



## **BUSINESS LAW SECTION**

NONPROFIT ORGANIZATIONS COMMITTEE  
THE STATE BAR OF CALIFORNIA  
180 Howard Street  
San Francisco, CA 94105-1639  
<http://www.calbar.org/buslaw>

### ***USE OF "CHAIR" AND OTHER TITLES UNDER CORPORATIONS CODE SECTIONS 5039.5, 5213, 7213, 9213, 12228.5 AND 12353***

#### **LEGISLATIVE PROPOSAL (BLS-2015-02)**

**TO:** Office of Governmental Affairs

**FROM:** Joel S. Corwin, Chair, and Carol A. Bradford, Vice Chair-Legislation, Business Law Section (the "Section") Nonprofit Organizations Committee (the "Committee")

**DATE:** March 18, 2014

**RE:** Proposal to amend Corporations Code Sections 5039.5, 5213, 7213, 9213, 12228.5 and 12353

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#### **SECTION ACTION AND CONTACTS**

Date of Approval by Section Executive Committee (the "Executive Committee"): July 11, 2014  
Approval Vote:

For: 13      Against: 0

<b>Executive Committee Contact:</b>	<b>Committee Contact:</b>
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#### **HISTORY, DIGEST AND PURPOSE**

This Proposal would authorize the use of chair, chairperson, chairman and chairwoman as officer titles under Corporations Code Sections 5213, 7213, 9213 and 12353 and update and correct related definitional Corporations Code Sections 5039.5 and 12228.5.

## History

These sections of the Public Benefit, Mutual Benefit, Religious and Consumer Cooperative Corporations statutes have previously been amended or added by legislation sponsored by the Committee (AB 1233, Stats. 2009, ch. 631) to clarify and expand officer titles, including allowing for expansion beyond the previously gender specific/limiting “chairman” title. The prior versions of these sections had required that a corporation have a “chairman of the board or a president or both.” As amended, Corporations Code Sections 5213, 7213, 9213 and 12353 now provide, in pertinent part, that a “corporation shall have a chair of the board, who may be given the title chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both....”

AB 1233 also added definitional Corporations Code Sections 5039.5 (for public benefit, mutual benefit and religious corporations) and 12228.5 (for consumer cooperative corporations). Further, it amended definitional Corporations Code Sections 5062 and 12241 (for the foregoing types of corporations, respectively). All such changes related to officer titles.

## Proposal and Reasons for the Proposal

While the current statute allows for the use of a “chair of the board” title and others, it does not allow for use of the term “chair”, which many nonprofit organizations use to refer to their chairperson. Thus, for example, as discussed at Nonprofit Organizations Committee meetings, and acknowledged by a representative of the California Secretary of State who was present at the meetings, filings with the California Secretary of State are returned to the filer if the term “chair” is used for a signatory for the filing. Further, nonprofit and consumer cooperative bylaws and other documents should be able to refer to “chair” as a legally authorized title, as many apparently already do. At the same time, these corporations should also be able to refer to the position as chairperson, chairman or chairwoman, without using “of the board” as a qualifier.

Thus, these sections should be amended accordingly. The proposal would amend the operative wording to read as follows: “A corporation shall have (i)(A) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a (B) president or (C) both....” (proposed additional language underlined)

Definitional Sections 5062 and 12241 (definition of officer’s certificate) were correctly amended in AB 1233 to refer to the new position chair of the board, rather than chairman, as well as to treasurer. However, definitional Sections 5039.5 and 12228.5, which were added, each inadvertently referred to chair (which was neither the required position nor an allowable substitute), rather than the then new required position, chair of the board. Further, the first sentence of each of the definitional sections, if corrected, would essentially repeat the alternatives, which would be listed in Sections 5213, 7213, 9213 and 12353.

Thus, the first sentence of each of Sections 5039.5 and 12228.5 should be deleted. The second sentence of the definitional sections should be retained and should be amended to exclude the references in the operative sections. The second sentence is necessary because there are multiple other references in the Corporations Code to “chairman of the board” rather than “chair of the board”.

#### **APPLICATION**

If enacted in 2015, the proposed legislation would become effective on January 1, 2016.

#### **PENDING LITIGATION**

We are not aware of any specific pending litigation that would be affected by this Proposal.

#### **LIKELY SUPPORT AND OPPOSITION**

We anticipate support from organizations that are subject to the California Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, which this change would impact. We are unaware of any specific segments that might oppose this proposal.

#### **FISCAL IMPACT**

None.

#### **GERMANENESS**

The matters addressed in this Proposal require the special knowledge, training, experience or technical expertise of the Section and of members of the Committee. The position advanced would promote clarity, consistency, and comprehensiveness in the law.

#### **DISCLAIMER**

This position is only that of the Nonprofit Organizations Committee of the Business Law Section of the State Bar of California. This position has not been adopted by the State Bar’s Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Nonprofit Organizations Committee and in the Business Law Section is voluntary and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.

## TEXT OF PROPOSAL

Corporations Code Sections 5039.5, 5213, 7213, 9213, 12228.5 and 12353 are amended to read as follows. Added text is indicated by underline. Deleted text is ~~lined out~~.

5039.5. ~~The term “chair” includes “chairperson,” “chairman,” and “chairwoman.”~~ All references in this division to “chairman of the board” (other than in Sections 5213, 7213 and 9213) shall be deemed to refer to “chair” all permissible titles for chair of the board, as permitted by Sections 5213, 7213 and 9213.

5213. (a) A corporation shall have (i)(A) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or (B) a president or (C) both, (ii) a secretary, (iii) a treasurer or a chief financial officer or both, and (iv) any other officers with any titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that no person serving as the secretary, the treasurer, or the chief financial officer may serve concurrently as the president or chair of the board. Any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

(c) If the articles or bylaws provide for the election of any officers by the members, 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.

7213. (a) A corporation shall have (i)(A) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or (B) a president or (C) both, (ii) a secretary, (iii) a treasurer or a chief financial officer or both, and (iv) any other officers with any titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. Where a corporation holds assets in charitable trust, any compensation of the president or chief executive officer and

the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

9213. (a) A corporation shall have (i)(A) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or (B) a president or (C) both, (ii) a secretary, (iii) a treasurer or a chief financial officer or both and (iv) any other officers with any titles and duties as are stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president, the chair of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that no person serving as the secretary, the treasurer, or the chief financial officer may serve concurrently as the president or chair of the board. Any compensation of the president or chief executive officer and the chief financial officer or treasurer shall be determined in accordance with subdivision (g) of Section 12586 of the Government Code, if applicable.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

12228.5. ~~The term “chair” includes “chairperson,” “chairman,” and “chairwoman.”~~ For the purposes of this part, all references to “chairman of the board” (other than in Section 12353) shall be deemed to refer to “chair” all permissible titles for chair of the board, as permitted by Section 12353.

12353. (a) A corporation shall have (i)(A) a chair of the board, who may be given the title chair, chairperson, chairman, chairwoman, chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or (B) a president or (C) both, (ii) a secretary, (iii) a treasurer or a chief financial officer or both, and (iv) any other officers with any titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the chair of the board, is the chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. Either the chair of the board or the president shall be elected from among those board members elected by the membership of the corporation.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

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