

Education Foundations: Top 10 Ways to Spend More Time with Your Attorney

UNDERWOOD

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1. Ignore your fiduciary duties.

Fiduciary Duties of Directors

Duty of Care

Duty of Loyalty

Duty of Obedience

Duty of Care

Exercise the amount of care an ordinarily prudent person in a similar position would exercise under similar circumstances.

Duty of Loyalty

- Act in good faith and in a manner that you reasonably believe is in the best interests of the organization.
- Put the needs of the organization ahead of personal benefit.

Duty of Obedience

Act in compliance with applicable law and governing documents.



2. Ignore scope of delegated authority.

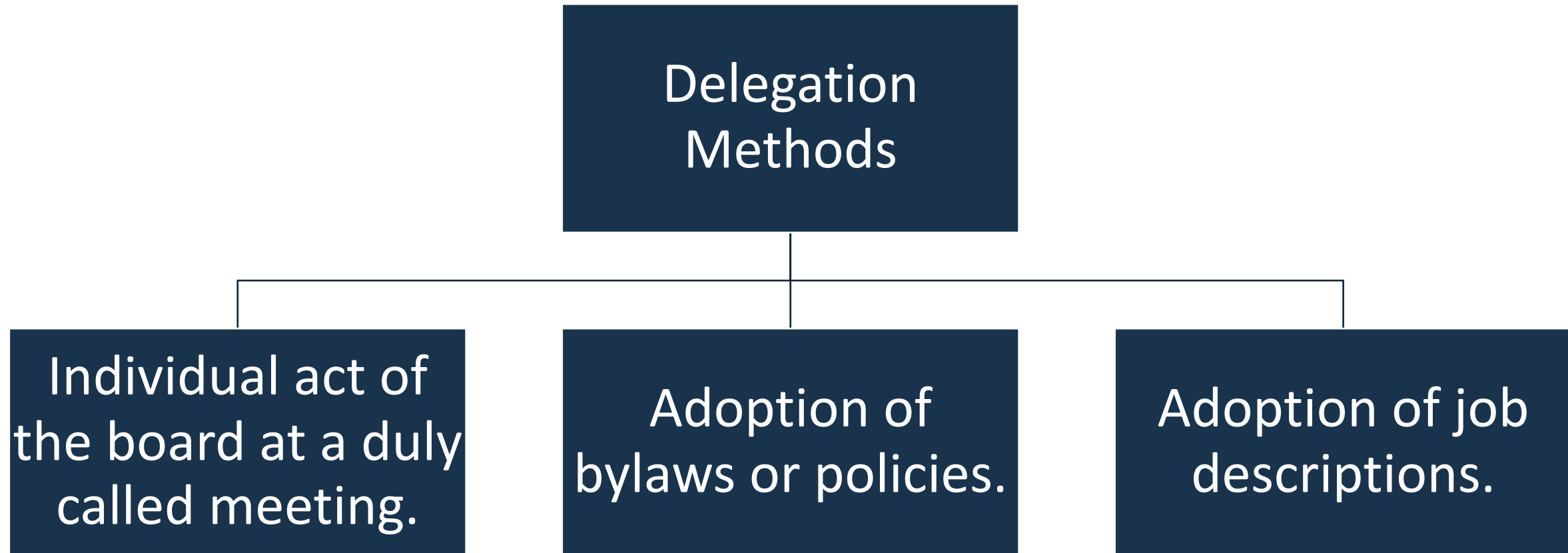


Delegation of Authority

- Action by a majority of the directors present in person or by proxy at a meeting at which a quorum is present at the time of the act is the act of the board of directors of a corporation, unless the act of a greater number is required by the certificate of formation or bylaws of the corporation. Tex. Bus. Org. Code § 22.214.
- Action without a meeting must be allowed by governing document.
- Unless delegated authority by the Board, an individual may not act on behalf of the organization.



Delegation of Authority





3. Fail to maintain bylaws.



Bylaws

- Bylaws required by Texas Business Organizations Code.
- Must be consistent with Certificate of Formation provisions.
- In the event of conflict, Certificate of Formation prevails.

Bylaws

- Establish structure for operation of the Foundation.
- Define exempt purpose.
- Establish structure for board of directors & officers.
- Establish committees and responsibilities.
- Organize financial operations.
- Record keeping.
- Indemnification & insurance.
- Procedures for amendment.



4. Fail to adopt and follow policies & procedures.



Policies & Procedures

Nondiscrimination
policy

Whistleblower
protection policy

Document
retention policy

Gift acceptance
policy

Employment
policies

Governance
policies



5. Fail to prepare and keep minutes.



Meeting Minutes

- Minutes of board or committee meetings are required.
Tex. Bus. Org. Code 3.151.
- Minutes are the official record of the actions taken at a meeting and are evidence of the actions so taken.
- Right to inspect:
 - Directors
 - Attorney General
 - If Foundation is subject to Public Information Act, anyone may request access subject to the Act.



6. Fail to comply with reporting requirements.



Know & Comply with Reporting Requirements

- IRS filings – 990
- Secretary of State – periodic reports
- Registered agent information
- Reports required by MOU with school district
- Reports required by grants



7. Spend restricted funds for undesignated purpose.



Use of Restricted Funds

- Restricted funds should not be used for general operations of the organization.
- Directors are liable for misdirected funds.
- Designated funds are held by the organization as a separate “trust” for the donor’s specific purpose.



8. Fail to maintain and produce financial records.



Financial Records

- Nonprofit corporations required to maintain “current and accurate financial records with complete entries as to each financial transaction of the corporation, including income and expenditures, in accordance with generally accepted accounting principles.” Bus. Org. Code 22.352(a)
- Board of directors must annually prepare or approve a financial report for the preceding year. Bus. Org. Code 22.352(b)
- Must be available to the public for inspection for 3 years.



9. Engage in activities outside exempt purpose.



Exempt Purpose



Statement of exempt purpose in governing documents defines the scope of allowable exempt activities of the organization.



Be familiar with the scope of your organization's exempt purpose.



If necessary, consider amendment if organization wants to change scope of activities.



10. Ignore laws governing fundraising activities.



Donations



DOCUMENTATION



DISCLOSURES

Charitable Raffles

- Governed by Texas Occupations Code Chapter 2002.
- Raffle means the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win.

Charitable Raffles

501(c) nonprofit organization for at least three years

All proceeds benefit charitable purpose of the organization

Up to four raffles per calendar year; one raffle conducted at a time

Ticket includes all info required by statute

Questions?

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