when talking about **[Name of Nonprofit]:**

# Legal Responsibilities of a Member of the Board of Directors

As a director, you have certain legal responsibilities that you must follow. This section is designed to give you some of the information you need to carry out those responsibilities. However, this material can only provide you with general information. It cannot address every situation that may arise and should not be construed as legal advice. Therefore, if the Board has a specific situation with respect to which it needs guidance, it should consult with **[Name of Nonprofit]**’s legal counsel to determine what is appropriate for the organization.In addition, if you have questions about any potential legal liability you may have as a director, you should consult Section 6 of this manual, Risk Management and Directors’ and Officers’ Insurance.

* + - 1. The Tone at the Top:The “tone at the top” refers to the ethical climate created in an organization by its leadership. Through your leadership on the Board, you can foster a climate whereby the directors, employees, and volunteers act in a manner that upholds the highest ethical standards of **[Name of Nonprofit]** while carrying out their duties.It is important to create this expectation for yourselves and others. If you and your fellow directors appear unconcerned with maintaining high standards, this attitude will be observed by the employees and volunteers, and it will impact their behavior as well.

In particular, the Board should make clear that, in making decisions, it is doing what it believes is in the best interests of **[Name of Nonprofit]** to help carry out its mission. It is also the Board’s responsibility to ensure that **[Name of Nonprofit]** fully complies with all applicable federal and California state laws and regulations.

[In addition, as a director, you are expected to comply fully with **[Name of Nonprofit]**’s Code of Ethics, which includes the Ethics Policy covering gift acceptance *(see Appendix M)* and the Conflict of Interest Policy *(see Appendix K)*. You and the other members of the Board are responsible for ensuring that all others comply with these policies as well. In particular, the Board is responsible for implementing **[Name of Nonprofit]**’s Whistleblower Policy *(see Appendix N)* and for ensuring that any claims of wrongdoing by a director, officer, employee, or volunteer are fully and fairly investigated, and that there is no retaliation against anyone bringing a claim in good faith.]

* + - 1. Duty of Care**:** The first of the two main fiduciary duties (i.e. duties that arise due to a relationship of trust) you owe as a director is the duty of care. The duty of care requires a director to act in a reasonable and informed manner when participating in the board’s decisions and its oversight of the corporation’s management. The duty of care requires a director to be informed and to discharge his or her duties in good faith, with the care that an ordinarily prudent person in a like position would reasonably believe appropriate under similar circumstances, and exercise independent judgment when making decisions on behalf of **[Name of Nonprofit]**. The duty of care includes a duty to reasonably inquire into matters that do not make sense on their face. The duty of care also requires that directors comply with all federal, state, and local laws that apply to the organization.

The Board may delegate day-to-day duties to **[Name of Nonprofit]**’s senior management, subject to the Board’s review and oversight. The Board may delegate certain Board functions to committees of the Board. The duties that can be delegated to committees of the Board are limited by law and are typically specified in the organization’s bylaws. (*See Appendix P for list of committees*).

In performing the duties of a director, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which the director believes to merit confidence, so long as the director acts in good faith, after reasonable inquiry when the need is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

However, you may not delegate your personal responsibilities as a member of the Board to others. You and your fellow directors bear ultimate responsibility for determining what is best for the organization.

* + - 1. Duty of Loyalty: The second main fiduciary duty you owe as a director is the duty of loyalty. The duty of loyalty requires you to act in the best interests of **[Name of Nonprofit]**, rather than in your personal interest or for the benefit of some other person or organization. In particular, the duty of loyalty requires you to avoid conflicts of interest that are detrimental to the corporation. The IRS recommends that tax-exempt corporations adopt a written conflict of interest policy to address potential conflicts of interest involving their directors, officers, and other employees. As a director, you must disclose to the Board any potential conflict of interest and also refrain from participating in any decision of the Board in which you have such a conflict.

You cannot take advantage of a business opportunity that would be of interest to **[Name of Nonprofit]** without first offering it to the organization. For example, if you are looking at a new building for **[Name of Nonprofit]** and you see a building for sale at a price affordable to **[Name of Nonprofit]**, you may not buy the building for yourself or your business without first disclosing to **[Name of Nonprofit]** the fact that the building is for sale and allowing **[Name of Nonprofit]** an opportunity to bid on the property.

In addition, under California laws, you cannot borrow money from **[Name of Nonprofit]** nor can you authorize **[Name of Nonprofit]** to loan money to any officer or other director of the organization unless approved by the Attorney General. There are a few limited exceptions to this rule, including for advances of expenses, payment of life insurance premiums or a secured loan to help the director or officer finance the purchase of a principal residence (only if this is necessary to retain the director or officer’s services).

The Board has adopted a Conflict of Interest Policy that applies to all directors and senior managers of **[Name of Nonprofit]** *(see Appendix K)*. **[Name of Nonprofit]** also asks each director to fill out an annual Conflict of Interest Questionnaire *(see Appendix L)*.As a director, you must familiarize yourself with the Conflict of Interest Policy and ensure that you and your fellow directors comply with it.

* + - 1. Charitable Trust Doctrine**:** Under the charitable trust doctrine, a donor’s charitable contributions to a nonprofit corporation are subject to any valid legal restriction imposed by the donor at the time of contribution. These restrictions impose a “charitable trust” on the assets, binding the nonprofit to use them for the purposes for which they were given. For example, if an individual gives a donation to [**Name of Nonprofit]** for the express purpose of supporting a particular program, [**Name of Nonprofit]** must use the donation for that program. See Section 4.B.1 for more information on designated donations.

Even when there is no donor-imposed restriction, assets accepted by a nonprofit corporation are restricted by operation of law and may only be used for the specific charitable purposes set forth in the Articles of Incorporation (*see Appendix A*). As a director, your duty of care requires you to ensure that [**Name of Nonprofit]**’s assets (including revenues generated by performance of charitable activities, i.e. fee-for-service) must be used to further the charitable purposes in [**Name of Nonprofit]**’s Articles of Incorporation. The duty of care requires that directors ensure that the assets of the corporation are being used consistent with the charitable trust imposed by donors or the Articles of Incorporation.

A nonprofit corporation is free to change its charitable purpose by amending its Articles of Incorporation. However, funds received prior to amending the Articles of Incorporation may not be used to fund a new program, if that program would not be permissible under the previous version of the Articles of Incorporation. For example, if the Articles of Incorporation of [**Name of Nonprofit]** specify that the charitable activities must be confined to Los Angeles County, the charitable assets of [**Name of Nonprofit**] may not be used to fund programs in Kern County. If [**Name of Nonprofit**] were to amend its Articles of Incorporation to remove the express geographic limitation, then funds raised after the Articles were amended could be used to fund activities in Kern County, but funds raised prior to the amendment may only be used in Los Angeles County.

* + - 1. Confidentiality:You should not disclose information about **[Name of Nonprofit]**’s activities unless the Board decides to make the information public, or unless the information is a matter of public record.
      2. Board and Committee Meetings and Minutes**:** Board meetings are an opportunity for senior staff to update board members on the activities of the organization, to discuss key strategic issues, and to deliberate and vote on corporate decisions that require approval of the board (e.g., approving a budget, hiring senior staff, adopting a corporate policy).The duty of care requires the board to meet at least once per year (sometimes called the “annual meeting”) although typically directors meet more frequently. **[Optional: If bylaws require meetings at a specified frequency or a minimum number of meetings per year, describe requirement].**

As a director, it is important that you demonstrate your commitment to the organization by regularly attending Board meetings and meetings of the committees of which you are a member. This is required by your duty of care, and will allow you to stay informed of **[Name of Nonprofit]**’s activities. In turn, the organization will benefit from the skills you bring to the Board.

There are ways you can attend meetings without being physically present. For example, you can participate via conference call, provided you can hear all the other participants in the meeting and they can hear you.[[2]](#footnote-2) However, being a member of the Board of Directors is a personal responsibility. You cannot delegate this responsibility to others. Therefore, you cannot give someone else the authority to attend a Board meeting or vote on your behalf. You cannot vote by proxy.

You should be given advance notice of each meeting so that you can prepare for the meeting and make plans to attend. The amount of advance notice for each type of meeting is specified in the bylaws. [**Summarize notice requirements in bylaws].** If you do not receive the proper amount of advance notice, you can still attend the meeting and participate.

There may be situations where the fact that you did not receive proper advance notice of a meeting may be detrimental to the organization. In such case, you have the right to object to the fact that you did not receive proper notice of the meeting. However, if you attend the meeting you must protest improper notice before or at the commencement of the meeting. If you participate in the substance of the meeting, you will be considered to have waived your right to make an objection.

An important way to stay informed about the organization’s activities is to review the Board and committee minutes. The Board should be provided with the minutes of the meetings in a timely manner. The Board secretary should prepare the minutes of any Board meeting promptly after the meeting, but at least in time to be approved before the next Board meeting. If, for some reason, you do not receive the minutes of a Board or committee meeting, you have the right to ask for a copy of the minutes.

Finally, the organization encourages open and informed debate among the Board directors, which helps ensure that the best possible decisions are made. If you disagree with any action the Board proposes to take, you have the right to vote against the action. All votes taken at a meeting are required to be recorded in the minutes for that meeting.

To the extent there are any objections or abstentions, the minutes must record how each director voted. This is important if you believe that the actions of the Board are not only unwise, but improper. In such case, if you object to the actions and have your objection recorded in the minutes, you may escape liability if the action is later challenged.

1. Director’s Rights: As a director, you have certain legal rights. These rights are designed to assist you in carrying out your fiduciary duties as a member of the Board. For example, it is important that you stay informed about **[Name of Nonprofit]**’s business affairs. Consequently, as a director, you have a right to have reasonable contact with the organization’s senior managers to discuss the organization’s business affairs. You also have the right to inspect the books and records of the organizationand to request additional information from management.

At the same time, you should remember that while the Board retains the ultimate responsibility for the operations of **[Name of Nonprofit]**,thesenior managers are responsible for the day-to-day management of the organization. Your duty as a director is to ensure that they exercise their management responsibilities in a manner that best serves the organization. It is not in the organization’s best interests if the Board attempts to review and approve day-to-day management decisions, or substitutes its judgment for that of the senior managers.

Therefore, when you request information from management, it is important that you are reasonable in the frequency and scope of your requests. You want to take care that your requests are suited to what you need to perform your duties as a director, and not the day-to-day management of the organization.

1. Ongoing Filing Requirements: As part of the directors’ duty of care, the directors should ensure that [Name of Nonprofit] is in good standing with the various federal and state agencies regulating its activities. In order to maintain federal and state income tax exemption, state corporate status, and state charitable registration status, the organization needs to meet certain filing requirements. Specifically, **[Name of Nonprofit]** needs to file an annual information return with the IRS, known as the Form 990 series; an annual information return with the Franchise Tax Board, which is either Form 199 or Form 199-N; a biennial statement of information with the California Secretary of State, and an annual form, called the RRF-1, with the California Attorney General. (*See Appendix R*).

Although directors may rely on staff and outside professionals (e.g., accountants) to complete and submit the filings, as part of your duty of care, you should make sure that [Name of Organization] is filing accurate and timely forms. Directors should review both the IRS and Franchise Tax Board annual filings before they have been submitted to make sure that there are no inaccuracies – IRS Form 990 specifically asks whether the governing body has reviewed the form and to describe the process of review.

1. Private Inurement and Private Benefit: The Internal Revenue Code gives tax-free status to charitable organizations because they provide important benefits to the general public. However, the Internal Revenue Code also provides that a tax-exempt organization must be operated for the benefit of the public and not for the benefit of “insiders”– individuals who have significant influence over the organization. This is called the private inurement rule. As a director, you must ensure that insiders do not receive favorable treatment at the expense of **[Name of Nonprofit]**, otherwise **[Name of Nonprofit]** risks losing its tax-exempt status. Some examples include paying more than fair market value for goods or services provided by an insider, or creating a job for someone just because they are related to an insider. Private inurement may be found in the compensation of managers. The Board should ensure that the total compensation is reasonable.

By insiders, the Internal Revenue Code generally refers to anyone with powers, responsibilities or interests that puts the person in a position to exercise substantial influence over the affairs of **[Name of Nonprofit]**. Typical “insiders” would include the following individuals:

* **[Name of Nonprofit]**’sfounders;
* Officers;
* Members of the Board of Directors;
* Chief paid staff member**;** and
* Their relatives such as a spouse, parent, siblings and their spouses, children and their spouses, and great grandparents, grandparents, grandchildren, and great grandchildren and their spouses.

It generally is permissible to give a benefit to any individual, even a director, that qualifies under **[Name of Nonprofit]**’s normal charitable guidelines.

In addition, as a director you must make sure that **[Name of Nonprofit]**’sactivities further the public good, rather than private interests. Therefore, you should make sure that any business transactions entered into by **[Name of Nonprofit]** are done through an arm’s length negotiations, are in **[Name of Nonprofit]**’s best interests, and help it carry out its mission. The assets of **[Name of Nonprofit]** should not be used to serve a private, as opposed to the public, good. This is called the private benefit rule.

* *Example:* **[Name of Nonprofit]** *wants to buy a building and it cannot use all of the space immediately. Therefore, the Board decides to rent out the unused space. As a director, you* *should try to maximize the value of the building to the organization. The organization should not charge any tenant less than market rent simply because the tenant is a friend of a director, or has some other connection to* **[Name of Nonprofit],** *such as a business relationship. If it does so,* **[Name of Nonprofit]** *may be in violation of the private benefit rule, even if there is no private inurement (i.e., an insider is not benefiting financially).*

One exception may be if the tenant is another tax-exempt organization. In such case, it may be acceptable for **[Name of Nonprofit]** to charge a lower rent or no rent at all to provide assistance to the other charitable organization if it is in furtherance of **[Name of Nonprofit]**’stax-exempt mission.

1. Board Compensation and Transactions with Board Members**:** As a director, you will not be compensated for your services. Moreover, you cannot claim a deduction for the value of your donated services to **[Name of Nonprofit]**.You may be reimbursed for any reasonable out-of-pocket expenses you incur on behalf of **[Name of Nonprofit]**,in accordance with its expense reimbursement policy. The organization will not pay for or reimburse a member of the Board of Directors for the cost of his or her spouse’s or other dependent’s travel to organization events. If you elect not to be reimbursed for your out-of-pocket expenses, you may be able to deduct them as a charitable contribution to the organization. And of course, you may deduct donations to the organization as a charitable contribution.

In addition to your Board service, from time to time it may be in the best interests of **[Name of Nonprofit]** for you to provide some other goods or services to **[Name of Nonprofit]**,such as legal or accounting work. If you provide goods or services to **[Name of Nonprofit]** in addition to serving on the Board, **[Name of Nonprofit]** is allowed to pay you for your goods or services, provided that you remain mindful of the private inurement issues discussed above, as well as California’s rule against “self-dealing transactions.” There is a safe-harbor for transactions with interested directors under the California self-dealing rules if:

* the corporation enters into the transaction for its own benefit;
* the transaction is fair and reasonable to the corporation at the time the transaction is entered into;
* prior to consummating the transaction or any part thereof, the Board authorizes or approves the transaction in good faith, by a vote of a majority of Directors then in office (without counting the vote of the interested Directors), and with knowledge of the material facts concerning the transaction and the interested Director’s financial interest in the transaction;
* prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation that the corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
* The organization properly documents and reports the transaction.

Self-dealing is discussed in [**section of bylaws]** of [**Name of Nonprofit]**’s bylaws and [**section of conflict of interest policy]** of [**Name of Nonprofit]**’s Conflict of Interest Policy.

In the event that you are paid more than fair market value for any goods or services you provide, or the organization fails to properly document or report the transaction, the transaction may be considered an “excess benefit transaction” under federal law, as well as a “self-dealing transaction” under California law.

If you receive an “excess benefit” under the Internal Revenue Code, you may be subject to penalties and may be required to “correct” the transaction by paying back the excess benefit received. In general, transactions between **[Name of Nonprofit]** and “disqualified persons” (including directors and other insiders) are presumed to be reasonable (unless it can be rebutted by the IRS) if the following three conditions are met:

1. The arrangement was approved in advance by the Board (or a committee of the Board) of **[Name of Nonprofit]** that was composed entirely of non-conflicted persons (i.e., individuals who were unrelated to, and not subject to the control of, the disqualified person or other persons involved in the arrangement);
2. The Board obtained and relied on appropriate data as to comparability; and
3. The Board adequately documented the basis for its determination

As provided in the previous section, deals with “insiders” may, in addition to giving rise to excise taxes, lead to revocation of the **[Name of Nonprofit]**’s tax-exempt status.

Additionally, transactions with directors can lead to a violation of the requirement that no more than 49% of the persons serving as directors of a California nonprofit public benefit corporation may be “interested persons.” For this purpose, interested persons are directors being compensated by **[Name of Nonprofit]** for services rendered to it in the past 12 months in a capacity other than as directors.

Before you enter into any financial transaction with **[Name of Nonprofit]**, you should consult the organization’s legal counsel and its Conflict of Interest Policy to ensure that all proper procedures are followed.

1. Political Activity and Lobbying
   * + - 1. Lobbying. As a tax-exempt entity, **[Name of Nonprofit]** may engage in limited lobbying activities. For this purpose, **[Name of Nonprofit]** will be regarded as lobbying if it attempts to influence legislation. Attempting to influence legislation includes contacting or urging the public to contact members or employees of a legislative body for the purpose of supporting or opposing legislation, or advocating for the adoption or rejection of legislation.

Legislation includes actions by Congress, state legislatures, or any other elected body, such as the local city council, with respect to acts, bills, or resolutions. It applies to such actions as confirming an individual for office, such as a judge or cabinet member. It also applies to ballot initiatives or similar procedures to be voted upon by the public. The definition of legislation does not include actions taken by the courts or government agencies.

As noted above, there are limits on the amount of lobbying in which **[Name of Nonprofit]** may engage. The Internal Revenue Code provides that a nonprofit that is exempt under Section 501(c)(3) cannot expend a “substantial” part of its activities in lobbying. If **[Name of Nonprofit]** engages in what is considered excessive lobbying, the organization may be subject to an excise tax and may risk its tax-exempt status.

At what point a nonprofit’s lobbying is considered “substantial” depends on all the facts and circumstances and is not always clear-cut. Therefore, Congress enacted Section 501(h) of the Internal Revenue Code. By filing an election with the IRS, a nonprofit is allowed to engage in lobbying activities—up to certain dollar limits—without being subject to an excise tax and without losing its tax-exempt status. The limits are based on the size of the organization’s annual revenue.

As a director, you should ensure that **[Name of Nonprofit]** complies with the rules against excessive lobbying. In addition, certain lobbying activities may require the organization to register as a lobbyist with various federal and local government authorities. If **[Name of Nonprofit]** wishes to engage in any lobbying activity, the Board should work with legal counsel and senior management to ensure that procedures are put in place to comply with these regulations and the IRS limitations on lobbying activities.

* + - * 1. Rules Prohibiting Political Activities. Under the Internal Revenue Code, nonprofit organizations are strictly prohibited from intervening on behalf of, or in opposition to, candidates for local, state, or national office. If **[Name of Nonprofit]** violates this rule, it could be subject to an excise tax on the amount expended on the campaign activity and loss of its tax-exempt status.

This does not mean that, just because you are a director of **[Name of Nonprofit]**,you cannot be involved in political activity as a private individual. However, you may not use **[Name of Nonprofit]’s** property or other assets, including **[Name of Nonprofit]’s** name or social media accounts, on behalf of or against any candidate for office. You should also make clear that any political statements you make, such as an endorsement of a candidate, are made in your personal capacity and not in your capacity as a director of **[Name of Nonprofit]**, and the statements should not be made at an event sponsored or hosted by **[Name of Nonprofit],** in any of its publications, or through any of its social media platforms.

If you are in any doubt as to whether your activities might be considered improper political activities on behalf of **[Name of Nonprofit]**, you should consult with the Board and legal counsel before engaging in those activities.

1. Summing Up: While all these responsibilities may seem like a lot to keep straight, you can broadly summarize your fiduciary duties using the following questions:

* Do you put the organization’s interests before your own? Do you ensure that others do as well?
* Do you regularly attend and participate in Board and committee meetings?
* Do you read the information provided to you as a director or otherwise stay informed?
* Do you exercise your independent business judgment as best as you can?
* Do you do your best to make sure that **[Name of Nonprofit]** follows the law, including the special rules applicable to nonprofits?
* Do you seek the advice of **[Name of Nonprofit]** legal counsel and independent accountants to assist you in your work?

If you follow these steps, you will go a long way towards faithfully carrying out your fiduciary duties as a director and establishing the proper ethical tone for the organization.

# Fundraising

1. Fundraising Strategy**:** These days, it is not enough for **[Name of Nonprofit]** to have a good purpose and programs. There are many nonprofits with important missions to fulfill, and there is a limited amount of money to support all their worthy causes. At the same time, without proper funding, **[Name of Nonprofit]** cannot fulfill its mission.

Therefore, one of the most important roles of the Board is to define and establish a successful fundraising strategy to sustain the organization’s goals. The role of the Board in raising revenue is unique, and it is one of the critical differences between nonprofit and for-profit businesses.

The Board has a responsibility to attract resources to sustain the organization’s programs and fulfill its mission. The Board must select and support senior management, put the budget in place, and oversee and evaluate the organization’s fundraising and financial performance.

Even though the Board is ultimately responsible for **[Name of Nonprofit]’s** fundraising strategy, the fundraising activities will not succeed without a close partnership with management. There has to be a close collaboration between the Board and management, as well as clearly defined goals for management to execute. Therefore, it is important for the Board to specify the responsibilities of both management and the Board in the fundraising effort. At the same time, it is important to remember that implementing the fundraising plan is a responsibility shared by the Board and should not be left only to management.

**B**. Fundraising Practices**:** The Board should ensure that **[Name of Nonprofit]** follows ethical fundraising practices and that its fundraising efforts are cost-effective. It is the Board’s responsibility to ensure that **[Name of Nonprofit]’s** fundraising programs reflect well on the organization and its mission. Therefore, the Board must exercise the following responsibilities:

1. Designated Donations: Frequently, a donor will make a contribution to **[Name of Nonprofit]** and place restrictions on how such funds may be used. For example, the donor may want to fund a specific initiative or activity. Also, as an organization, **[Name of Nonprofit]** may solicit funds with the promise that the donations will be used for a particular purpose. These are called restricted or designated funds. As a member of the Board, it is your responsibility to ensure these funds are used for the purpose the donor specified, and not for other expenses such as overhead or other program activities. You should ask that any financial reports you receive specify whether the income is restricted or unrestricted, so that you can ensure that the donor’s wishes are being carried out.
2. Gift Acceptance Policy: From time to time, **[Name of Nonprofit]** may be offered donations that would compromise the organization’s ethics, financial circumstances, program focus, or other interests. For example, the source of the funds may be one that is inconsistent with the mission **[Name of Nonprofit]** is trying to serve. Therefore, it is important that the Board has clear standards and procedures for determining when it will not accept a donation. These standards and procedures must be discussed in advance and not after a questionable gift is being offered; otherwise, financial and time pressures on the organization may cause the Board and management to make a wrong decision about whether to accept the gift. **[Optional:** **[Name of Nonprofit]’s Gift Acceptance Policy is attached as Appendix T].**
3. Fundraising Techniques: **[Name of Nonprofit]’s** most valuable asset is its good name. One way the organization may forfeit its good name is if it engages in inappropriate fundraising practices. In the past few years, newspapers have published several stories of otherwise legitimate charities that have employed questionable fundraising methods. Therefore, it is important that the Board ensure there is appropriate training and supervision of the people soliciting funds on **[Name of Nonprofit]’s** behalf, that they understand their responsibilities and do not employ techniques that are coercive, intimidating, or intended to harass potential donors.

4. Compensation for Fundraisers:Compensation for fundraising activities shouldreflect the skill, effort, and time expended by the individual or firm on behalf of **[Name of Nonprofit]**. Basing compensation on a percentage of the money raised can encourage fundraisers to put their own interests ahead of those of **[Name of Nonprofit]** or the donor, and may lead to inappropriate techniques that jeopardize **[Name of Nonprofit]’s** values and reputation as well as the donor’s trust in the organization. Many professional fundraising associations prohibit their members from accepting payment for fundraising activities based on a percentage of the amount of charitable income raised or expected to be raised. For these reasons, **[Name of Nonprofit]** should not compensate internal or external fundraisers based on a commission or a percentage of the amount raised.

5. Charitable Solicitation Laws**:** Most states, including California, and many localities, including the City of Los Angeles, regulate the solicitation of contributions by charitable organizations. To solicit funds in California and in Los Angeles, a nonprofit generally must register with the Attorney General and the Los Angeles Police Department’s Charitable Services Section. Unless it qualifies for an exemption, **[Name of Nonprofit]** is required to register in California and with each state where it solicits funds from individuals, foundations, or businesses located in that state. The Board is responsible for ensuring that **[Name of Nonprofit]** complies with various charitable solicitation laws.

6. Privacy Policy: **[Name of Nonprofit]** respects the privacy of individual donors and, except where disclosure is required by law, does not sell or otherwise make available the names and contact information of its donors without providing them an opportunity at least once a year to opt out of the use of their names.

7. Substantiation and Disclosure Rules for the Receipt of Contributions: **[Name of Nonprofit]** should provide a written acknowledgement to donors of $250 or more (in cash or non-cash contributions) to support donors claims for charitable contribution deductions. The acknowledgement serves to substantiate a donor’s claim for a charitable deduction. The acknowledgement should be sent no later than January 31 of the year following the donation. The acknowledgment should state **[Name of Nonprofit]**’s name, the amount of any cash contribution, a description of any non-cash contribution, and a statement that no goods or services were provided by **[Name of Nonprofit]**, if that was the case.

Moreover, **[Name of Nonprofit]** is required to provide a written disclosure to a donor who receives goods or services in exchange for a payment in excess of $75. These donations are referred to as “quid pro quo” contributions. The required disclosure statement must inform a donor that the amount of contribution that is deductible for federal tax purposes is limited to the excess of money (and the fair market value of property other than money) contributed by the donor over the value of goods or services provided by **[Name of Nonprofit]**, and provide a donor a good-faith estimate of the fair market value of such goods or services provided by **[Name of Nonprofit]**. No disclosure is required for goods or services given to a donor that meet the “token” exception for insubstantial goods or services, such as low-cost mugs bearing the name of the organization. The permissible dollar value of such items is adjusted every year by the IRS. Other exceptions may be applicable. The IRS may impose a penalty on **[Name of Nonprofit]** if it fails to provide the written disclosure for applicable quid pro quo contributions. You must ensure that **[Name of Nonprofit]** follows the substantiation and disclosure rules with respect to the receipt of contributions.

* *Example of a written acknowledgement: “Thank you for your cash contribution of $350 that* **[Name of Nonprofit]** *received on May 6, 2019. In exchange for your contribution, we gave you a cookbook with an estimated fair market value of $50. The amount of your contribution that is deductible for federal income tax purposes is limited to the excess of the value of your donation over the fair market value of the gift received in return for your donation.”*

**C. Board Participation:** In addition to the preceding tasks, each member of the Board should show his or her personal financial support for the organization. Many directors contribute to their organizations in non-financial ways, such as having an understanding of the community in need or having prior nonprofit experience. Directors also offer specialized skills such as human resources or financial expertise. The organization cannot succeed without those contributions.

However, we cannot expect others to financially support **[Name of Nonprofit**] if the Board does not.Your personal participation is essential to a successful fundraising campaign. **[Name of Nonprofit]**’s goal is to have 100 percent participation by the Board.

In addition, you should help management identify and evaluate prospective donors, including individuals, corporations, and foundations. As a director, you should also assist in cultivating prospective donors by stimulating interest in **[Name of Nonprofit]** and its work.

# Board’s Responsibility for Financial Oversight

Because **[Name of Nonprofit]** is fortunate that so many people support the organization by giving their time and money—often at great sacrifice to themselves—it is important that **[Name of Nonprofit]** exercise good stewardship in managing the donations of its supporters.

The senior management of **[Name of Nonprofit]** plays a key role in managing the financial affairs of the organization, but the Board is ultimately responsible for ensuring that its funds are properly utilized.

The IRS has increased its financial oversight of nonprofit organizations over time. Several states also have started extending these governance principles, previously applicable only to public companies, to cover nonprofit organizations. Moreover, grant makers and other donors expect nonprofit organizations to exercise robust financial oversight. Therefore, the Board should establish clear policies and procedures to protect **[Name of Nonprofit]**’s financial assets and ensure that it is following best practices.

As a director, you can call on the **[Name of Nonprofit]**’sresources, including senior management and the independent auditors responsible for conducting the organization’s annual audit, to help you perform your duties. In particular, the Board, or a designated committee of the Board, should meet with the auditors before the annual audit and after a draft audit is prepared to discuss the auditors’ findings and to determine what steps, if any, the Board should take to improve the financial oversight of the organization.

The California Nonprofit Integrity Act of 2004 generally requires that charities with gross revenues of $2 million or more establish and maintain an audit committee and have an independent audit of its annual financial statements prepared annually.

The following is a summary of the key financial responsibilities of the Board:

**A.** Policies and Procedures: While it is management’s responsibility to oversee the day-to-day accounting and financial management of **[Name of Nonprofit]**, the Board is responsible for ensuring that proper financial systems and controls are in place. For example, the Board should establish a policy to ensure that at least two unrelated people (either staff members or volunteers) bear the responsibility for receiving, depositing, and spending the organization’s funds. The Board is also responsible for reviewing practices and reports to ensure that staff members and volunteers are complying with Board-approved policies.

* 1. Budget and Expenses:The Board is responsible for reviewing and approving **[Name of Nonprofit]**’s annual budget. The Board should also receive regular financial reports, either monthly or quarterly. The reports should show budgeted and actual expenditures as well as budgeted and actual revenues. By carefully reviewing the regular financial reports, the Board will be able to determine whether adjustments must be made in spending to accommodate changes in revenues.

However, prudent financial oversight requires that the Board look beyond monthly or annual financial reports to consider how **[Name of Nonprofit]**’s current financial performance compares with that of previous years, and how its financial future appears. If **[Name of Nonprofit]**’s net assets have been declining over a period of years, or if future funding seems likely to decrease significantly, the Board may need to take proper steps to achieve or maintain the financial stability of the organization.

**C.** Prudent Investment of Financial Assets:As a member of the Board, you also have the obligation to establish policies and procedures to ensure that **[Name of Nonprofit]** manages and invests its funds responsibly and in compliance with the legal requirements. The Board is responsible for establishing policies that govern how the funds will be invested, ensuring that donor-restricted funds are used in a manner that complies with the donor’s restrictions, and allocating the returns from investments among the various programs. For example, the Board must decide questions such as:

* Will **[Name of Nonprofit]** maintain an endowment where funds that may be used to serve its purpose may be restricted by the donor?
* How much of an operating reserve should the organization have (i.e., three months of operating expenses)? Under what circumstances can the operating reserve be used? Who makes the decision to use the operating reserve?
* Are there any restrictions on how **[Name of Nonprofit]** will invest its funds? For example, does **[Name of Nonprofit]** wish to invest in the stock of companies that manufacture armaments or alcohol, maintain gaming establishments, etc.?

As a member of the Board of Directors, you are expected to carry out your responsibility to manage the funds of the organization in good faith, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. This means that you are responsible for overseeing the investment of the funds to ensure that those charged with making the investment decisions, including any committee appointed by the Board, are acting prudently. As a director, you should keep in mind several factors in carrying out these duties, such as:

* The needs of the organization and general economic conditions, including the possible effects of inflation and deflation;
* The expected total return for an investment, including appreciation, and how that relates to the overall investment portfolio;
* The need to preserve capital versus the need to generate income;
* The other resources available to **[Name of Nonprofit]**;
* An asset’s special value, if any, to the organization; and
* Any expected tax consequences with respect to an investment.

In managing the funds, the Board may incur appropriate costs that are reasonable in relation to the amount of assets being invested and the purposes of **[Name of Nonprofit]**.

By following these steps, you will help ensure that **[Name of Nonprofit]** acts as a good steward of its funds and in a manner that helps the organization carry out its mission.

# Overseeing the Performance and Compensation of Management

The **[chief paid staff member]** of **[Name of Nonprofit]** is the chief executive of the organization and is hired and supervised by the Board. The Board also has the authority to fire the **[chief paid staff member]** if he or she is not meeting the performance standards set by the Board.

As part of its responsibilities, the Board should review the performance of the **[chief paid staff member]** annually. By giving the **[chief paid staff member]** feedback at least annually, the Board will assist the **[chief paid staff member]** in performing to the best of his or her abilities.

The Board is also responsible for setting the compensation for the **[chief paid staff member]** and other members of senior management. In particular, the Board must review and approve the compensation of the [**chief paid staff member]** and the [**chief financial officer**] to ensure that the payment is just and reasonable. The review and approval must occur at the time of initial hiring, when the term is renewed or extended, and when the compensation is modiﬁed. Compensation includes any beneﬁts being provided.

In addition, the Internal Revenue Code sets forth criteria for determining who is a member of senior management, and provides that a nonprofit organization cannot pay more than “reasonable” compensation to its senior managers. Moreover, the Internal Revenue Code imposes penalties and requires a correction if excess compensation is paid.

The good news is that **[Name of Nonprofit]** and its Boardcan and should significantly reduce the risk that compensation paid to senior management will be considered excessive. The Internal Revenue Code provides a three-step process, which, if followed by the Board, will give rise to a rebuttable presumption that the compensation set by the Board is reasonable. Generally the three steps are:

1. The compensation level must be approved by the Board or a committee of the Board authorized by it to set the compensation;
2. The Board makes use of data showing how much similar organizations are paying their employees to determine that the compensation is reasonable; and
3. There is proper documentation of the decision-making process.

If the three requirements are satisfied, the IRS may rebut the presumption that a transaction is not an excess benefit transaction only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body. Rebuttal evidence is limited to evidence relating to facts and circumstances existing on the date the parties enter into the contract pursuant to which the payment is made. This process is laid out in the Executive Compensation Policy (*see Appendix O).*

1. Prior Approval by Authorized Body: To satisfy the first requirement, either the Board or a Board committee authorized by the Board to determine senior management’s compensation must approve the compensation package **in advance**. Compensation may be reviewed and approved by a committee of the board, so long as the committee has the power under [**Name of Organization]**’s bylaws and the California Nonprofit Corporation Law to act on behalf of the Board. If a committee of the Board makes a recommendation as to compensation, the entire Board (excluding directors with a conflict) must follow the three-step process in order to take advantage of the rebuttable presumption.

To participate in the compensation approval process, a director cannot have a conflict of interest. If you, as a director, have a conflict of interest, you must disclose your conflict to the other members of the Board, and you may not participate in the vote or discussions of management compensation.

The following are the principal rules for determining whether a conflict of interest exists, with examples of how those rules would apply:

* A conflict of interest exists if you are participating in or economically benefiting from the compensation arrangement being voted on, or you have a family member benefiting from the compensation arrangement. Family members include your spouse, ancestors, siblings and their spouses, and children, grandchildren, and great grandchildren, and their spouses.
* *Example: You are the parent of the* **[chief financial officer]***. You may not vote on the* **[chief financial officer]***’s compensation because you would be voting on a compensation arrangement from which a family member of yours would be benefiting.*
* A conflict of interest exists if you are an employee subject to the direction or control of a member of management whose compensation is being voted on.
* *Example: You are an employee of* **[Name of Nonprofit]** *and report to the* **[chief paid staff member]***. You may not vote on the* **[chief paid staff member]***’s compensation package because your vote may be influenced by your desire to help your career.*
* A conflict of interest exists if you receive compensation or other payments that must be approved by a member of management whose compensation is being voted on.
* *Example:* **[Name of Nonprofit]** *retains your services as a fundraising consultant. The chief financial officer**approves the payments and reimbursement of expenses to you. You may not vote on the* **[chief financial officer]***’s compensation package because your vote may be influenced by your desire to help your career.*
  + - A conflict of interest exists if you have a material financial interest that would be affected by the compensation package being voted on.
* *Example: The* **[chief paid staff member]** *owes you money and is having trouble paying it back. You may not vote on the* **[chief paid staff member]***’s compensation package because your vote may be influenced by your desire to recover the amount you are owed by the* **[chief paid staff member]***.*
* A conflict of interest exists if you vote on a compensation package for a member of management, and that member of management has approved, or will approve, a transaction providing economic benefits to you.

* *Example: The* **[chief paid staff member]** *sits on the Board of a nonprofit that employs your spouse. As a member of that Board, the* **[chief paid staff member]** *would be expected to vote on your spouse’s compensation package. As a member of* **[Name of Nonprofit]***’s Board, you may not vote on the* **[chief paid staff member]***’s compensation package because your vote may be influenced by your desire to increase your spouse’s compensation, which will provide an economic benefit to you as well.* (For the same reason, the **[chief paid staff member]** should refrain from voting on your spouse’s compensation package at the other organization.)
  + 1. Use of Appropriate Comparability Data**:** Prior to voting on senior management’s compensation, the Board must determine how the proposed compensation package compares to compensation paid by similar organizations for similar services. Comparability data is appropriate if it provides the Board with sufficient information to determine if the compensation arrangement, in its entirety, is reasonable when compared to what other organizations pay.

The information the Board may use to make the comparability determination includes:

* The actual compensation paid by similarly situated for-profit and nonprofit organizations for comparable positions;
* Whether or not there is a ready supply of people to perform similar services in the Los Angeles area;
* Current compensation surveys compiled by independent firms; and
* Actual written offers from similar institutions competing for the services of the senior manager.

There are a number of ways to obtain comparability data. **[Name of Nonprofit]** may hire a compensation consultant to review **[Name of Nonprofit]**’s compensation structure. However, if the Board feels that this is too costly, the Board can purchase compensation comparability data from organizations that provide technical assistance to other nonprofits or from human resource companies that compile that information for a fee. In California, the Center for Nonprofit Management publishes an annual report on compensation levels at nonprofits in Southern and Central California. The report covers close to 200 job titles and can be purchased in whole or in part through the Center for Nonprofit Management at [www.cnmsocal.org](http://www.cnmsocal.org). Guidestar also publishes a nationwide report, *Nonprofit Compensation Report*, which analyzes compensation paid by over 100,000 exempt organizations in fourteen job categories.

As a third alternative, the organization can use publicly available information, including IRS Form 990s of comparable nonprofits and Web sites such as [www.guidestar.org](http://www.guidestar.org) to determine what comparable organizations are paying their employees. As a starting point, it is good for the Board to define what are **[Name of Nonprofit]**’s “peer” organizations for purposes of making comparisons.

If**[Name of Nonprofit]**’s annual gross receipts are less than $1 million during the three years before the Board sets senior management’s compensation, the IRS provides that **[Name of Nonprofit]** may look at compensation paid by three comparable organizations located in Los Angeles or a similar community for similar categories of employees for purposes of determining comparability.

**C**. Proper Documentation of the Decision-Making Process:The third part of the IRS procedure for setting management compensation is to ensure that the Board’s decision-making process is properly documented. The documentation may be written or electronic such as written minutes or an e-mail summary of the meeting. The documentation must note:

* The terms of the compensation package and the date it was approved;
* The members of the Board or Board committee who were present when the compensation package was debated, those who voted on it, and approvals and rejections by each voting member;
* The comparability data obtained and relied on by the members of the Board and information on how the data was obtained;
* Any actions taken by a regular member of the authorized body who had a conflict of interest with respect to the transaction (e.g., the member left the meeting and refrained from taking part in the decision); and
* If the reasonable compensation is higher or lower than the range of comparability data obtained, the basis for the decision.

The documentation must be completed in a timely manner. This means that **[Name of Nonprofit]** must prepare the records before the later of:

* The next meeting of the Board or committee, or
* Sixty days after the final action or actions are taken.

Also, the Board or committee must review the documentation and make any needed corrections to the documentation within a reasonable amount of time.

* + *Example: The Board approves* **[chief paid staff member]***’s compensation package on December 1. The minutes of the meeting must be prepared and distributed to the Board for its approval at the next Board meeting. However, if the next meeting is held sooner than 60 days after December 1, the Board has until 60 days following the meeting, or January 30 to approve the minutes.*

**[Name of Nonprofit]** has to comply with all three steps to establish the rebuttable presumption of reasonableness. The **[Name of Nonprofit]** will not enjoy the protections the safe harbor affords if the organization fails to meet any one of these three requirements. Establishing the rebuttable presumption of reasonableness is also considered to be a “best practice” in terms of nonprofit governance. The IRS will ask **[Name of Nonprofit]** to disclose the method it used to set management’s compensation when it completes its IRS Form 990. Also, **[Name of Nonprofit]** must appropriately report the compensation in its tax filings, both on the organization’s annual IRS Form 990, and on an IRS Form W-2 issued to the recipient of the compensation (if he or she is an employee) or IRS Form 1099 (if he or she is an independent contractor).

# Risk Management and Directors’ and Officers’ Insurance

**A.** Liability of the Organization: One of the functions of the Board is to protect the assets of **[Name of Nonprofit]**. This will help ensure that the assets are available to serve the mission of the organization. To do so, the Board should implement an appropriate risk management plan.

There are three basic steps in any risk management plan. They are:

1. Identify the risk;
2. Mitigate the risk; and
3. Insure against the risk.

The Board should begin by working with management to identify activities that create risks for the organization. The next step is to see if there are any procedures the organization can take to lessen the risk that a bad event will occur. The final step is to work with **[Name of Nonprofit]**’s insurance broker to see if there is any way the organization can insure against the risk that such bad event occurs.

The following are some examples of how this process works:

* **[Name of Nonprofit]** *regularly receives invoices from various people with which it does business. It is the employees’ responsibility to pay* **[Name of Nonprofit]***’s invoices.*

*1. Identify the risk.*

*There is a risk to the organization that an employee could steal* **[Name of Nonprofit]***’s funds. The employee could pretend to pay invoices by writing checks to a friend or relative.*

*2. Mitigate the risk.*

*The Board and management adopt financial controls which provide that there must be two signatures on all checks above a specified amount, such as $500.*

*3. Insure against the risk.*

**[Name of Nonprofit]** *purchases employee**dishonesty coverage as an endorsement to its property insurance policy. This insures***[Name of Nonprofit]***against loss, up to a specific dollar amount (for example $10,000), in case an employee steals funds from the organization.*

* **[Name of Nonprofit]** *holds an annual car wash as a fundraiser.*

*1. Identify the risk.*

*There is a risk to the organization that a volunteer will slip and fall at the car wash, injuring him- or herself.*

*2. Mitigate the risk.*

**[Name of Nonprofit]** *adopts safety procedures for conducting the car wash and trains its volunteers and employees on the safety procedures The organization also asks each volunteer to sign a waiver of liability.*

*3. Insure against the risk.*

**[Name of Nonprofit]** *purchases volunteer accident insurance. This insurance pays a volunteer’s uninsured medical expenses, up to a specific dollar limit (for example $25,000), on a no-fault basis.* **[Name of Nonprofit]** *also**purchases general liability insurance to protect the organization in case it is sued by the injured volunteer for compensation for the injury.*

**B.** Liability as a Director**:** As a director, you may be subject to a lawsuit if someone alleges that you failed to carry out your duties appropriately, or you were guilty of discrimination in connection with someone’s employment or the provision of nonprofit services. However, the Director generally will not be personally liable for the debts, liabilities, or other obligations of the organization unless the director or officer engaged in self-dealing transactions, conflicts of interests, or intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

To protect yourself from liability, you should consider three steps:

1. Prevention:Exercise your duties as a director with due care and ensure that **[Name of Nonprofit]** acts in accordance with legal requirements. This is the best way to avoid liability. If you carry out your duties as a director diligently and with due care, you will be much less likely to encounter legal problems.
2. Indemnification:One way to protect yourself against liability is to ensure that **[Name of Nonprofit]** will pay any attorney’s fees you incur and any legal damages you have to pay in connection with any acts you commit while serving on the Board. This is called “indemnification.” Indemnification provisions are found in **[Name of Nonprofit]**’s bylaws. You should consult with your or **[Name of Nonprofit]**’s attorney to determine whether you would be covered by **[Name of Nonprofit]**’s indemnification. In general, you will be eligible for indemnification as long as you acted in good faith and in a manner you reasonably believed to be in the best interests of the organization. In the case of a criminal proceeding, you must have had no reasonable cause to believe that your conduct was unlawful.
3. Directors’ and Officers’ Insurance:Under California law, the organization must maintain Directors’ and Officers’ Insurance at all times in order to limit the liability of volunteer directors and officers.

In order to promote service by volunteer directors and officers, the California Legislature declared that directors and officers of 501(c)(3) organizations who serve without compensation will be exempt from a cause of action for monetary damages arising from their service as a director or officer on account of any negligent act or omission occurring (1) within the scope of that person’s duties as a director acting as a board member, or within the scope of that person’s duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the organization; and (4) is in the exercise of his or her policymaking judgment.

There are a number of specific causes of action (such as actions alleging self-dealing) that are carved out of the above protection. In addition, the limitation on liability for volunteer directors and officers only applies if the nonprofit organization maintains a liability insurance policy with an amount of coverage of at least $500,000 to $1,000,000, depending on the organization’s annual budget.

A separate but similar provision of the California Nonprofit Corporation Law exempts volunteer directors and volunteer executive officers of nonprofit public benefit corporations from liability to third parties for monetary damages caused by the director’s or officer’s negligent act or omission in the performance of their duties if: (1) the act or omission was in the scope of their duties; (2) the act or omission was performed in good faith; (3) the act or omission was not reckless, wanton, intentional, or grossly negligent, and (4) the damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, or the board at least made all reasonable efforts in good faith to obtain such liability insurance. This protection is subject to exceptions for liability due to self-dealing and actions brought by the Attorney General.

Finally, under the federal Volunteer Protection Act of 1997 (the “Act”), volunteer directors are afforded additional liability protection if: (1) the volunteer was acting within the scope of the volunteer’s responsibilities; (2) the volunteer was properly licensed or certified (if applicable); (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle which must be insured or operated with a license.

This limitation on liability does not cover certain claims, such as claims by the nonprofit organization against the volunteer. The Act also allows a state (e.g. California) to set certain conditions on the volunteer’s eligibility for the liability protections of the Act, such as a requirement that the organization maintain a sufficient insurance policy covering such liability.

You should request a copy of and review **[Name of Nonprofit]**’s directors and officers insurance policy with the assistance of your or **[Name of Nonprofit]**’s attorney.

# Board Evaluation

The final task the Board must undertake is to periodically evaluate its own performance. Self-evaluation can be hard. Therefore, the Board should at least use a performance checklist to assist the members *(see Appendix S).* Some of the criteria are objective and easy to evaluate such as attendance at meetings. Other criteria are more subjective.

However, it is important for the Board to meet annually to discuss how it can improve its performance. The Board should determine what skills the Board may be lacking, and whether it can recruit a new member with those skills. For example, is there a member of the Board with a background in finance, human resources, or the law?

Moreover, each director must be engaged in the work of the Board. If the directors are not fully engaged in the Board’s work, the Board should discuss what steps it should take to re-engage its members. Without a fully engaged Board, there is a likelihood that the work will fall on a few individuals. This will not only result in many tasks not being done, but will also put members of the Board who are most engaged at risk of becoming burned out.

If efforts to re-engage a director do not work, the Board should be willing to ask the director with poor performance to resign from the Board, or to leave the Board at the end of his or her term. While evaluating the performance of individual members can be hard, it is important to remember that the Board’s first duty is to serve the best interests of **[Name of Nonprofit]** and not those of other members of the Board. Building a strong Board makes the Board’s workload more manageable and improves the performance of each member of the Board of Directors.

# Conclusion

Again, we want to express our appreciation of your willingness to serve as a director of **[Name of Nonprofit]**. There are many exciting challenges ahead, and we are grateful that you have accepted the responsibility of being a member of the Board.

As an organization, we are committed to giving you the resources you need to succeed. Also, we realize that as a new member, you have a background that is different from members of the Board who have served longer. Your presence enriches and renews the Board. Much of the information in this manual may seem overwhelming at first, but if you have any questions or if there is anything **[Name of Nonprofit]** can do to assist you in your Board service, please speak to the officers of the Board or senior management.

We serve an important mission, and we believe that you will find serving on the Board a rich and rewarding experience. Thank you for joining us.

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# Appendices

* 1. **Articles of Incorporation**

[*www.publiccounsel.org/publications?id=0059*](http://www.publiccounsel.org/publications?id=0059)

* 1. **Bylaws**

[*www.publiccounsel.org/publications?id=0060*](http://www.publiccounsel.org/publications?id=0060)

* 1. **IRS Application for Exemption**

[*www.irs.gov/pub/irs-pdf/f1023.pdf*](http://www.irs.gov/pub/irs-pdf/f1023.pdf)

* 1. **List of Board Members**
  2. **List of Important Contacts**
  3. **Most Recent IRS Form 990**

[*www.irs.gov/pub/irs-pdf/f990.pdf*](http://www.irs.gov/pub/irs-pdf/f990.pdf)

* 1. **[Optional: Most Recent Audited Financial Statement]**
  2. **Current Operating Budget**
  3. **Current Strategic Plan**
  4. **Board Minutes for the Past 12 Months**
  5. **Conflict of Interest Policy**

[*www.publiccounsel.org/publications?id=0061*](http://www.publiccounsel.org/publications?id=0061)

* 1. **Conflict of Interest Questionnaire**

[*www.publiccounsel.org/publications?id=0061*](http://www.publiccounsel.org/publications?id=0061)

* 1. **Ethics Policy**

[*www.publiccounsel.org/publications?id=0061*](http://www.publiccounsel.org/publications?id=0061)

* 1. **Whistleblower Policy**

[*www.publiccounsel.org/publications?id=0063*](http://www.publiccounsel.org/publications?id=0063)

* 1. **Executive Compensation Policy**

[*http://www.publiccounsel.org/publications?id=0249*](http://www.publiccounsel.org/publications?id=0249)

* 1. **List of Committees**
  2. **Organizational Chart**
  3. **Required Annual Filings**
  4. **Personal Checklist and Self-Evaluation**
  5. **[Optional: Gift Acceptance Policy]**

[*http://www.publiccounsel.org/publications?id=0254*](http://www.publiccounsel.org/publications?id=0254)

**Appendix A**

**Articles of Incorporation**

The Articles of Incorporation serve as the basic charter for **[Name of Nonprofit].** They set forth the purposes for which the organization was founded, and basic rules about how the organization is to operate. They also contain the charitable giving rules that the Internal Revenue Service (IRS) requires for the organization to maintain its tax-exempt status.

**Appendix B**

**Bylaws**

The bylaws set forth the operational rules for **[Name of Nonprofit].** They contain the rules regarding the size and composition of the Board of Directors, how directors are elected, and how meetings are held. They also contain provisions about the election of officers and the appointment and operation of Board committees. The bylaws may be amended by the Board of Directors.

**Appendix C**

**IRS Application for Exemption**

The IRS Form 1023 is the application which **[Name of Nonprofit]** filed with the Internal Revenue Service to be recognized as a tax-exempt organization. It sets forth the original mission of the organization. It is important that **[Name of Nonprofit]** review its original mission statement from time to time to ensure that it is acting in a manner that furthers its exempt mission. If the organization were to change its mission, it will have to notify the IRS.

**Appendix D**

**List of Board Members**

**Appendix E**

**Important Contacts**

**Appendix F**

**Most Recent IRS Form 990**

This is the information return that **[Name of Nonprofit]** must file each year with the IRS.

* On this form, the organization is asked to describe its exempt mission and the activities it carries out in furtherance of that mission.
* It also sets forth basic financial information about the organization, including how much it expends on program activities (activities that directly contribute to carrying out its exempt mission), fundraising, and administrative expenses.
* In particular, the form sets forth how much is paid to the organization’s officers, directors, and other higher-paid individuals.
* The form also asks the Board of Directors if it is following certain best practices for nonprofit governance.
* Finally, the form asks whether the Board has reviewed the form before it was filed with the IRS.

**Appendix G**

**Most Recent Audited Financial Statement**

The financial statements are prepared by management and audited by **[Name of Nonprofit]**’s independent auditors. The audit shows basic financial information about the organization. You will note that the financial statements are different from those of for-profit companies. The audit contains the following information:

* Statement of Financial Position (Balance Sheet). This contains the organization’s:

1. Cash;
2. Accounts receivable;
3. Donation pledges;
4. Fixed assets such as buildings and equipment;
5. Accounts payable; and
6. Accrued liabilities, including long-term liabilities.

The statement shows unrestricted assets, which can be used for any purpose consistent with the organization’s exempt mission. It also shows permanently and temporarily restricted assets. These are assets that have been donated to **[Name of Nonprofit]** for a particular purpose or program and can only be used for that purpose or program.

* Statement of Activities (Income Statement). This sets forth the organization’s general operating expenses, functional expenses, non-operating revenues, and expenses and change in net assets from year to year.
* Statement of Cash Flows. This sets forth the sources and uses of the organization’s short-term cash and cash-equivalents.
* Statement of Functional Expenses. This sets forth the portion of the organization’s expenses that was expended on:

1. Program activities;
2. Management and other general expenses; and
3. Fundraising activities.

The audit also contains an opinion letter from the organization’s auditors saying that the financial statement fairly represents the financial position of **[Name of Nonprofit]**.

**Appendix H**

**Current Operating Budget**

This is the budget for the current operating year, including income and expenses. You will receive reports on a regular basis from management showing **[Name of Nonprofit]**’s actual income and expenses, and how they compare to the budget.

**Appendix I**

**Current Strategic Plan**

The current strategic plan sets forth the long-term plan for **[Name of Nonprofit]**. The organization’s work plan and budget are drafted to carry out the goals contained in this plan.

**Appendix J**

**Board Minutes for the Past 12 Months**

It is the responsibility of the Board secretary to prepare timely and accurate minutes of the Board’s meetings. As a director, you also are entitled to see the minutes of Board meetings and of any Board committee meetings.

**Appendix K**

**Conflict of Interest Policy**

The Conflict of Interest Policy is designed to offer guidance to **[Name of Nonprofit]**’s officers, directors and key employees on how to avoid conflicts of interest. A conflict exists when an officer, director or key employee (or someone related to them) proposes to act on any transaction in which the officer, director or key employee has a personal interest in the transaction that is different from the organization’s.

**Appendix L**

**Conflict of Interest Questionnaire**

The Conflict of Interest Questionnaire is designed to inform **[Name of Nonprofit]** of the various business interests of each of its officers, directors and key employees so that the organization can help them avoid conflicts of interest.

**Appendix M**

**Ethics Policy**

The Code of Ethics applies to all employees and volunteers of **[Name of Nonprofit].** It summarizes various ethical issues involving the employee’s or volunteer’s work with the organization, including conflicts of interest, acceptance of gifts, nondiscrimination, and other matters.

**Appendix N**

**Whistleblower Policy**

The Whistleblower Policy is designed to encourage employees and volunteers to report to the Board of Directors any wrongdoing within the organization. It is designed to provide employees and volunteers with a safe way to report these complaints without fear of retaliation, and to ensure that any such complaints are properly investigated.

**Appendix O**

**Executive Compensation Policy**

This Executive Compensation Policy is designed to provide guidance to directors on how to take advantage of the IRS rebuttable presumption of reasonableness in setting compensation.

**Appendix P**

**List of Committees**

Under the terms of the bylaws, the Board of Directors is authorized to create committees that are authorized to carry out the functions of the Board with respect to certain matters. These matters are specified in the bylaws and the committee charter. Only directors may sit on these committees and the creation of the committee, as well as appointments to the committee, must be approved by a majority of directors in office. As long as a committee is acting within the scope of its authority, as set out in the bylaws and committee charter: (1) It is authorized to act as if it were the Board, with the same authority to act on behalf of **[Name of Nonprofit]** as the Board has; and (2) The non-committee members of the Board are entitled to rely upon the expertise of the committee and, absent special circumstances, cannot be held responsible for the committee’s actions.

The Board of Directors is also permitted to create advisory committees, that do not have the power to act on behalf of the board, which may include non-directors as well.

Attached is the list of committees and their members, as well as a description of the purpose of each committee. Each committee is designated as “advisory” or “non-advisory.”

**Appendix Q**

**Organizational Chart**

**Appendix R**

**Required Annual Filings**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Agency to File With** | Secretary of State | IRS | California Attorney General | Franchise Tax Board |
| **Name of the Form** | Statement of Information  SI-100 | **Annual Information Return**  Form 990, 990-EZ, 990-N  \*\*Form 990-T for UBIT reporting | AG Annual Filing  Form RRF-1 | Form 199/199-N |
| **Link to Form** | [Form SI-100 Instructions](http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf)  [File Online](https://businessfilings.sos.ca.gov/) | [Form 990](https://www.irs.gov/pub/irs-pdf/f990.pdf)  [Form 990-EZ](https://www.irs.gov/pub/irs-pdf/f990ez.pdf)  [Form 990-N (E-Postcard)](https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard) | [Form RRF-1 & Filing Instructions](https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/charitable/rrf1_form.pdf) | [Form 199](https://www.ftb.ca.gov/forms/2018/18_199.pdf)  [Form 199 Instructions](https://www.ftb.ca.gov/forms/2018/18-199-booklet.html)  \_\_\_\_\_\_\_\_\_  [Form 199-N (E-Postcard)](https://www.ftb.ca.gov/file/business/types/charities-nonprofits/199N.asp) |
| **What is the form?** | This form ensures that the Secretary of State has the most updated information about your organization. | This is an annual information return that 501(c)(3) charitable organizations must file with the IRS. | Your organization must complete an annual filing to continue engaging in charitable solicitations. | This form is similar to Form 990. It is an annual information return that tax-exempt organizations must file with the California Franchise and Tax Board to retain state tax-exempt status. |
| **Which Form to File** | Every organization files the same form. | Gross Receipts < $50,000 file **990-N** | Every organization files the same form. | Gross receipts normally equal to or less than $50,000 file **199-N**  Gross receipts greater than $50,000 file **199** |
| Gross receipts > $50,000,  < $200,000 and  total assets < $500,000 file **990-EZ** |
| Gross receipts > $200,000 or total assets > $500,000 file **990** |
| **File By:[[3]](#footnote-3)**  (fill in specific date for your organization here) | **File it in [Incorporation Month] on [odd/even] years** | [**FILL IN DATE]** | [**FILL IN DATE]** | [**FILL IN DATE]** |
| **Filing Fees** | $20.00 |  | Filing fee depends on organization’s annual income:  Ranges from $0 - $300 | $10.00 if you file and pay by due date  $25.00 if you file by the due date but pay after the due date |
| **Penalty Fees for Late Filing or Failure to File** | **$50 penalty** regardless of tax-exempt status | Penalty of **$20 a day for each day the return is late.** The same penalty applies if the organization does not give all the information required on the return or does not give the correct information.  In general, the maximum penalty for any return is the lesser of $10,000 or 5 percent of the organization's gross receipts for the year. |  | Penalty of **$5 for each month, or part of the month**, the return is late. If the return is not filed by the extended due date, the automatic extension will not apply. **The penalty may not exceed $40.**  **Failure to file a return or a California e-Postcard, as required, with the FTB for three consecutive years will lead to automatic revocation of state tax-exempt status.** |

**Appendix S**

**Personal Checklist and Self-Evaluation**

**Appendix T**

**Gift Acceptance Policy**

1. This useful source is available at https://independentsector.org/wp-content/uploads/2016/11/Principles2018-Final-Web.pdf. [↑](#footnote-ref-1)
2. Do not include this statement if not permitted by bylaws. Remove this footnote from the manual. [↑](#footnote-ref-2)
3. Fill in the correct due date for each form using this chart. The statement of information is due initially within 90 days after the filing of the original articles of incorporation and biennially thereafter in the month of the anniversary of the incorporation date.

   The Form 990, 199, and RRF-1 are all due on the same date – the 15th date of the 5th month after the end of your organization’s accounting period. Extensions are available. If an organization receives an extension for filing a 990, the Attorney General will honor that extension with regard to the RRF-1. Here is a chart with original due dates based on fiscal years. Remove this footnote from the manual.

   |  |  |  |  |
   | --- | --- | --- | --- |
   | **Fiscal Year End Date** | **Filing Date** | **Fiscal Year End Date** | **Filing Date** |
   | December 31 | May 15 | June 30 | November 15 |
   | November 30 | April 15 | May 31 | October 15 |
   | October 31 | March 15 | April 30 | September 15 |
   | September 30 | February 15 | March 31 | August 15 |
   | August 31 | January 15 | February 28/29 | July 15 |
   | July 31 | December 15 | January 31 | June 15 |

   [↑](#footnote-ref-3)