

PRESENTED AT

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**Legal Requirements and Considerations
for Directors of a Texas Nonprofit Corporation**

Executive Summary

(December 2016 Release)

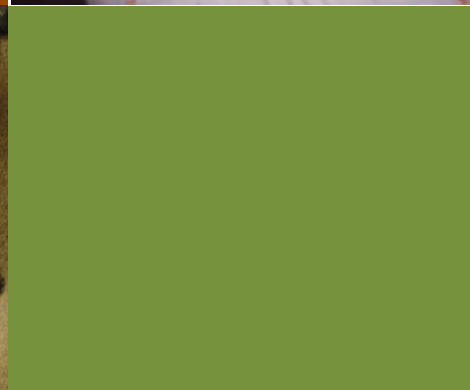
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**LEGAL REQUIREMENTS AND CONSIDERATIONS
FOR DIRECTORS OF A
TEXAS NONPROFIT CORPORATION**

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INTRODUCTION

Nonprofit corporations must comply not only with state corporate law but also with a number of laws specific to charitable organizations, including laws related to fundraising, donor privacy and federal tax-exempt status. Just a few of the issues that a director of a Texas nonprofit corporation may confront include:

- What is required of directors to meet their fiduciary duties to the nonprofit corporation?
- What must a nonprofit entity do to maintain its federal tax-exempt status?
- What are the legal requirements for raising money over the internet?
- What privacy laws apply to a nonprofit?
- In what way does the Sarbanes-Oxley Act of 2002 apply to a nonprofit entity?

This executive summary addresses legal topics pertinent to service as a director of a nonprofit entity. There are various types of nonprofit entities. The scope of this document is limited to Texas nonprofit corporations that are exempt from federal income tax under section 501(c)(3) and are classified as public charities under the Internal Revenue Code.

This executive summary does not address additional requirements under Texas law for certain nonprofit organizations in niche areas such as dental and healthcare organizations, corporations formed by physicians and physician assistants, religious organizations or corporations assisting state agencies. Nor does this executive summary address all legal requirements with which an organization must comply such as employment and labor laws, financing laws and tax laws other than federal tax law requirements for exempt organizations.

LEGAL REQUIREMENTS AND CONSIDERATIONS FOR DIRECTORS OF A TEXAS NONPROFIT CORPORATION

Chapter 1. Governance for a Texas Nonprofit Corporation

Under Texas law, a nonprofit corporation is a corporation in which “no part of the income” of such corporation may be distributed to a member, a director or an officer of the corporation unless an exception applies.¹ Although the Texas Business Organizations Code (“TBOC”) provides that a nonprofit corporation may have one or more classes of members,² the members do not own the nonprofit corporation, nor do they have a legal ability to profit personally from it.³ In fact, a Texas nonprofit corporation does not need to have any members.⁴ However, if it does, a nonprofit corporation may compensate its members for services rendered to the nonprofit corporation and may provide its members with a right to govern the nonprofit corporation or to vote on certain matters.⁵

Composition of the Board

A Texas nonprofit corporation may be managed either by a board of directors or by its members (if the corporation has members).⁶ If the nonprofit is managed by its members, it need not have a board of directors.⁷ This executive summary assumes that the nonprofit corporation will have a board of directors.

A board of directors of a Texas nonprofit corporation must have at least three directors.⁸ The certificate of formation or the bylaws may specify the procedures for election or appointment of directors, as well as the size of the board.⁹ If the certificate of formation and the bylaws fail to specify these procedures, the nonprofit’s board of directors elects each director.¹⁰ Texas law does not require a director of a Texas nonprofit corporation to be a resident of Texas or a member of the respective nonprofit corporation.¹¹

If the certificate of formation or the bylaws do not provide otherwise, then:

- a director of a nonprofit corporation may be removed, with or without cause, by the persons entitled to elect, designate, or appoint a director to such nonprofit’s board;¹²
- a director of a nonprofit corporation may resign at any time by providing written notice to such nonprofit; and¹³
- any vacancy on the board of a nonprofit corporation shall be filled by a vote of the majority of the remaining directors, regardless of whether that majority is a quorum. Such director will hold office for the balance of the term of her or his predecessor, at which time a successor will be elected in accordance with the normal election process for that nonprofit corporation.¹⁴

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