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## Understanding Ex Officio Directors for Nonprofits

Building a strong Board is crucial to any nonprofit organization. The inclusion of ex officio directors may bring a different dynamic to the table, offering both valuable insights and potential challenges. This Legal Alert explores the role of ex officio directors in New York nonprofits, outlining their purpose and advantages, best practices for implementation, and potential challenges and considerations.

### What is an Ex Officio Director?

The term *ex officio* is a Latin phrase meaning “of the office.” An ex officio director is therefore someone who serves on a Board of Directors by virtue of holding a particular office or position within the organization or in the community at large. An ex officio position might be reserved for the CEO of the corporation, for a city councilperson, or for an officer of a local university.

### Purposes and Advantages

An ex officio Board member can bring many advantages to a nonprofit Board, including:

- **Expertise:** Ex officio Board members often bring specialized knowledge or expertise to the Board that may support the nonprofit’s mission and/or operations. For example, ex officio Board members may be able to elevate Board discussions by bringing context and insight gained from their other role.
- **Continuity and stability:** Since ex officio Board members are not tied to term limits, these directors may offer a level of continuity to the Board. As long as they remain in their role, the Board and the organization may continue to benefit from an ex officio director’s knowledge and relationships.
- **Representation:** Ex officio Board members who are connected with the local community or local government, for example, can often prove beneficial to an organization looking to represent certain populations and communities, as they may be keenly attuned to the needs of the communities being served.

The simplest way to create an ex officio Board member position is to write the position into the organization’s bylaws:

- at the formation of an organization, or
- at any time through an amendment to the bylaws.

The bylaws may explicitly provide for an ex officio position that is tied to a particular office, or they may more broadly provide for the Board to create an ex officio position. In the latter case, should the Board then decide to create such a position, such decision should be documented in Board resolutions and/or minutes. In either case, the Board should also formally appoint any new ex officio director. An ex officio position that has been written into the bylaws may also be terminated by an amendment to the bylaws.

Typically, an ex officio Board member's duties and responsibilities are identical to those of any other Board member, including the right to vote, quorum determinations, and duty to attend meetings. However, bylaws may be written such that the ex officio Board member does not have the right to vote.<sup>1</sup> This could be done, for instance, in a situation where the ex officio Board member is an expert in the subject matter at hand but does not have a personal stake in the community being served.

## Challenges and Considerations

Ex officio directors may offer valuable contributions to a nonprofit Board, and creating such a position may be an excellent strategy for some. However, nonprofits with ex officio directors (or considering having them) should be sure to consider the following:

- **Accountability:** Though an ex officio member serves in dual capacities, ex officio directors must still be held accountable to any organization on whose Board they are serving. While all Board members have a fiduciary duty to serve in the best interests of the organization, ex officio Board members may not have the same motivation as Board members who must seek re-election; it is important to provide appropriate training and guidance to all directors, including any ex officio directors.
- **Conflicts of interest:** Nonprofits must tread with caution when an ex officio Board member's other role or status presents an imminent risk of conflict or related party transactions. The most common example of this would be where the ex officio Board member is also an employee of the organization. In such cases, the ex officio Board member would need to be sure to recuse themselves from matters involving their own compensation. Boards should carefully review their organization's conflict of interest policy to ensure that they can appropriately manage any conflicts that might arise from the dual roles or other affiliations of an ex officio director.
- **Balance of power:** While there is utility in Board consistency and the preservation of institutional knowledge, Board turnover often reflects the changing needs of the nonprofit organization over time, bringing in new faces along with new ideas. Ex officio directors who may remain regardless of the evolving needs of the nonprofit could lead to a power imbalance, particularly for smaller Boards. Boards should regularly assess the inclusion of an ex officio director to ensure that it remains in the best interest of the organization and enhances, rather than impedes, the Board's effectiveness and efficiency.

Ex officio directors can be a valuable addition to your Board, bringing expertise, continuity and stability, and representation. However, organizations should proactively consider the potential challenges and limitations having such a position on your Board may bring. By holding all directors accountable, managing conflicts of interest, and maintaining a balanced Board, your nonprofit can effectively leverage the benefits of ex officio directors. Be sure to consult with legal counsel for advice specific to your organization.

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<sup>1</sup> N.Y. Not-For-Profit Corp. Law (N-PCL) § 713(d).

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Senior Staff Attorney Ciarra Chavarria at [cchavarria@lawyersalliance.org](mailto:cchavarria@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. To become a client, visit [www.lawyersalliance.org/becoming-a-client](http://www.lawyersalliance.org/becoming-a-client).***

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