

Gender-Neutral Titles for California Nonprofit Corporations

11.23.15 | Linda J. Rosenthal, JD



It was a wild ride for California legislators this year. They faced a daunting, packed calendar of important bills on topics ranging from right-to-die to regulation of the state's medical marijuana program to gender pay equality. It was a race against the clock, trying to squeeze in final votes on all of the pending measures before the scheduled adjournment on September 11, 2015.

In the midst of this hectic calendar, Golden State lawmakers took the time to thoughtfully consider and settle a burning question affecting the nonprofit community.

The issue? How to properly refer to the illustrious person who calls to order, and presides over, the meetings of an organization's board of directors.

What is appropriate, acceptable, and politically correct – (now) – in the second decade of the 21st century?

It's Settled

The suspense is over; there's now a definitive answer. Under Senate Bill 351, California nonprofit corporations may continue to use any of these (already permitted) titles:

- chairman of the board
- chair of the board
- chairperson of the board
- chairwoman of the board

and, effective January 1, 2016, they are authorized as well to use any of the following:

- chairman

- chair
- chairperson
- chairwoman

The modifier “of the board” is no longer necessary. It’s optional.

In July, SB 351 easily sailed through the Senate and Assembly. Governor Jerry Brown signed it into law with little fanfare and no peep from the affected constituency. There was nothing like the brouhaha erupting at the 11th-hour over SB 549, the amendments to the charity raffle rules.

A Review of Related Law

With this weighty matter resolved, it’s a good time to summarize the California Nonprofit Corporation Law about director and officer positions generally, so any lingering confusion is cleared up.

We’ll focus here on the statute – California Corporations Code section 5213 – that applies to nonprofit public benefit corporations (roughly equivalent to the federal 501(c)(3) concept). As newly amended, it includes the “chair” terminology options of SB 351. [There are similar statutes that apply to mutual benefit corporations (sec. 7213) and to religious corporations (sec. 9213), and which were amended by SB 351.]

Here is section 5213, (as recently amended) verbatim:

”

(a) A corporation shall have (1) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both, (2) a secretary, (3) a treasurer or a chief financial officer or both, and (4) any other officers with any titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that no person serving as the secretary, the treasurer, or the chief financial officer may serve concurrently as the president or chair of the board...

In plainer English, here are the key points:

- *Mandatory Positions:* There are three levels of required positions: (1) a board chair or a president, or both; (2) a secretary; and (3) a treasurer or chief financial officer, or both. (*Some duplication is allowable; subject to limits, see below. One person may wear “two hats”; but each job level has distinct job duties that must be done.*)
- *Who Runs the Organization:* Generally, the president is the “general manager and chief executive officer” of the nonprofit, and runs the day-to-day operations; if there’s no president, that job is done by the board chair. (*But: the board of directors has the ultimate responsibility for policy-making and governance; sec. 5210*)
- *Who’s In Charge of the Finances:* Generally, (unless there’s a contrary provision in the articles of incorporation or bylaws), the chief financial officer has the day-to-day responsibility for the finances. If there’s no CFO, the treasurer performs this CFO function. (*As with the chief executive function, the ultimate responsibility for governance and policy remains with the board of directors.*)
- *Optional Offices:* There may be additional officers with additional titles and duties, if authorized either by the bylaws or by the board of directors.
- *Allowable Duplication:* One person may hold more than one office, but the executive level must be kept separate from the subordinate levels; that is, secretary/treasurer/CFO. For example, the secretary may also be the treasurer, but the secretary may not also be the chief executive officer. The same applies to a treasurer or CFO; no overlap with the executive level is allowed.