

AVOIDING LEGAL AND FINANCIAL PITFALLS

Four Truths and a Lie

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- ❑ Chad has worked for a nonprofit that was shuttered by the NY Attorney General in a multi-million dollar lawsuit against the nonprofit, its founders, its vendors AND its Board members;
- ❑ Chad has testified in a courtroom following an embezzlement at an association where he worked;
- ❑ Chad has been a plaintiff on a breach of fiduciary responsibility lawsuit against an association Board (for whom I previously worked);
- ❑ While at CEC, Chad has advised a CEC unit on dealing with an embezzlement, helped a division file Articles of Incorporation, guided a Unit who lost its nonprofit status, and advised a CEC volunteer worried about indemnification and his legal responsibilities;
- ❑ Chad is a lawyer.

Agenda

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- Fiduciary Responsibility
- Guiding Documents
- 501c3 and Nonprofits
- Governance Nomenclature
- Insurance
- License, Tax and Audit
- Accounting
- Contracts
- Conflict of Interest

Fiduciary Responsibilities

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- Applies to:
 - ▣ Elected Volunteers/Leaders
 - ▣ Appointed Volunteers/Leaders
 - ▣ Staff
- Everyone has the same fiduciary responsibilities
 - ▣ i.e. president doesn't have more fiduciary responsibility than the membership chair
- Legal implication for not fulfilling responsibilities
 - ▣ “Fiduciary Breach”

Fiduciary Responsibilities

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Responsibility	Chad-Speak	Examples
Duty of Care	Be Informed	Data, Counsel, History --COME PREPARED

Fiduciary Responsibilities

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Duty of Loyalty	Put the Organization First	Avoid Conflict, Declare Conflict

Fiduciary Responsibilities

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Duty of Loyalty	Put the Organization First	Avoid Conflict, Declare Conflict
Duty of Obedience	Follow the Rules	Bylaws, Mission, Policies

Fiduciary Responsibilities

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Duty of Foresight	Be Proactive	Strategy, Data Mining, Listening

Avoiding Claims of Fiduciary Breach

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- Individual volunteers protected somewhat by VPA; not protected from gross negligence
 - Avoid negligence by seeking support/counsel
- Organization NOT protected from negligence
- Remove volunteers members who are negligent; promote volunteers who uphold responsibilities
- Onboard/train new volunteers; make governing documents available

Hierarchy of Guiding Documents

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- “Duty of Obedience”
- Follow the laws, policies, and mission of the organization.

Hierarchy of Guiding Documents

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Document	Created By	Includes
State/Government Law	Lawmakers	<ul style="list-style-type: none">-Who can incorporate-Board responsibilities on voting, quorum, etc

Hierarchy of Guiding Documents

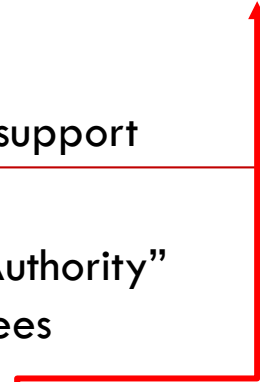
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Hierarchy of Guiding Documents

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Bylaws	Board of Directors (Usually Member Approved)	<ul style="list-style-type: none">-Membership-Officers; terms; "Authority"-Standing Committees-Quorum; voting



Hierarchy of Guiding Documents

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Operations Manual	Committees; Staff	<ul style="list-style-type: none">-Day to Day Operations-Processes and Procedures-Not Legally Binding



Governance Nomenclature

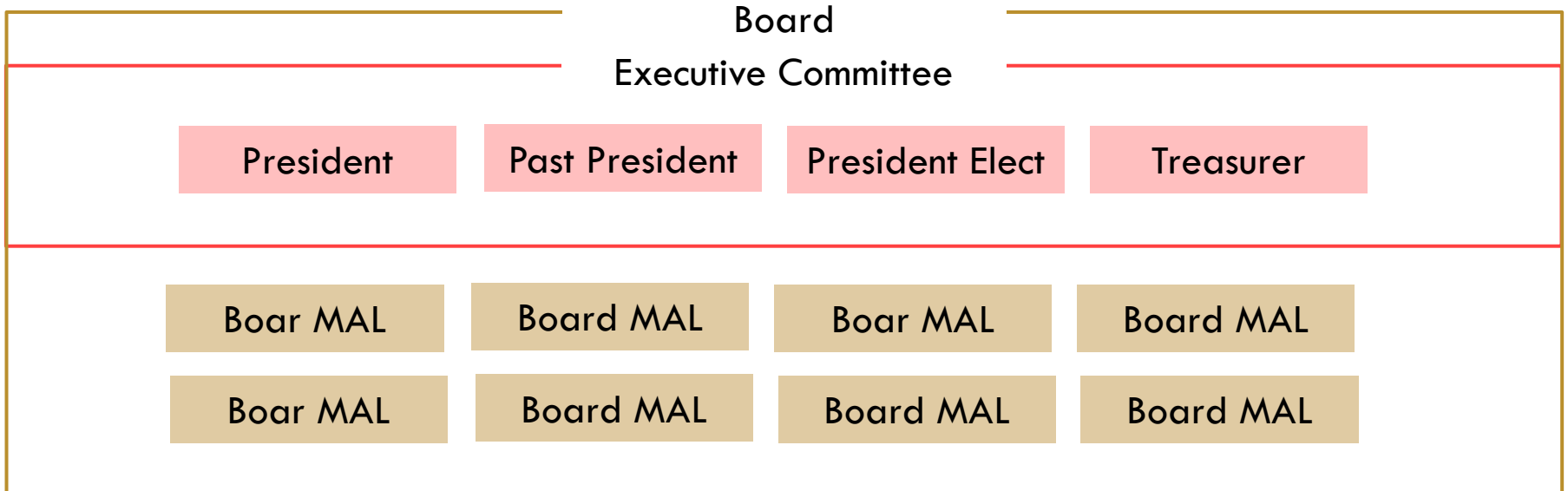
Governance Nomenclature

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- Must use nomenclature established in Bylaws
- Names establish authority
- All volunteers have same Fiduciary Responsibility; nomenclature defines different Legal Responsibility

Governance Nomenclature

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Chapters

SIGS

Committees

Workgroups

Subdivisions

CASE STUDY: SPSP

CASE STUDY: SPSP

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Executive Committee

President

Past President

President Elect

Treasurer

CASE STUDY: SPSP

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Board

President

Past President

President Elect

Treasurer

Boar MAL

Board MAL

Boar MAL

Board MAL

Boar MAL

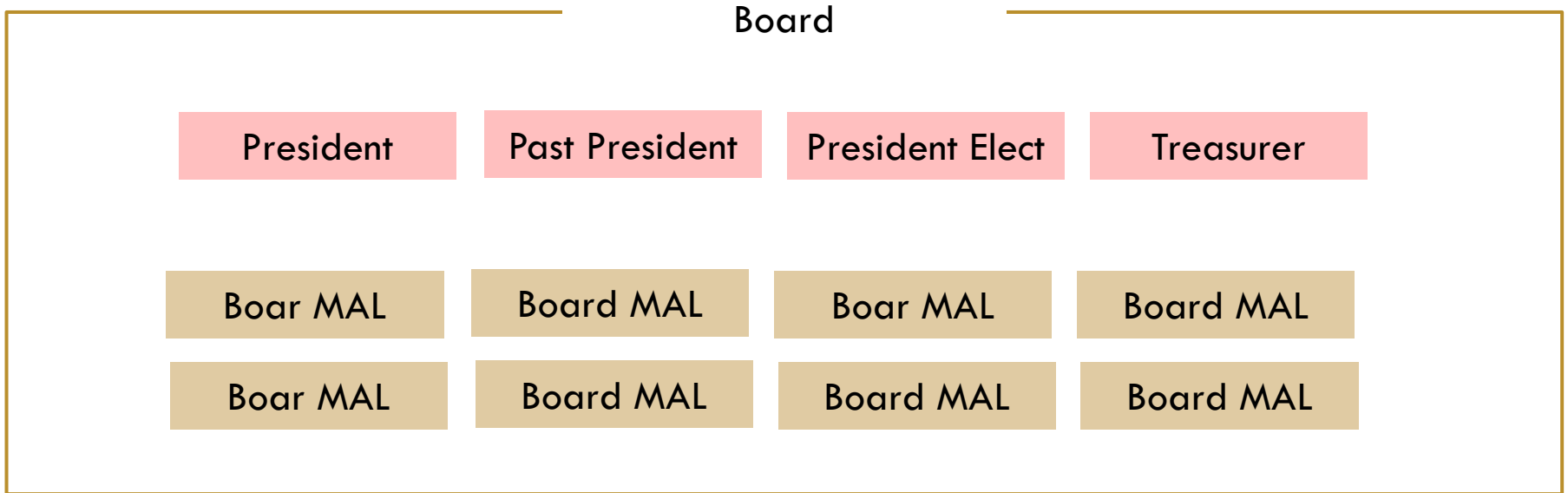
Board MAL

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Board MAL

CASE STUDY: SPSP

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Committees

Editors

Task Forces

Foundation

Staff

CASE STUDY: SPSP

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Executive Committee

President

Past President

President Elect

Treasurer

Boar MAL

Board MAL

Boar MAL

Board MAL

Boar MAL

Board MAL

Board MAL

Board MAL

Committees

Editors

Task Forces

Foundation

Staff

501c3 Cans and Cannots

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- 29 Difference 501c NONPROFIT organizations, all exempt from some federal taxes
 - ▣ 501c3 – Religious, charity, education, science, etc
 - ▣ 501c4 – Civic leagues, social welfare, local employees
 - Most Political Action Committees (PAC)
 - ▣ 501c5 – Labor unions, agricultural organizations
 - ▣ 501c6 – Business leagues, chamber of commerce
 - Lots of Lobbying

501c3 Cans and Cannots

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- No tax on operating income, local sales tax
- Contributions are tax deductible – NOT membership
 - Must register to be ACTIVELY pursue donations
- Members cannot engage in activities that utilize nonprofit resources to benefit personally (i.e. book promos)
- Cannot engage in electioneering, supporting any candidate for public office OR allow it to happen in forums, listserves, etc.
- Cannot engage or create forums for Antitrust violations (propose boycotts of companies, agree on pricing to pay, exclusionary practices, etc)
- CAN do lobbying
 - Safe Harbor Law: Cannot spend more than 20% of first \$500,000 of revenue

CEC Policies

	Divisions	Units
Bylaws	On File with CEC	
Membership	Unified - 1% of CEC (~200)	Unified; 50-Person Minimum
Groups	Oversee Subdivisions	Oversee Chapters
Budget	Should Have One	
Public Statements	Must Use Disclaimer Unless Approved by CEC	Must Be in Alignment with CEC (unless state-level)
Reporting	Submit Annual Assurance Form	
Elections	May support candidates for CEC Board election (new as of 2021)	

Insurance

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- Anyone involved in the management of a nonprofit organization — including directors, officers, employees and volunteers — could be held personally liable for errors or omissions involved in the management of the organization.
- Types of lawsuits:
 - ▣ Employment/Contract Issues (90% of nonprofit lawsuits)
 - ▣ Fiduciary Duty Breach
 - ▣ Misuse of nonprofit funds or donor funds
- **Directors and Officers Insurance** (CEC Can Recommend)
- General Liability Insurance
- Event Cancellation Insurance*

Licensure

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State Registration

Initial Registration
Proves Your
“License”

Filed Annually

Update Officers

“Local” Contact

Sometimes include
Tax Info

Often includes a
payment

Federal Registration

Initial Registration
Provides an EIN

Annually File a 990

Federal Nonprofit Status

Done One Time

KEEP YOUR LETTER

IRS 990

- Form 990 is an annual reporting return that certain federally tax-exempt organizations must file with the IRS. It provides information on the filing organization's mission, programs, and finances.
 - ▣ All 501 c3 organizations must file
 - ▣ Revenue <\$50,000 can file 990-N (Postcard)
 - ▣ Revenue <\$200,00 can file 990-EZ
 - ▣ May be subject to 990-T (UBIT)
 - ▣ 990 Must be made available upon request
- CEC will not relinquish dues without proof of filing

Accounting Best Practices

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- Approve an Annual Budget
 - ▣ Review Regularly
 - ▣ Look at TRENDS, Not Just This Year (Foresight)
 - Division dues come monthly, Units come annually
 - ▣ Diversify Revenue
 - ▣ Management vs. Programs
- Multiple “Hands” Involved in Process
 - ▣ Minimum = Someone Reviewing Bank Statements
- Rotate Treasurer Role
- Audit Periodically
- “How Much Should We Have In Reserves?”
- No Money, No Mission

Contracts

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□ GET IT IN WRITING

“No, Jimmy, I distinctly said you could HALVE your allowance by mowing the lawn.”



Contracts

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- GET IT IN WRITING
- Anything involving money, Speaker contracts, Web development, Meeting/Event contracts, Editors/Publishers, etc
- CEC will provide free, non-legal review of any contract; Legal review should be handled by an attorney in your state or territory

Meetings/Hotels

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- Always start with an RFP (CEC can provide sample)
 - ▣ Ask for what YOU want, not what they want to give
 - ▣ Discounts on Food/Beverage and A/V (20% minimum)
 - ▣ Comped Rooms (1:40 Comped at a minimum)
 - ▣ Free Upgrades
- Chad's Must-Haves
 - ▣ Attrition of 20%+
 - ▣ Any revenue minimums and ability to decrease
 - ▣ Cancellation Clause
 - ▣ Force Majeure Clause
 - ▣ Alcohol Responsibility Clause
 - ▣ Walk Clause
 - ▣ Rate Integrity Clause
 - ▣ Resell/Rebook Clause
- If not experienced, use a third party (CEC can recommend)

Conflict of Interest

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- Interest of Two Parties Cannot Be Served
- Many States Require Nonprofits to Have Written Policy, Signed Annually
- Not Always Financial
 - ▣ Personal Gain vs. Undue Influence
- Conflicts Should Be Avoided—particularly if it is a duality of loyalty; when they cannot, volunteer should recuse and minutes should reflect

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2022 **Leadership** Institute

ACTIVATE
the **VALUE**
of **CEC**

Council for
Exceptional
Children

1922-2022

100 Years
of Leading
Special Education