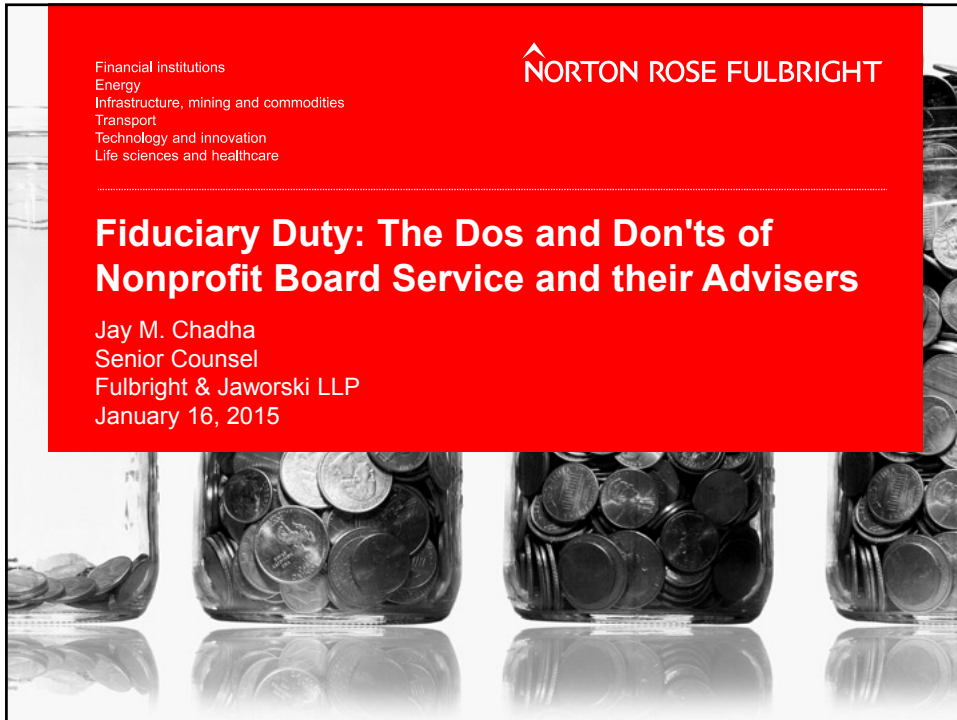


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Fiduciary Duty: The Dos and Don'ts of Nonprofit Board Service and their Advisers

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Jay represents and counsels tax-exempt organizations on a variety of matters covering the entire life cycle of an exempt organization, from advising on formation issues, preparation and advocacy in obtaining tax-exempt status from the Internal Revenue Service and other governmental entities, advising on compliance and reporting issues for exempt organizations, providing guidance to boards of such organizations regarding corporate governance issues and assisting with the termination of such organizations. Jay has handled matters for a wide variety of exempt organizations, including public charities, private foundations, donor advised funds, support organizations, religious organizations, schools, museums, and hospitals and medical research organizations.

Goals

- “Governance” for a nonprofit corporation
- Overview of director’s responsibilities
- Transactions that require additional consideration should be considered
- Role of advisers

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Governance

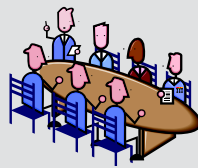
- Two parts to governance:
 - Legal – what the law requires from a board member regarding its relationships to the nonprofit corporation.
 - Functional – how the board of directors act for the corporation.
- Both state law and federal income tax law provide rules regarding governance.

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Board of Directors - TBOC § 22.001(1)

- "Board of directors" means the group of persons vested with the management of the affairs of the corporation, regardless of the name used to designate the group.
- The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation.



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Director is not a Trustee - TBOC § 22.223

- A director of a corporation is not considered to have the duties of a trustee of a trust with respect to the corporation or with respect to property held or administered by the corporation, including property subject to restrictions imposed by the donor or transferor of the property.
- Provision applies only to directors, the organization itself could have the duties of a trustee when the corporation serves a trustee of a charitable trust.

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