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Who's Who? The Difference between Directors and Officers

Our clients often ask: what is the difference between a director and an officer?

They sound like synonyms, but they are not. "Director" and "officer" are two distinct categories with different responsibilities and powers. Because the law prescribes different roles for each, it is important to understand the difference to ensure compliance.

Directors. A director sits on a nonprofit corporation's Board of Directors. The Board holds all corporate powers and is ultimately responsible for the activities and affairs of the corporation (although it commonly delegates much of this authority and supervises its exercise). The Board exercises this broad authority as a collective; in other words, unless specifically authorized by the Board, no single director can individually take action, such as creating a new program or rejecting a funding proposal. Each director has legally enforceable, fiduciary duties of care, and loyalty in the performance of their duties as a director. The Board supervises the officers and, if the organization has employees, the senior member(s) of the staff (typically, an Executive Director or Chief Executive Officer).

Officers. An officer of a nonprofit corporation (note: they are properly described as officers "of the corporation," not "of the Board") plays a different role. Officers are customarily delegated a more day-to-day, operational role in the corporation, with specific duties, and normally have some individual authority with respect to those duties. For example, a chief financial officer would generally be responsible for the corporation's finances and accounting, while the secretary would be solely responsible for ensuring minutes are kept and meeting notices properly given. The California Nonprofit Public Benefit Corporation Law requires that a corporation have a president or chair or both; a treasurer or chief financial officer or both; and a secretary. (The same is true of nonprofit mutual benefit and nonprofit religious corporations.) The Board of Directors may create other offices as it sees fit. Like directors, officers have fiduciary duties, but these duties are generally narrower and deeper than a director's, as befits the narrower but more day-to-day role of an officer. Unlike directors, each officer only has authority within a specified, limited scope.

Why the Confusion? The difference between officers and directors sometimes confuses people, perhaps because the same individual can wear both hats at once. For example, in some organizations, all of the officers are selected from among the directors. However, it is equally permissible for the individuals serving as officers to be entirely distinct from those serving on a board, or for there to be only partial overlap. The best structure will depend on the needs of the particular organization and the individuals involved – people

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just need to remember which hat they are wearing when they make a decision or take an action.