

Does It Matter What We Call A Nonprofit's Top Executive?

03.30.22 | Linda J. Rosenthal, JD



Recently, in *The Delicate Dance of the Nonprofit Board and Staff* (February 25, 2022), we posed the question: Why do some nonprofits that appear to the outside world to be “worthy and promising” nevertheless eventually “collapse on themselves and fail”?

In more than a few situations, we explained, the two sides do not “know or understand their legally distinct roles and duties.” This “tug of war” eventually creates dysfunction and resentment significant enough to cause an otherwise preventable implosion.

Often contributing to this breakdown is the lack of clear guidelines on a workable dividing line between the board’s oversight responsibilities and the executive’s delegated management duties. This gray area is a breeding ground for power struggles.

While this is a rich topic for deeper dives in later blog posts, today we wander off on a tangent: Why was it so hard to write the title of that February 25th blog entry? The “Delicate Dance of the Nonprofit Board and Staff”: Is “staff” a good default term for the “management” partner in that tricky tango?

After all, there is little consistency or consensus for referring (in the nonprofit literature, at least) to the most senior person on a nonprofit organization’s paid staff.

All of the following options (and others) pop up in Google searches:

- Executive director
- Chief executive
- Chief executive officer
- CEO

- CEO and president
- CEO and executive director
- General manager
- Senior manager

Does the choice matter? Perhaps, according to various experts and sticklers for linguistic precision. Perhaps not so much, according to others.

Of course, it may matter quite a bit in a job listing or in an employment contract.

Many Options

“The head of a nonprofit has several options for potential titles. According to Mikko Sperber, managing partner and founder of Fundamental Strategy, a fundraising and nonprofit management advisory firm, many nonprofits do not have a president.” He adds: “The top staff position of a nonprofit organization is most commonly executive director, with the president and/or CEO becoming more commonly found in larger organizations.”

In *The Power of Titles: Being an Executive Director versus CEO in the Nonprofit Sector* (July 22, 2021), Therese Nguyen of brand strategy and marketing agency, Tronvig, writes: “What’s in a name? Leaders in nonprofit organizations are expected to hold labels that reflect their authority and responsibility, but with a handful of terms to choose from, how much weight does a particular title really hold? Specifically, what is the significance of being Executive Director versus CEO?”

As a threshold matter, it’s important to point out that size matters when anecdotally surveying the field. Smaller organizations have tended to gravitate to the title “executive director” whether they are all-volunteer (with a founder or other dedicated person doing most of the work) or have a small paid staff. And, by sheer numbers, there are far more of them than sprawling institutions with huge budgets and massive workforces.

If and when they expand, often they switch over towards the trending options; most particularly, “chief executive officer” or “CEO and president.”

Effect of State Law

As another threshold matter, it’s important as well to emphasize that, under the nonprofit laws of most (perhaps all) states and the District of Columbia, there is a critical distinction between the “board” side of the dancing partnership and the “staff” side.

Under these laws, there are *statutorily authorized* directors and officers. In a nutshell, the board of directors is responsible for the direction and control of the organization but may delegate some of that authority so long as the board retains that ultimate control. In addition, state laws “generally require that a [nonprofit] have certain officers. In California, for example: the nonprofit public benefit corporation must have:

- A president or a chair of the board;
- A secretary; and
- A treasurer or a chief financial officer.

This complex relationship – particularly as it applies to small, all-volunteer organizations with the same people wearing multiple “hats” - is excellently discussed by Gene Takagi, Esq., in [Duties of the President and/or Chair of the Board](#) (January 4, 2017) *NEO Law Blog*.

“It’s important,” attorney Takagi explains, “to first distinguish between directors (board members) and officers. [Who’s in charge?](#) This is a commonly asked question when structuring the governance and management of a nonprofit corporation. Is it the president or chair of the board? Do nonprofits need to maintain both of these positions? And how does an executive director fit into this equation?”

See also [Who is the Chief Executive Officer – the Executive Director or the Board Chair?](#) (June 16, 2010), Gene Takagi, Esq., *NEO Law Blog* and [Nonprofit Directors and Officers – Not the Same Thing](#) (May 14, 2019) Gene Takagi, Esq., *NEO Law Blog*.

The bottom line is that the board of directors (acting collectively as a board and not as individuals) and the officers have “statutory” authority while paid staff – even the most illustrious and generously compensated – are the hired help, even when they have solid employment contracts.

That’s a brutal way of putting it, but ... it is what it is.

Bearing in mind the distinctions of power and authority imposed by state law, agreement on a “workable dividing line between the board’s oversight responsibilities and the executive’s delegated management duties” is often a “gray area” fraught with complexity.

In many cases, the directors and officers are Fred Astaire and the employees are Ginger Rogers, doing all the same things but backwards and in heels.

Expert Thoughts

Now back to the tangent *du jour*: What are the most popular choices for what a nonprofit organization calls its top executive? Are some options better than others? Does it matter?

Consider, for example:

- [What’s in a Name? Benefits of the President/CEO Title](#) (reprinted June 16, 2010 from earlier publication), Eugene Fram, Professor Emeritus, E. Philip Saunders College of Business of the Rochester Institute of Technology, *nonprofitconversation.blogspot.com*
- [Who is the Chief Executive Officer – the Executive Director or the Board Chair?](#) (June 16, 2010), Gene Takagi, Esq., *NEO Law Blog* [agreeing on many, though not all, points made by Dr. Fram]
- [Who’s in Charge Here? Role of the Board of Directors vs. Role of the Executive Director](#) (December 26, 2018), Molly Cullinane, Esq.
- [The Power of Titles: Being an Executive Director versus CEO in the Nonprofit Sector](#) (July 22, 2021) Therese Nguyen, *tronviggroup.com*

Conclusion

There is imprecision and indecision when it comes to how the nation's nonprofits name their leadership slots. Is that inevitable?

Or, viewing it as turning lemons into lemonade, is it the logical and beneficial result of the flexibility of the American nonprofit governance model.

Won't resilience be necessary in any event as we move into uncharted territory like "shared (executive) leadership" formats or as nonprofit work is spun off into hybrid or other entities like LLCs or social-purpose corporations?

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