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Understanding the Nuances of Ex Officio Board Members

Many Boards of Directors have what are called “ex officio” members. The term itself comes from the Latin, meaning “from the office.” It refers to a Board member who has their position because of the office that person holds. For example, Nonprofit A’s Board might want the Executive Director of a related supporting organization (Nonprofit B) to serve as an ex officio Board member of Nonprofit A. This may be a way to give Nonprofit B a sense of inclusion in Nonprofit A’s community and keep the Board informed as to issues that are important to Nonprofit B. It also may help these two affiliated groups work more smoothly together.

There are a couple of important things to know about ex officio Board members under California law. The first pertains to Corporations Code section 5047, which clarifies that anyone who is a director and counted as a member of the Board must have the right to vote. This is important, because many nonprofit organizations were operating under an assumption that ex officio members either did not have the right to vote or could be denied that right, while still counting as a member of the Board. The legislature clarified that even ex officio members must have voting rights if they are to be considered members of the Board.

The second important piece of information is that the term of an ex officio director must coincide with the respective term of office for the position entitling that person to be a director. This is codified in Corporations Code section 5220(f). Using the example from above, this law means that the Executive Director of Nonprofit B would be qualified to be an ex officio Board member for Nonprofit A only for the time that he or she served as Executive Director of Nonprofit B. Once a new Executive Director took office, that new person would automatically become the new ex officio member of Nonprofit A’s Board.

Nonprofit organizations that had certain ex officio members as a way to honor long-term members of the community *without* giving them a voting position on the Board can still achieve that goal while staying within the bounds of the Corporations Code. One way to do that is, instead of calling such people ex officio Board members, the nonprofit can instead honor them as Directors Emeritus or Honorary Advisors. Those individuals can be invited to Board meetings to share their wisdom and input with the Board without being considered and counted as an actual member of the Board. This is an easy way to balance the desire to honor and share the

knowledge of beloved and respected community members while still complying with the legal requirements for director voting rights. In the alternative, the nonprofit can still call them ex officio members so long as their bylaws make clear that such individuals are not considered full members of the Board with voting rights and are not counted as official members of the Board for legal purposes.

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