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TIPS FOR CALIFORNIA NONPROFIT CORPORATIONS FOR PREPARING MINUTES OF BOARD MEETINGS

I. PURPOSE OF MINUTES

The purpose of corporate minutes is to protect your nonprofit corporation by maintaining an accurate and complete record of its actions, and to protect the corporation's directors by demonstrating that they met their fiduciary obligations in the decision-making process. Since the directors' duty of care includes using reasonable inquiry in performing their duties, the minutes are an appropriate place to document that they are fulfilling this obligation.

II. GENERAL GUIDELINES

A. Appropriate Balance of Information. In preparing minutes of meetings of the Board and Committees of the Board, a balance should be struck with regard to the level of detail the minutes provide. The minutes should set forth sufficient information to show that the directors performed their fiduciary obligations consistent with the standard of care. At the same time, the minutes should not be so detailed that they become material for cross-examination in the event of litigation. Rather than recording verbatim or paraphrasing the statements of the individual directors, the minutes should summarize the discussion and deliberations. Specifically, for each major item acted upon, the minutes should reflect the issues presented; the significant factors discussed and relied upon; the alternatives considered, if appropriate; the fact that questions were asked during the discussion; and the decision reached by the Board or Board Committee. If the decision was unanimous, that fact should be noted. If not, the names of those abstaining from the discussion or vote, as well as the names of those voting against a resolution, should be documented.

B. Special Procedures Regarding Conflicts of Interest and Consideration of Executive Compensation. When considering and approving resolutions regarding payment of executive compensation and/or matters in which one or more of the directors have a conflict of interest, special procedures should be followed. These procedures should be set forth in separate policies on executive compensation and/or conflicts of interest and the minutes should reflect that the procedures were followed. If the corporation fails to follow these special procedures, or follows them but neglects to document in the minutes how they were followed, the corporation may subject itself to liability under the IRS rules on excess benefit transactions (applicable to organizations recognized as tax-exempt under Internal Revenue Code Section 501(c)(3)) and/or California law.

C. Additional Items. In addition to the items discussed above, the minutes should also include:

1. The time the meeting was called to order and the time it was adjourned.

2. The names of the directors who were present and absent. If any non-directors are present, their names, titles, and affiliations should be noted.
3. Indication if any attendee arrived late and/or left early.
4. The fact that a quorum was present.
5. What reports or presentations were given at the meeting, and the names of the presenters. Copies of these documents should be attached to the approved minutes and filed in the Minute Book.

III. CLOSED/EXECUTIVE SESSIONS

A. Who Should Attend. Staff members and other non-directors are generally excluded from closed sessions of the Board, although the Board may, in its discretion, invite specified non-directors to attend. If the organization's executive director is also a member of the Board, that person should attend and participate in the closed session, unless he or she must be excluded due to a conflict of interest.

B. Level of Detail in Minutes of Closed Sessions.

1. In General. With respect to the minutes of a closed session of the Board, it is generally preferable to minimize the detail in the minutes taken, particularly if the issue is a sensitive one. Certainly, the minutes should note the names of the directors who were present and absent, that a quorum was present, the subject discussed, and the resolutions adopted at the meeting, along with the names of those voting against the resolutions. Beyond that, in many situations, it is sufficient to simply state that there was substantial discussion among and questions by the directors concerning the topic.

2. Executive Compensation. As noted in section II above, if executive compensation is the purpose of the closed session, special procedures apply, and the minutes might need to be more detailed in order to comply with California law and the IRS rules on excess benefit transactions, if applicable to the organization.

IV. APPROVAL OF MINUTES

Generally, draft minutes are prepared after the meeting and provided to the directors for review prior to the next meeting. At each meeting, the draft minutes of the last meeting are then presented for approval. If no changes are made, the minutes of the present meeting would report that the minutes of the last meeting were approved as presented. If minor changes need to be made, it is permissible for the minutes of the present meeting to simply report that the minutes of the last meeting were approved as corrected; if a major or important correction needs to be made, the minutes of the present meeting might instead memorialize that change. Ultimately, the minutes of the last meeting are finalized (including incorporation of approved corrections, if any), and, traditionally, signed by the chair or the secretary before being filed in the Minute Book.