

This profile is part of a set of 51 profiles, including all U.S. states and the District of Columbia, which outlines state laws, regulations, and requirements that apply to charitable organizations. It covers six areas and highlights ways in which state laws differ from federal laws governing charitable organizations.



Formation, Elections, Operation, and Dissolution

Nonprofit Corporations

Nonprofit Public Benefit Corporations. Cal. Corp. Code §§ 5110 - 6910.

Nonprofit Unincorporated Associations

Nonprofit Associations. Cal. Corp. Code §§ 18605-18640.

Election of Directors

No specific number of directors required. Cal. Corp. Code § 5220.

Director Term

Generally, director terms may be fixed in the bylaws but may not exceed four years. However, "terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year." Cal. Corp. Code § 5220.

Meeting and Quorum Requirements

Quorum (Directors): The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in or pursuant to the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in or pursuant to the articles or bylaws is one, in which case one director constitutes a quorum. Cal. Corp. Code §§ 5211, 5510 et seq.

Quorum (Members): One-third of the voting power, represented in person or by proxy, shall constitute a quorum at a meeting of members, unless bylaws say otherwise. Cal. Corp. Code § 7512.

Meeting requirements governed by Cal. Corp. Code § 5510.

Officer Requirements

A California nonprofit corporation must have: 1) either a chairperson of the board or a president or both; 2) a secretary; and 3) a treasurer or a chief financial officer or both. Cal. Corp. Code § 5213.

Officer Term

The term of office of the elected officer shall be one year unless the articles or bylaws provide for a different term which shall not exceed three years. Cal. Corp. Code § 5213.

Dissolution

Cal. Corp. Code § 6510 et seq. governs the dissolution of a California nonprofit corporation.

Duties, Indemnification, and Interested Transactions

Director Duties

Duties of Care and Loyalty. Cal. Corp. Code §§ 5230 et seq. "A director shall perform the duties of a director...in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."

Officer Duties

Duties of Obedience, Care, and Loyalty. Officers of California nonprofits have the duties stated in the bylaws and assigned to them by resolutions of the board of directors. Cal. Corp. Code § 5213(a).

Board Independence Requirements

No more than 49 percent of the persons serving on the board of a California nonprofit corporation may be interested persons. "Interested persons" means either: (1) Any person currently being compensated by the corporation for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; or (2) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. Cal. Corp. Code § 5227.

Interested Transactions

Generally interested transactions are permitted if the transaction is fair and reasonable and preapproved by a disinterested majority of the board. Cal. Corp. Code § 5233.

Indemnification of Directors/Officers

An agent (director or officer) may seek advances or indemnification with regard to "any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative." Cal. Corp. Code § 5238.

Loans to Directors, Officers, or Employees

Loans are typically not permitted except for business expenses the director/officer is reasonably expected to incur. Cal. Corp. Code § 5236.

Notable Departures from Federal Law

Religious/Church Exemption

California Constitution Article XIII, Section 4(b) provides the California Legislature with the authority to exempt property used exclusively for religious, hospital, or charitable purposes. Churches must apply for and receive an exempt determination or acknowledgement letter from the California Franchise Tax Board. Cal. Rev. and Tax'n Code § 23701d. Additionally, California religious organizations are exempt, upon application, from sales and use taxes and property tax. See Publications 18 and 48.

See tax sections below.

Healthcare "Plus Factors"

California law recognizes that nonprofit hospitals receive "favorable tax treatment by the government... [i]n exchange [for assuming] a social obligation to provide community benefits." 'Community benefits' are defined as hospital activity "intended to address community needs and priorities primarily through disease prevention and improvement of health status." However, California nonprofit hospitals are not required to provide a specified minimum of community benefit. Cal. Health & Safety Code §127340(a).

Nonprofit hospitals must submit annual community benefit plans which include the economic value to be provided. Cal. Health & Safety Code § 127350(d). Every two years (or when a significant policy change is made), nonprofit hospitals must provide copies of its discount payment policy, charity care policy, eligibility procedures, review process, and the application for charity care or discounted payment programs. Cal. Health & Safety Code § 127435.

Nonprofit hospitals must conduct assessments to evaluate the health needs of communities they serve. Cal. Health & Safety Code § 127350(b).

General

Rebuttable Presumption of Reasonableness - Delegation to Disinterested "Others"

"The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that the activities and

affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board." Cal. Corp. Code § 5210.

Charitable Solicitation Requirements

A California nonprofit must register with the Attorney General's Registry of Charitable Trusts within 30 days of initially receiving assets. See California Law on Charitable Solicitations, Cal. Bus. & Prof. Code §§ 17510-17510.95; California Law on the Supervision of Trustees & Fundraisers for Charitable Purposes, Cal. Gov't Code §§ 12580-12599.8.

State-Specific Retention Policies

18 Cal. Code Reg. § 4901(i) establishes record retention requirements under the State Board of Equalization, Cal. Corp. Code §§ 6320 et seq. governs corporate record retention.

Personal Information Collection and Protection Laws

No relevant statute found.

Whistleblower Protection

California has a general whistleblower protection statute that protects employees who disclose illegal activity or refuse to participate in illegal activities. Cal. Labor Code § 1101 et seq.

State Volunteer Liability Law

A volunteer director or executive officer of a nonprofit corporation is not liable for monetary damages to a third party if the act or omission was done in good faith and within the scope of duty and if the damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation. Cal Corp. Code § 5239.

Independent Audit Requirements

Charitable corporations with gross revenues of two million dollars or more must prepare annual financial statements audited by an independent certified public accountant (CPA). Cal. Gov. Code §12586(e)(1).

State Filing Requirements

California nonprofits must file an annual registration renewal fee report with the California Registry of Charitable Trusts. Cal. Gov. Code §12580 et seq. Additionally, California nonprofits must file an annual information return with the California Franchise Tax Board. Cal. Rev. and Tax'n. Code § 23772. Finally, nonprofits must file a statement of information biennially with the California Secretary of State. Cal Corp. Code § 6210.

Model Acts

Uniform Prudent Management of Institutional Funds Act

Adopted

Uniform Prudent Investor Act

Adopted

Tax Exemptions

Income Tax

California nonprofits can apply to the California Franchise Tax Board for exemption from the California Franchise Tax. Cal. Rev. & Tax'n Code § 23701.

Sales and Use Taxation

Generally, a California nonprofit's sales and purchases are taxable unless the sale is covered by a specific legal exemption or exclusion. Nonprofits must apply to the California Board of Equalization to obtain an exemption letter for exempt sales activities. See California State Board of Equalization Publications 18 and 61.

Property Tax Exemption

Real and personal property owned and operated by certain nonprofit organizations can be exempted from local property taxation through a program jointly administered by the Board of Equalization and county assessors' offices in California. This exemption, known as the Welfare Exemption, is available to qualifying organizations that have exempt status under IRC § 501(c)(3) or Cal. Rev. & Tax'n Code § 23701(d) and are organized and operated exclusively for religious, charitable, scientific or hospital purposes.

Miscellaneous Exemptions

N/A.

General Resource:

http://www.leginfo.ca.gov/.html/corp_table_of_contents.html

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