FPLG: BLOG

How Many Officers Should a California Charity Have?

03.17.16 | Linda J. Rosenthal, JD

Especially for people who are new to the world of charities and tax exemptions, even the most basic concepts are perplexing. That includes the basic nature of the corporate structure, how it is governed, and the distinct roles (or "hats") that various individuals perform. Particularly confusing is the perception – especially to outsiders – that one or two people are doing everything.
That may well be true, but there are limits. A single person may hold multiple roles in a nonprofit organization, but not *all* of them simulataneously.

Management and Operation of a Corporation

Directors

Most organizations that want to have the coveted IRS charity tax-exempt status will set up as corporations. In California, these organizations are governed by the Nonprofit Public Benefit Corporation Law, starting at the California Corporations Code section 5110.
Under this corporate form, there are directors and officers. Both are required:

> *Every corporation must have directors and officers. Legally, a public benefit corporation … may operate with only one director. However, most charities operate with three or more directors, which is strongly recommended.*

(As a practical matter, it may be difficult to be approved for tax-exempt status on the federal level with only a single director.)
Specifically –

> *Each corporation shall have a board of directors…. [T]he activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board.*

The board of directors "may delegate the management of the activities of the corporation" – to one or more people, or to a management company, or to a committee – provided that the board keeps and exercises "ultimate direction."
The board's role is to create governing policy and make final decisions for the corporation.

Officers

In addition to directors, every public benefit corporation is required to have a president, a chief financial officer and a secretary. Additional officers may be appointed.
The "powers, duties, and liabilities of directors and officers of public benefit corporations are governed by California statutes."
The statute that governs corporate officers is section 5213:

> *(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.*

There is one express limitation on the overlap of offices:

> *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.*

The duties of the officers are to operate the corporation:

> *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."
Generally, officers are selected by the board and "serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment." This is another example of one person wearing more than a single "hat." The category of employee is separate and distinct from the management – that, is the directors or officers. But in many charitable corporations, some of the directors and officers are also hired as staff. That power and authority is, however, different and distinct from any separate power that the person has by virtue of being a director or an officer, or both.

Conclusion

Under the express rules of the California Nonprofit Public Benefit Corporation Law, there must be at least two officers, because of the restriction that the president (or board chair) cannot also serve at the same time as secretary or as treasurer or chief financial officer.