

# Putting some product into work-product: corporate lawyers learning from designers

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**What's here**

Clients hire corporate lawyers to make useful products. These products are documents, such as contracts and corporate bylaws. Lawyers have good tools for making documents; standard forms and precedents from prior engagements are prime examples. But, corporate lawyers do not seem to use other tools whose employment might contribute to the utility and value of their products. These tools, employed by designers, include a focus on the reader and actual user experience, and an attention to typography, to facilitating communicative effectiveness through careful attention to the presentation of text. This paper reflects work by corporate lawyers trying to learn from designers, their work-product, and their literature, in creating legal documents for clients. The materials considered here are governance documents for nonprofit corporations. This paper notes several themes emerging from the literature study, explains why governance materials are a good vehicle for this work, characterizes typical executions of those materials, describes in detail and provides examples of the documents we developed, and makes a few observations about continuing work in the area. The work here is early-stage. As designers might say, we're doing ideation and prototyping. But, we do think the work is suggestive of how even modest awareness of design considerations can make our work-product better for our clients.

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## Documents as products

Documents as communication projects

Others are in this business, too

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### **Documents as communication projects**

Documents produced by corporate lawyers represent interesting communication challenges. Documents carry a lot of substance. They embody commercial relationships, carry out regulatory mandates, frame legal entities, and convey information and advice. They are material expressions of concrete relationships, desires, conclusions, and contexts. Documents serve as catchments for all manner of considerations and reflect and function within legal regimes. They attract reliance and often have a broad footprint and long life. Unlike litigation materials, they tend to be directed not to lawyers but instead are used by executives, directors, investors, lenders, customers, suppliers, employees, auditors, regulators, and consumers in overseeing, financing, operating, and interacting with organizations. There is a lot to get done (or that can get done) in a legal document, and the subject matters are generally important.

Clients come to lawyers, as they come to engineers, with problems that they cannot solve themselves. The service both engineers and lawyers provide is the solving of those problems. But more than that, although both lawyers and engineers might solve clients' problems merely by offering advice and guidance, the central instrument for solving problems that both use is a device of some kind—using a physical device in the case of engineers and a document in the case of lawyers. . . . The job lawyers do, from corporate finance to legal drafting, of making things for clients is arguably the most important, and it is the most frequent, job they do.

DAVID HOWARTH (3, 31)

**Others are in this business, too**

Lawyers are not the only professionals facing complex communication tasks. Consider the designer charged with creating a wayfinding system for a major airport, a subway system, a college campus, or a historical district, or a technical writer developing an instruction guide for a complex manufacturing process. Consider a healthcare provider who asks patients to provide advance directives about end-of-life care, or a cartographer creating a map. These folks create extraordinarily important functional pieces for diverse users, and as with lawyers, inefficiencies, frustrations, errors, and other bad things can happen if they fail.

Our job as designers is to design with intent, so that the objects we design function as they are supposed to for those who need them and use them. Our job as information designers is to clarify, to simplify, and to make information accessible to the people who will need it and use it to make important decisions. Information needs to be in a form they can understand and use meaningfully, and to tell the truth of what things mean and how they work.

JOEL KATZ (intro)

**But we don't pay attention**

Curiously, we corporate lawyers don't seem interested in how other professionals go about communication tasks. We don't study how they approach a problem. We don't look at examples of great communication executions from other contexts. We give little attention to the professional and academic literatures relating to document design and technical communication. Both practitioners and scholars seem to pay minimal attention to the object itself, to its design and form. Our work-product rarely reflects meaningful deviation from traditional forms, or apparent attention to comprehension and use realities, or even attention to basic typographical principles. We don't really think about our work as a set of information or product design problems. For us, "contract design" means substance, not its concrete expression.

### **No surprise**

This is not surprising. There are lots of good reasons to stick with what one has always done. The scholarly literature explains the benefits of standardization in documents. Use of standard forms reduces costs and enables a party to obtain the benefit of network and learning externalities, and of greater certainty of enforcement. A party avoids questions, and maybe suspicion, if it uses familiar documents. Traditional (if not necessarily optimal) forms persist because the form itself—as a social artifact—is symbolic of legitimacy and legality. The document just looks and feels legal. If contract terms are sticky, and, as scholars have demonstrated, law firms are not particularly productive sources of substantive design innovation, it seems pretty difficult to imagine firms paying much attention to document design innovation.

Standardization has a long tradition in transactional legal practice. . . . Rather than writing from scratch, lawyers typically reuse contract provisions from previous transactions. . . . [T]hey store and retrieve documents from past deals and follow procedures for standardizing best practices for different types of transactions. By serving large numbers of clients, a law firm may realize scale economies from using the same or similar “best practice” contract provisions across different transactions. . . . Standardized contract terms are enormous cost savers. . . . [S]tandard contract terms are often sticky or locked-in practices. A party who departs from contract standards loses the benefits of network and learning externalities. For example, deal partners are generally suspicious of and expend additional resources to understand novel terms. They also discount the value of a contract that includes unfamiliar contract terms or language. Moreover, a standard term is more likely to have been interpreted by a court, so the prospective enforcement of that provision is more certain and less costly. Many contracts are more valuable if they can be readily assigned or traded to third parties. The greater certainty of enforcement and familiarity of standard provisions [support such transferability].  
George Triantis (177)

[explaining stickiness of contract language]: Many complementary factors point in a single direction; the lack of investment in R&D, herd behavior, and the culture of not giving (or taking) credit for innovation or background research if not immediately billable to a client, the separation between litigation and transactional practice, and the residual embarrassment of having to explain contract revisions in new contracts to clients who are bound by the older, risky language, all impel lawyers to resist revising standardized language.  
Mitu Gulati & Robert E. Scott (151)

### A wasted opportunity

But it does seem like a wasted opportunity. For one thing, simply thinking about alternative presentations seems to improve thinking about substance, and we lawyers should care about that. Our work-product and communications do not have good reputations as models of usefulness. Clients often need summaries, annotations, checklists and other tools explaining, in accessible ways, the content and practical implications of the document. As Triantis explains, lawyers (or at least law firm lawyers) don't tend to think much about the fact that folks actually have to live with the document. This certainly seems an odd perspective for a client-service business. Doesn't it seem like we lawyers might want to think about whether our (expensive) outputs are optimally designed for the customer? Shouldn't we want to explore techniques that might result in a better client experience? Doesn't it seem puzzling that we don't use all the available tools when we create the written works at the core of our trade? Might we want to think a bit harder about our work-product as a *product*?

[The process of making a visual representation] often leads to new insights into your work; when you make decisions about how to depict your data and underlying concepts, you must often clarify your basic assumptions.

Felice C. Frankel & Angela H. DePace (3)

Efficiencies in the midstream of the contract lifecycle are often neglected by both lawyers and their clients. . . . the legal language of contract documents must be translated into operationally meaningful terms, so that the lay employees of the parties can understand and perform their company's obligations accurately and in a timely manner. . . . [such steps] reduce the risk of inadvertent breach and thereby lower expected dispute resolution and enforcement costs. . .

George Triantis (10)

Contracts do not make things happen—people do. People need to follow their contracts. Contracts are seldom easy for their users in the field, mostly non-lawyers, to understand and to implement. Their language and complexity may overload readers' cognitive abilities. If this happens and contract implementation fails, it would be wrong to assert that those contracts are "perfect," or even of reasonable quality, fit for their purpose. Quite the opposite: even if they are legal masterpieces, they fall short of their ultimate purpose.

Helena Haapio (64-65)



### **What's out there**

Some lawyers are thinking about documents as functional objects, about ways to approach the job and to make better objects. For example, a 2013 book about “law as engineering” characterizes our work as making “useful devices” for clients. There are several books and articles in the legal writing literature about typography and legal documents. There is work, largely in Europe, that brings information design, user experience, and other research to bear in exploring the use of visuals and other non-textual devices in contract documents, with the focus precisely on organizational understanding and other mid-stream challenges. Lawyers trained in design are developing human-centered design approaches to legal practice and products. There is emerging work in computational law involving automated document creation and use of visualization techniques. And, outside the legal community, there is a huge body of practice and literature relating to various dimensions of design including information, document, and wayfinding design, and typography. One need only read a book by a typographer or flip through an information graphics collection to feel both dismayed by our lack of imagination and inspired by the opportunity to do better.

#### **Lawyers and typography**

MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS* (2010).

#### **Contract visualization**

Helena Haapio, *Contract Clarity and Usability through Visualization*, *KNOWLEDGE VISUALIZATION CURRENTS: FROM TEXT TO ART TO CULTURE* 63 (Francis T. Marchese and Ebad Banissi, eds. 2013)

#### **Design and law**

Margaret Hagen, <http://www.margarethagan.com/>

#### **Computational law**

CodeX Future Law Conference 2013, Stanford University  
<http://www.law.stanford.edu/event/2013/04/26/codex-futurelaw-2013>

#### **Legal writing**

WAYNE SCHIESS, *PREPARING LEGAL DOCUMENTS NONLAWYERS CAN READ AND UNDERSTAND* (2008)

#### **Typography**

ELLEN LUPTON, *THINKING WITH TYPE* (2010)

#### **Document design**

KAREN A. SCHRIVER, *DYNAMICS IN DOCUMENT DESIGN* (1997).

#### **Information design**

JOEL KATZ, *DESIGNING INFORMATION: HUMAN FACTORS AND COMMON SENSE IN INFORMATION DESIGN* (2012)

#### **Forms design**

BORRIES SCHWESINGER, *THE FORM BOOK: CREATING FORMS FOR PRINTED AND ONLINE USE* (2010).

A selection of sources appears at the end of this paper.

## Looking at picture books

No news here

People actually have to do these things

It's not just about making it pretty

It's not just about font, either

We're responsible if the client gets lost

### **No news here**

It's fun to read design books. The information graphics collections are full of unbelievably cool, wish-I-could-do-that work. There's also much in the design literature that is familiar to a lawyer, and that might prompt the cynical among us to wonder what's the big deal about "design thinking." After all, we legal grinders study businesses closely, try out different characterizations of situations, imagine the future (known as "anticipating future contingencies and states of the world"), sketch diagrams, reduce abstract to concrete, toss out ideas, identify needed actions in needed order, go through multiple drafts, spend hours polishing work-product, and create deliverables for clients to read, use, and distribute. This design stuff seems like a pretty good description of what happens when we structure a transaction or shape a decision-making process or create a prospectus. We may not use words like "inspiration" and "ideation," or put Post-it® sticky notes all over the place, but isn't this what we do? Lawyers and designers seem to share a fundamental orientation and approach to their work.

As a style of thinking, design thinking is generally considered the ability to combine empathy for the context of a problem, creativity in the generation of insights and solutions, and rationality to analyze and fit solutions to the context.

[http://en.wikipedia.org/wiki/Design\\_thinking](http://en.wikipedia.org/wiki/Design_thinking)

Law and design are not often brought in conversation with each other. This is a loss to both fields. Superficially, design and law could not be more different. Law is text-heavy and often quite abstract. Design emphasizes visualization, sketching ideas out, and emphasizing the human elements of any situation. Law often is confusing for non-initiates (and sometimes legal professionals) to navigate. It has a reputation for being adversarial, with zero-sum attitudes, and strong hierarchy. Design is less formal, more participatory, and collaborative. But design and law share a fundamental purpose—to shape how humans act and interact with each other. They are both oriented (at least in the idea) towards problem-solving, serving clients, and building better ways of life.

MARGARET HAGEN, [www.openlawlab.com/approach-process/](http://www.openlawlab.com/approach-process/)

As a designer, you have to think in time and see things in sequence. You have to see information as a narrative form. KIM BAER, INFORMATION DESIGN WORKBOOK (204, quoting Paul Mijksenar)

Law is neither an art nor a science. It is a craft. . . . One of the most prized skills of the craftsperson is the ability to design, visualize, and compose.

BRETT SCHARFFS (2247, 2296)

### **People actually have to do these things**

On the other hand, a central message of the literature is the fundamental importance of listening, of watching, of understanding and valuing individual needs and experiences, of creating something that works for the user. Lawyers hear all of the time about (and emphasize to new lawyers) the importance of learning the business, and those of us with clinical experience talk and write about client-centered lawyering. But, it's pretty hard to claim that the typical corporate lawyer preparing documents for a client approaches the task with the empathy, the close and sustained observation, the commitment to actual user experience and product functionality contemplated by the design discipline, much less the openness to new ideas or novel executions. We have our time-tested, marketplace-familiar, low-cost legal forms. Attending to practical, on-the-ground implementation by regular people, making life easier for the individuals at the organization, departing from the firm's standard document . . . that's not how it typically goes.

Effective information design . . . helps people navigate and understand the increasingly complex world of facts, figures, directions, and demands. It helps people finish a task, solve a problem, or meet a need. It minimizes or eliminates frustrations. It begins with understanding the people who will use the content and making sure the content and its presentation and delivery will serve them.

RONNIE LIPTON (intro)

Successful wayfinding designs depends on understanding three variables: the nature of the client organization, the people with whom the organization communicates, and the type of environment in which the system will be installed.

DAVID GIBSON (18)

As it stands, in most cases documents are designed from a very egocentric perspective where the writer takes centre stage, functioning in a rather authoritarian manner within a top-down design process. Audience analysis wants to do exactly the opposite: make the design process less authoritarian by . . . taking a bottom-up approach.

LEON DE STADLER & SARAH VAN DER LAND (64)

It is easier to talk than to listen. Pay attention to your clients, your users, your readers, and your friends. Your design will get better as you listen to other people.

ELLEN LUPTON (219)

**It's not just about making it pretty**

Another message that comes through, and one that may surprise lawyers, is that design is not about aesthetics. It is about functionality and effectiveness. As such, content is front and center. Designers have to make decisions about what data to present (and not present), as well as decisions about how most effectively to present it. For lawyers doing governance and other documents, this is a challenge. We tend to put a lot of stuff in documents. Framing these choices in terms of practical value to the user (versus, or at least in addition to, covering every base) is an interesting idea. Wayfinding is a useful way of thinking about it.

Determining the appropriate content for the communication of information requires a rigorous process of examination: Is it true? Is it relevant? Is it necessary? Does its inclusion add or detract? Is it in a form that its audience can understand?

JOEL KATZ (19)

### **It's not just about font, either**

Similarly, the literature makes clear that typography is about function, not art. It's about reinforcing the message and helping the reader. As Butterick says, "[b]ecause our writing matters, our typography matters." He continues: "typography in legal documents should be held to the same standards as any professionally published material. Why? Because legal documents *are* professionally published material." These are rather compelling and commonsensical assertions. It certainly seems like we should learn about tools that will help us improve communicative effectiveness and reduce the demands on our clients. Hard-to-use documents consumes management time and create inefficiencies; maybe reducing reading costs is a way of reducing the all-in cost of legal services.

. . . Typography is visual, so it's easy to conclude that it's primarily an artistic or aesthetic pursuit. Not so. Typography is primarily utilitarian. . . . Good typography is measured on a utilitarian yardstick. . . . {It} is measured by how well it reinforces the goals of the text. . .

MATTHEW BUTTERICK (29)

[The] visual form of a document should be no more arbitrary than the words in a text because both contribute to the message the document is intended to express. Documents thus communicate with readers through their design as well as through their words. . .

ELLEN BRUMBERGER (15)

Typography is for the benefit of the reader, not the writer. . . . Typography matters because it helps conserve the most valuable resources you have as a writer—reader attention. . . . Many legal writers adopt a riskier model of reader attention. Instead of treating reader attention as precious, they treat it as an unlimited resource. . . . What could be more presumptuous? Or dangerous?

MATTHEW BUTTERICK (21)

**We're responsible if the client gets lost**

A final theme, and one reinforced in Howarth's book about law as engineering, is that designers should take responsibility for the functionality of the objects they produce. If a visitor gets lost in the airport or at the medical center, the designer of the signage system should be troubled. Lawyers certainly worry about content responsibility, but we may not worry so much about our visitors getting lost midstream. So, how might we be able to learn from the designers in helping our clients better find their way?

Since people rely on documents to make decisions that influence their safety, livelihood, health, and education, the highest ethical standards must be brought to bear in making textual choices—in deciding what to say and what not to say, in what to picture and what not to picture. Taking responsibility for these choices is central to the practice of document design.

KAREN A. SCHRIVER (11)

The craftsmanship of a lawyer or judge can never be separated from the effects of her craft.

BRETT SCHARFFS (2277)

## Governance documents

Why nonprofit governance documents

What we find in the field

What we see in the documents

Defining the problem

Some broader principles

What about the legal stuff?

Some practical considerations



**Why nonprofit governance documents**

Let's use nonprofit governance documents as the vehicle for exploring this question. Such documents are good subjects. They are unarguably "legal;" they set out a corporation's governance arrangements, and they support compliance activities. To those ends, these documents reflect statutory requirements, regulatory mandates, and organizational choices and culture. They are undergirded by a well-developed set of default rules (in the corporation statute) and operate in an environment of meaningful organizational conduct regulation (under the tax law). They are unilateral in nature; there is no other party who must agree to a non-traditional execution. Like contracts, they involve midstream management. Organizations need to understand and follow the rules set out in the documents. As a practical matter, these materials are unlikely to be the subject of litigation and interpretation by a court, and yet must be operatively and recognizably legal given their function and their visibility to regulators, funders, and the like. Nonprofit governance documents are form-based. Law firms use the same standard documents over and over, and there are multiple reputable public sources of comprehensive forms. They are institutional documents, not the sort of consumer materials where regulators have engaged focus groups and graphic designers to develop new executions (and where the "mandated disclosure" literature has documented endless failings). They are corporate documents, not the litigation materials that are the principal subject of the "typography for lawyers" writing. Finally, the context dovetails nicely with scholarly observations about legal document experiment and innovation by users, nonprofit associations, and academics.

**What we find in the field**

Governance documents include bylaws, board committee charters, board resolutions, and conflict of interest, whistleblower, compensation review, and other policies. They often include additional documents, such as annual conflicts disclosure questionnaires, descriptions of board member duties, and board self-assessment questionnaires. These materials may be assembled in a “board orientation handbook” given to new directors. Organizations also adopt governance policies and practices (sometimes written, often not), such as those relating to management compensation review, board composition goals, and board review of the Form 990 document, the (public) report tax-exempt organizations make each year with the Internal Revenue Service. Governance arrangements are visible. Form 990 includes multiple questions about governance practices and policies, and about public access to core governance and financial materials. The IRS and funders pay attention to nonprofit governance, as do third party raters such as Charity Navigator. In response, law firms, state bar committees, consulting firms, and other sources have made available a variety of comprehensive, deeply-researched, and carefully-prepared model documents, and the IRS publishes guidance and commentary. In developing these documents, nonprofits draw on these sources, have documents prepared by pro bono counsel or the lawyer on the board, or adopt a DIY approach with materials obtained from friends or plucked off the internet. Once in place, these materials, like other legal documents, seem to grow over time; more things are added, and the documents are rarely pruned or harmonized across the set.

## Putting Some Product Into Work-Product

These are excerpts from the bylaws, conflict of interest policy, and audit committee charter of a major California charitable organization.

the Board shall be held whenever called by the Chair of the Board, a Vice Chair of the Board, the Chief Executive Officer, or by any three (3) members of the Board. Neither a notice nor a waiver of notice must specify the purpose of any regular or special meeting.

5. **Time And Place Of Meetings And Telephone Meetings.** All meetings of Directors, regular and special, shall be held at the principal executive office of the Corporation or at such other place, within or without California, as shall be designated in the notice of the meeting or in a resolution of the Board of Directors. Directors may participate in any meeting, including the casting of votes, through use of conference telephone, video screen communication or other communications equipment, provided that all members so participating can hear each other.

6. **Quorum.** A majority of the Directors then in office shall constitute a quorum for the transaction of business, except to adjourn, in which case a majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another date, time and place. Unless the vote of a greater number is required by these Bylaws, the Articles of Incorporation, or the California Nonprofit Corporation Law, every act or decision done or made by a majority of the Directors present shall be the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board, individually or collectively, consent in writing to such action. Any and all written consents shall be filed with the minutes of the proceedings of the Board.

7. **Waiver Of Notice.** The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be valid as though taken at a meeting duly held after regular call and notice, if: (i) a quorum is present, and (ii) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to the holding of the meeting or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

8. **Notice Of Adjournment.** Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

9. **Fees And Compensation Of Directors.** Directors and members of committees may receive such compensation, if any, for their services and such reimbursement for expenses incurred on behalf of the Corporation as may be fixed or determined by resolution of the Board of Directors; provided, however, that such compensation shall be reasonable and shall be comparable to the compensation paid for a like position by similar nonprofit organizations; and provided further that a Director may not vote on matters relating to his or her compensation in a capacity other than as a Director.

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bylaws  
13 pages

4. In the case of a Grant or Transaction in which a Foundation Manager has a material financial interest<sup>1</sup>, the Board determines in good faith that The Endowment has entered into the Transaction for its own benefit, that the Transaction is fair and reasonable to The Endowment, and that The Endowment could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

5. The interested Foundation Manager may provide factual information, but not advocacy, upon request of the uninterested staff members or Directors. Notwithstanding the above, this section does not preclude Directors from initiating board recommended grants nor Foundation Managers from initiating matching gifts.

6. The interested Foundation Manager may be present during Board deliberations of the issues related to the Grant or Transaction to provide factual information, but not advocacy, upon request of the uninterested Foundation Managers. The interested Foundation Manager shall leave the room prior to the actual vote on any such Grant or Transaction, except when such requirement is waived by the Chair of the Board or when such matter is on a consent calendar, and shall, when present during the vote as permitted herein, recuse him or herself from any vote on the Grant or Transaction.

7. A Grant or Transaction involving a Foundation Manager with a material financial interest is approved by a majority of the Directors in office. All other Grants and Transactions must be approved by a majority of the Directors present, except that for such other sponsorships of, or memberships in, charitable organizations exempt from taxation pursuant to Internal Revenue Code §501(c)(3) and which have a cost of less than \$10,000, they may be approved by the President or his designee.

8. A Grant, with the exception of matching gifts, to an organization where the Director (or the Director's family member) is compensated more than \$1,000 per year is secondarily reviewed by The Endowment's Audit Committee.

9. A Director neither recommends a Board Recommended Grant nor requests a Matching Gift to an organization where any Director (or any Director's family member) is compensated more than \$1,000 per year.

An exception to this provision (9) is made for universities or other charitable organizations with assets in excess of \$1 Billion and which have multiple departments or divisions that are separate and distinct. A Board Recommended Grant or Matching Gift may be made to a university or other charitable organization described above that employs a Director (or family member) if the department or division receiving the grant is distinct from the department or division that employs the Board (or family) member.

<sup>1</sup> For the purposes of Cal. Corp. Code §5233 only (and not for tax law purposes), a financial interest will not be deemed "material" if it has a value of less than \$10,000.

5

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8 pages

### 5. General Responsibilities

5.1. Report to the Board on Committee activities;

5.2. Conduct annually a performance evaluation of itself in relation to the requirements of this Charter and such other matters as the Committee may deem appropriate and present such performance evaluation to the Board;

5.3. Review annually the Committee Charter and recommend any changes to the Governance Committee; and

5.4. Recommend to the Board any other actions related to audit matters necessary for The Endowment to fulfill its mission.

### COMPOSITION AND TERMS

Composition: The Committee consists of three or more members of the Board who are financially literate. The Committee members shall be recommended by the Board Chair and appointed by the Board. Committee members shall have no material financial interest in any entity doing business with The Endowment, herein defined as paid executives employed or contracted by grantees or contractors. Investment and Finance Committee members shall constitute less than one-half of the membership of the Audit Committee. Staff of The Endowment, including the President or CEO and the Treasurer or CFO, may not be Audit Committee members. The Board Chair shall designate a member of the Committee to serve as Chair of the Committee. The Audit Committee Chair shall not be a member of the Investment and Finance Committee. At least one Audit Committee member must have accounting or financial management expertise. It is recommended that at least one Committee member will have served on the Committee the previous year.

Terms: Each Committee member serves a one-year term, renewable annually by action of the Board.

### MEETINGS

The Audit Committee meets typically at least two times per year, with additional meetings held as needed to fulfill its responsibilities as described above. Meetings are convened by the Committee Chair. The Committee may ask Management or others to attend the meeting and provide pertinent information as necessary.

### PROVENANCE AND LIMITATIONS

The Audit Committee is mandated by The Endowment's Bylaws (Article IV, Sections 15(a)). Unless expressly delegated by the full Board when allowed under applicable law and The Endowment's Articles of Incorporation and Bylaws, the Audit Committee shall not have the power or authority to act for the full Board. Meetings and actions of the Audit Committee are governed by provisions of the Bylaws concerning meetings and actions of the Board (Article IV, Section 4).

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### **What we see in the documents**

These excerpts are fairly representative of traditional executions. Bylaws are often lengthy and may have a table of contents. They may recite statutory text and legal requirements relating to nonprofit status. They may articulate the mission of the organization. They often set out board composition aspirations, director conduct expectations, and specific responsibilities for each board committee. The bylaws and conflict of interest policy may address different aspects of the same concern: statutory director self-dealing here, other related party concerns there. All these bylaws, charters, and policies tend to look the same: Times New Roman font; centered title and headings; narrow margins and resulting lengthy lines; Roman numerals; sometimes full justification; sometimes definitions; dense text; and often all caps, bold, underlining and italic emphases in the same document (sometimes even in the same section heading or word). It can be hard to tell one document from the next. The document package generated by the firm is more or the less the same for every client, big or small. Advice about director fiduciary duties, matters requiring formal board approvals, and the like are presented in a memo from the firm.

[M]uch of what we lawyers consider proper legal typography is an accumulation of bad habits and urban legends. . .  
MATTHEW BUTTERICK (14)

### **Defining the problem**

Governance materials are important legal documents. They typically read and look like what one expects of a legal document, and what one expects of a document prepared by a cover-every-base lawyer. That all said, and especially for nonprofits, these materials can also be viewed as a *user's guide*, an instruction manual, a set of directions for specified operations. They set out procedures for managing a legal entity subject to special behavioral requirements relating to its nonprofit and tax-exempt status. Governance materials also serve as *educational tools*; most users are novices (and volunteers to boot) and often learn about tax and governance rules through use of the documents. In that sense, they might be viewed as a form of *mandated disclosure*; this is information that you, board member, need to know, and these are rules that you need to follow. The materials are used by an extraordinary variety of organizations, some grassroots and others with billions in assets. That means the *readership is widely varied*; users may be lawyers, social workers, PhDs, or clients of the charity. And, *access to legal support varies widely* as well. If that's the case—if these documents are not only “legal” documents but also educational, operational, and disclosure materials used by a diverse and often novice readership—then it seems logical to think about their design from that point of view. That is, have we been defining the problem correctly? Have we really thought about how these products are encountered and used in the real world? And, with that understanding, what might we do to improve functionality and reduce reading costs?

Trying to understand the needs of the user and the context in which the design is used will foster a deeper understanding of design function and empathy with the user.

JOEL KATZ (125)

Part of being an expert in document design means being able to write and design a single document that will satisfy the needs of multiple audiences.

KAREN A. SCHRIVER (167)

**Some broader principles**

As we set out in this inquiry, we might identify some general principles based on client observations, research about reader experience, and our own common sense. Most fundamentally, from a user point of view, shorter documents are better than longer documents. So, let's try to cut everything we can comfortably cut. Since these are educational materials, it would be good to take advantage of them as tools for teaching and periodic refreshment and reinforcement. We should think hard about where to capture what; clients often note that they struggle with how and where to document policy decisions. We get recurring questions from clients and see the same confusions in their documents; maybe we can anticipate and address those questions. We might also think about materials that can serve as useful discussion platforms; imagine an executive director and board chair sitting down to plan a series of board meetings or orient a new director. Knowing easily which documents cover what topic would be helpful, as would addressing related subjects in one rather than multiple documents. We might try to segregate highly technical information from core content to the extent we can. Plain language is a given: short paragraphs, short sentences, and simple language are all good. And, if we can do anything else to make the materials easier to recognize, navigate, and read, let's do it.

Would you rather have your audience read all of less or none of more?  
JOEL KATZ (79)

**What about the legal stuff?**

We certainly can't lose sight of the legal nature of these materials. We need to make sure we take care of the basics. But, we might be able to do more than that. For example, what can we do to reduce the risk of inadvertent noncompliance? (It's not uncommon to find that actual practice varies from provisions set out in the documents.) Are there steps we can take to reduce maintenance costs, such as need for frequent bylaw changes and the resulting, and often observed, practical difficulty of keeping track of serial amendments? Can we do something to reflect efficiently best practice principles, tax safe-harbors, Form 990 definitions, and IRS commentary about desirable governance practices? Thinking about white space doesn't mean we ignore trying to cover lots of ground. Presumably, enhancing the efficiency and educational effectiveness of the materials would contribute to both better substantive compliance and to establishment of a better record and audit trail. And, at the same time, we need to follow the wise counsel of a group of California lawyers who prepared and published a set of comprehensive model governance policies; they emphasized the importance of an organization adopting only policies they can actually implement.

### Some practical considerations

Finally, we need to take into account that neither these documents nor the underlying law are static. Organizations refine their governance practices and the statutes change now and then. We can't get too fancy with the formatting; the documents need to be easy to change. A website-only, no-paper approach would allow all kinds of substantive and presentation functionality, but that's not likely to fly any time soon in the nonprofit environment. Organizations often make changes in their documents without the help of graphic designers and their software or even their lawyers. That means that we better stay text-focused and use Microsoft Word. We also can't get too carried away with novel designs. The documents need to do the necessary legal work, and they need to be immediately recognizable as legal documents. After all, directors, funders, auditors, and especially regulators will bring expectations to the table when they review these materials. (Bylaws are social artifacts, too.) The document design theorists would say that we are identifying purpose and non-purpose constraints on the design space.

[C]omponents of purpose descriptions are seen as restrictions on the set of design options for a given document. This set is referred to as the design space. The design space contains all the options that are initially open regarding the content, structure, style, and visuals to be used in a given document. It is subsequently restricted by purpose constraints (that is, constraints stemming from the purposes of the document) and non-purpose constraints... Often the most critical questions in document design concern the consequences of combining different purposes and different audiences in the same document, and of combining purpose-related considerations with other considerations like financial and legal ones.

LEO LENTZ & HENK PANDER MAAT (392)

#### From a famous interview with Charles Eames:

Q: What is your definition of design?

A: A plan for arranging elements in such a way as to best accomplish a particular purpose.

Q: What are the boundaries of design?

A: What are the boundaries of problems?

Q: Does the creation of design admit constraint?

A: Design depends largely on constraints.

Q: What constraints?

A: The sum of all constraints. Here is one of the few effective keys to the design problem: the ability of the designer to recognize as many of the constraints as possible (and) his willingness and enthusiasm for working within these constraints—the constraints of price, size, strength, balance, surface, time, etc.; each problem has its own peculiar list.

<http://www.hermanmiller.com/discover/how-does-charles-eames-define-design/>



## Things we might change

- Content changes in bylaws
- Content changes in committee charters
- Content changes in policies
- Content changes in other documents
- Form and organization
- Typographical choices

**Content changes in bylaws**

These considerations suggest some approaches to bylaw content choices. At a general level, to reduce length, the risk of inadvertent noncompliance, and the need for frequent amendment, let's not approach them from the point of view of encyclopedic comprehensiveness but instead try to make the bylaws more general and "constitutional" in nature. Perhaps we should focus on board composition and meeting mechanics, committee creation, officers, indemnification, and contract execution, and not much more beyond that. We can comfortably cut recitations of statutory provisions and tax-compliance requirements. This language seems boilerplate in nature, and if the idea is to educate and guide conduct, burial in the bylaws seems an odd way to cover these topics. Besides, if the statute changes, then the document is immediately out of date. We should drop those provisions and find another and better vehicle for education and for documenting awareness of the rules. To ease navigation and reduce the need for making and keeping track of bylaw amendments, let's provide only a framework for board committees in the bylaws. We should drop the recitation of the self-dealing statute in favor of addressing that topic, as well as other conflict of interest matters, in a standalone conflicts policy. With these sorts of changes, the document can be seven or eight pages in length.

People hope to use *less* information, not more; to break information down into easy, modular pieces, not to assemble it into comprehensive wholes; to minimize unfamiliar decisions and replace them with familiar ones. The ideal underlying mandated disclosure—systematic information—fails to recognize these preferences.

OMRI BEN-SHAHAR & CARL E. SCHNEIDER (729)

Successful information design in movement systems gives the user the information he needs—and only the information he needs—at every decision point.

JOEL KATZ (167)

### **Content changes in committee charters**

Board committee charter design is based on two simple ideas: (1) each committee should have its own document, and (2) each document should be one page in length. Charters are standard practice for public companies and make good practical sense. They are targeted, accessible, and easy to change. Charters should cover a set of common topics (for example, composition, operations, and responsibilities) in a standard way. They would make clear whether the committee is a true board committee or an advisory committee, a distinction in California that's often confusing to clients. Responsibility descriptions would begin with appropriate "board role" verbs (oversee, monitor, review) and be written as crisply as possible. Charters might include a note summarizing the statutory limitations on committee action; if this obscure topic is dealt with at all, it seems more efficient to present it in the operative document—the one actually used by the committee—rather than buried in the bylaws. This way, it's more visible to the user, and it's easier to change if the statute changes (which in fact it did in California several years ago).

By training one's eye to notice the details, the document designer can learn that type and space work together to: (i) set the mood, look, and feel of a document (e.g. formal or informal, urgent or relaxed); (ii) make the structure of a document apparent (e.g. hierarchy, part-whole relationships, clusters of related ideas); (iii) invite readers to scan and navigate the document in certain ways (e.g., top-to-bottom, left-to-right, column-by-column); (iv) give clues about the type of document, that is, its genre (e.g., the graphic clues that distinguish a business letter from a bus schedule); (v) suggest how to interpret and use the text (e.g., take this seriously or not, use it in procedural fashion or not, keep it or throw it away); and (vi) reveal what the designer and/or editor thought was important (e.g., amount of space devoted to certain items, the position and emphasis given to certain words and pictures, the amount of graphic contrast used to set off certain ideas).

KAREN A. SCHRIVER (251)

**Content changes in policies**

Core governance policies include conflict of interest, whistleblower, compensation review, and document retention policies. It seems fair to assume greater uptake if the covered population understands the reasons underlying the policy. For that reason, each policy might begin with text stating the purpose and legal background of the policy. The conflicts policy would cover the field; it would address not only general conflicts matters but also the director self-dealing statute often treated in the bylaws. It would set out step-by-step procedural and documentation requirements (in line with its nature as a user's guide) and might cover related topics such as use by directors of the organization's name. At the same time, we'd do our best within the limited space to build a case that the policy reflects the relevant Form 990 definition and IRS commentary about the topic. From a coverage and efficiency point of view, it may make sense to design the annual conflicts questionnaire to include a one-page set of specific, policy-and-990-driven prompts rather than a general question followed by blank space. That way, the document not only might generate fuller responses but also be more effective as a diligence document for compliance and disclosure purposes. We'd follow the same approach for the other policies (background, coverage, rule, procedure) and try to get all of them done in a page or, at most, two pages and change.

Learning and transfer are facilitated by more general instructions and goal descriptions, in part because the force the learner to try to understand the system or domain and engage in effortful cognitive strategies conducive to learning.

ELSA EIRIKSDOTTIR & RICHARD CATRAMBONE (768)

[990 definition]: A policy that defines conflict of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that can help identify conflicts of interest, and specifies procedures to be followed in managing conflicts of interest.

INTERNAL REVENUE SERVICE,

<http://www.irs.gov/pub/irs-pdf/i990.pdf>

[IRS commentary]: The Internal Revenue Service encourages charities to adopt a written policy establishing standards for document integrity, retention, and destruction. The document retention policy should include guidelines for handling electronic files. The policy should cover backup procedures, archiving of documents, and regular check-ups of the reliability of the system.

INTERNAL REVENUE SERVICE,

[http://www.irs.gov/pub/irs-tege/governance\\_practices.pdf](http://www.irs.gov/pub/irs-tege/governance_practices.pdf)

### **Content changes in other documents**

As with the conflicts questionnaire, a board self-assessment tool might include multiple prompts, grouped in logical categories. Instead of memos and “job descriptions” relating to director duties, perhaps that topic should be captured in a single document that touches on fiduciary duties, expectations of individual directors, and meeting practices such as agenda development and distribution of advance materials. Indeed, this document could be expanded (a little) to include board composition goals and nomination process, nutshell summaries of each committee and each governance policy, and brief statements regarding other matters such as tax compliance principles, fundraising principles, or board review of the Form 990. The document could also cover topics of particular concern to specific organizations—director engagement in political activities, for example. Such a document—a governance guidelines piece somewhat similar to that required of public companies—could serve as an efficient orientation tool for directors and external readers such as funders or auditors, a vehicle for capturing additional governance-related topics for which separate documents would be too much, and an internal basis for external assertions in the Form 990 and financial statements. And, it could be a tool for educating organizational actors about IRS expectations and governance best practices, and create a record of those practices. In short, the idea is to create a practical, accessible, multi-purpose, and easy-to-update tool that gets a lot of legal and board development work done for the client.

Prior to adoption of a formal policy, the organization should determine where the policy should be placed in the organization's documentation. Alternatives may include, for example, in the bylaws, in a board policies and procedures manual, or as a stand-alone item.

NONPROFIT ORGANIZATIONS SUBCOMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA, <http://www.publiccounsel.org/tools/assets/files/990RevMemo.pdf>)

The board should establish an effective, systematic process for educating and communicating with board members to ensure that they are aware of their legal and ethical responsibilities, are knowledgeable about the programs and activities of the organization, and can carry out their oversight functions effectively.

Independent Sector,  
[https://www.independentsector.org/board\\_education\\_communication\\_principle\\_15](https://www.independentsector.org/board_education_communication_principle_15)

### Form and organization

It's not helpful for the bylaws, charters, policies, and other documents to more or less look the same. Why force the reader to figure out what's what? Instead, each type of document could have its own format, and the nature of each category of document could be immediately apparent. The bylaws, for example, might follow a traditional, one-column format with separate articles. The committee charters could be set up in two columns, with the core responsibilities section having its own easy-to-see column, and the charters could have lots of white space. (For one thing, directors might feel better about taking on committee responsibilities if the duties are stated concisely and the document has a fairly spare appearance.) Policies might feature a term sheet format, with section captions set out on the left and text on the right. Other documents would vary as appropriate; we can try to choose a format that facilitates practical use. For example, rather than a dry memo setting out topics and housekeeping items a board should address, how about a one-page "annual board calendar" that identifies those topics and gives directors and management high-level visibility into the year? How about a table setting out voting requirements for particular items, including the occasional subtleties like "majority" versus "majority in office?" In all cases (and as inspired by Schwe-singer's book about forms), we'd plainly and in large font state the name of the document in the top left corner. We'd also make sure that the documents would still be recognizable as legal documents, and the formatting would be such that a client could easily manage future changes.

Just as the text in writing is subject to rules, techniques, and rhetorical decisions, so is page design. The look of a page, the visual grammar, requires the same types of rhetorical, writerly decisions that the writer makes when producing, revising, and polishing writing.

JONATHAN BUSH & LEAH ZUIDEMA (87)

Typography is not only verbal information but also lines of texture within a composition. These textures create rectangles of tone on the page, and the relationship of the positions of these rectangles is critical to the perception of order and unity within a composition. The duality of the two roles gives the designer responsibility for both communication and composition.

KIMBERLY ELAM (intro)

Designers provide ways into—and out of—the flood of words by breaking up text into pieces and offering shortcuts and alternative routes through masses of information. From a simple indent (signaling the entrance to a new idea) to a highlighted link (announcing a jump to another section), typography helps readers navigate the flow of content. The user could be searching for a specific piece of data or struggling to quickly process a volume of content in order to extract elements for immediate use. Although many books define the purpose of typography as enhancing the readability of the written word, one of design's most humane functions is, in actuality, to help readers *avoid* reading.

ELLEN LUPTON (87)

### **Typographical choices**

We should do our best as amateur typographers. We should try to make use of grids and white space, and to think about hierarchy and navigability. We should follow guidelines about line length; no more lines that run on and on (think traditional legal documents vs. magazines). We shouldn't fully justify text but instead go flush left and ragged right. We shouldn't center headings, use all caps, use Roman numerals, or use bold, underlining, and italic all in the same document. We should vary font size and have a good debate about font choice. If we need a table of contents someplace, we should put the page numbers close to the words, rather than clear across the page. We should try hard to use a consistent style throughout the document package.

In typography, margins must do three things. They must lock the textblock to the page. . . . through the force of their proportions. Second, they must frame the textblock in a manner that suits its design. Third, they must protect the textblock, making it easy for the reader to see and convenient to handle. (That is, they must leave room for the reader's thumbs.)

ROBERT BRINGHURST (165)

This long [line] reappears in other contexts over the centuries—on Roman imperial writing tablets, in medieval European charters and deeds, and in many poorly designed specimens of academic prose. It is a sign, generally speaking that the emphasis is on the writing instead of the reading. . . . Whether oral or visual, longwindedness is very rarely a virtue.

ROBERT BRINGHURST (161-162)

Choosing to align in justified, centered, or ragged columns is a fundamental typographic act. Each mode of alignment carries unique formal qualities, cultural associations, and aesthetic risks.

ELLEN LUPTON (112)

Centered text is difficult to read because the eye cannot easily find the beginning of the line.

JOEL KATZ (148)

A word set in ALL CAPS within running text can look big and bulky, and A LONG PASSAGE SET ENTIRELY IN CAPITALS CAN LOOK UTTERLY INSANE.

ELLEN LUPTON (52)

Typeface and font are important to understanding and even shaping meaning.

REBECCA TUSHNET (10)

Lists, such as contents pages and recipes, are opportunities to build architectural structures in which the space between the elements both separates and builds. The two favorite ways of destroying such an opportunity are setting great chasms of space that the eye cannot leap without help from the hand, and setting unenlightening rows of dots (dot leaders, they are called) that force the eye to walk the width of the page like a prisoner being escorted back to his cell.

ROBERT BRINGHURST (35)

## Bylaws

O&amp;T DRAFT 07/22/13

### 1. Name

The name of this corporation is XYZ ("XYZ").

### 2. Membership

XYZ shall have no members, as defined in Section 5056 of the California Nonprofit Public Benefit Corporation Law, as amended (the "Nonprofit Corporation Law"). XYZ may from time to time use the term "members" to refer to persons associated with it, but such persons shall not be members within the meaning of Section 5056 of the Nonprofit Corporation Law.

### 3. Board of Directors

#### 3.1 Powers

Subject to the provisions of the Nonprofit Corporation Law, Articles of Incorporation, and these Bylaws, XYZ's activities and affairs shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board of Directors of XYZ (the "Board"). Directors shall have no power as individual directors and shall act only as members of the Board.

#### 3.2 Number of Directors

The number of authorized directors of XYZ shall be not less than \_\_ nor more than \_\_, with the exact number of authorized directors to be fixed by resolution of the Board from time to time.

#### 3.3 Qualification of Directors

No more than forty-nine percent (49%) of the directors serving on the Board may be interested persons, as defined in Section 5227 of the Nonprofit Corporation Law. However, any violation of this Section 3.3 shall not affect the validity or enforceability of any transaction entered into by XYZ.

#### 3.4 Election and Term of Office

At the annual meeting of the Board, the Board shall elect directors to serve for one-year terms. An in-office director shall hold office until a successor has been elected and qualified.

#### 3.5 Vacancies

A vacancy or vacancies on the Board shall exist in the event that the actual number of directors is less than the authorized number for any reason. In addition, the Board may declare by resolution a vacancy in the office of any director who has been declared of unsound mind by an order of court, convicted of a felony, or found by final order or judgment of any court to have breached a duty under Article 3 of Chapter 2 of the Nonprofit Corporation Law.

#### 3.6 Resignation

Except as provided below, any director may resign at any time by giving written notice to the Chair, the Executive Director, or the Secretary (as each are defined in Section 6.1). The resignation shall take effect upon receipt of notice or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. If a director's resignation is effective at a later time, the Board may elect a successor to take office as of the date when the resignation

bylaws

9 pages

Note: NIA compliant charter

## Finance Committee

O&amp;T DRAFT 7/25/13

### Authority and Membership

1. The Committee is a committee of the Board established under Section 5.1 of the Bylaws. The Board will appoint members of the Committee and a Chair, each to serve for one-year terms.
2. The Chair of the Audit Committee may not serve on the Committee.
3. The Board may fill vacancies on the Committee. The Board may remove a Committee member from the Committee at any time, with or without cause.

### Operations

1. The Committee will meet with such frequency as it may determine. The Chair of the Committee will preside over Committee meetings. A majority of Committee members will constitute a quorum. Committee approvals will require a vote of a majority of the Committee members present at a meeting at which a quorum is present.
2. The Committee will report its activities to the Board on a regular basis and will keep minutes of its meetings.
3. The Committee may invite any director, officer, employee, outside advisor or other individual who is not a Committee member to attend Committee meetings or meet with Committee members, but such persons will not have voting power and will not be held out as Committee members.
4. The Committee will review this charter periodically and recommend any proposed changes to the [Governance Committee][Board] for review.

### Responsibilities

1. Review and make recommendations to the Board regarding XYZ's budget, including the process used in developing the budget.
2. Review periodically operating cash flows, liquidity position, and performance against budget and projections.
3. Lead Board review of XYZ's strategy for long-term financial sustainability.
4. Review regularly developments in relevant state and federal funding programs and requirements and XYZ's compliance with such requirements.
5. Review and make recommendations to the Board regarding the establishment and termination of banking and similar relationships.
6. Review XYZ's investments, including investment objectives, strategy, reporting, and performance, and monitor execution against XYZ's investment policy.

Note: The Board may amend this charter at any time. Because of statutory limitations, however, the Board may not authorize the Committee, and the Committees may not: fill vacancies on the Board or on any committee with Board authority; designate or remove from office any directors, or lengthen the term of any director; fix compensation of the directors; amend, repeal, or adopt provisions of the bylaws or articles of incorporation; amend or repeal any Board resolution that is, by its own express terms, not so amendable or repealable; create Board committees or appoint members of Board committees; authorize indemnification for any agent of XYZ; expend corporate funds to support a nominee for director after there are more people nominated for director than can be elected; authorize the merger of XYZ, or the lease or transfer of substantially all of XYZ's assets; authorize or revoke the decision to wind up and dissolve XYZ; or approve a self-dealing transaction, except as provided in Section 5233(d)(3) of the California Nonprofit Public Benefit Corporation Law.

committee charter

1 page



## Putting Some Product Into Work-Product

O&T DRAFT 7/25/13	
<b>Whistleblower Policy</b>	
<b>Introduction</b>	XYZ Corporation ("XYZ") adopted this Whistleblower Policy (this "Policy") to facilitate open and honest communications concerning its governance, finances and compliance with law, policy and ethical principles. This Policy applies to all directors, officers, employees and volunteers of XYZ (collectively, "XYZ associates").
<b>Policy</b>	Every XYZ associate is encouraged to report under this Policy any concerns about any XYZ activities that he or she believes, in good faith, to be illegal, unethical, questionable or contrary to XYZ policies. These matters include, without limitation, suspected fraud, theft or embezzlement; accounting, internal controls or auditing irregularities such as undocumented transactions or misleading financial reporting; improper financial transactions or use of XYZ assets; kickbacks; improper concealment or destruction of XYZ records, and violations of XYZ's conflicts of interest policy and of law.
<b>Reporting a concern</b>	If at any time an XYZ associate has such a concern, the XYZ associate may raise the concern directly by speaking with the Executive Director of XYZ. Alternatively, if he or she is not comfortable speaking with the Executive Director or does not believe the concern has been properly addressed, the XYZ associate may report the concern to the Chair of the Board of Directors or the Chair of the Audit Committee. If the subject of a report involves both Chairs, the XYZ associate may report such concern to any other Board member.
<b>Confidentiality</b>	XYZ will treat a report of unethical or illegal conduct as confidential, subject to and limited by the need to investigate and prevent or correct the action, and the need to comply with applicable laws. Reporting individuals are expected to act in good faith, cooperate in internal investigations of misconduct, and provide truthful information in connection with any official inquiry or investigation. XYZ will investigate anonymous reports to the extent it deems appropriate.
<b>Non-retaliation</b>	An XYZ associate making a report will not be discharged, demoted, disciplined, harassed or discriminated against for making a report in good faith under this Policy. Any XYZ associate who retaliates against an individual for reporting or participating in an investigation of illegal or improper activity may be subject to disciplinary action including termination of employment.
<b>No impact on employment status</b>	This Policy is not an employment contract and does not modify the employment relationship between XYZ and its employees. It does not change the fact that employees of XYZ are employees at will.
<b>Other laws and policies</b>	This Policy is intended to supplement and not supersede federal and state laws, including, without limitation, Section 1102.5 of the California Labor Code and Section 1107 of the Sarbanes-Oxley Act, or XYZ policies including, without limitation, those relating to harassment, discrimination or personnel.
<b>Amendment</b>	The Board may amend this Policy at any time.

policy  
1 page

[Year] Annual Disclosure Questions	Yes	No
1. Did you receive any <b>compensation</b> from XYZ for service as an employee, director or officer of XYZ?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are you aware of any <b>compensation</b> paid by XYZ to a <b>family member</b> for service as an employee, director or officer or XYZ?	<input type="checkbox"/>	<input type="checkbox"/>
3. Did you receive any payments from XYZ as an independent contractor?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are you aware of any payments made by XYZ to a <b>family member</b> as an independent contractor?	<input type="checkbox"/>	<input type="checkbox"/>
5. Are you aware of any <b>transactions</b> between XYZ and any <b>entity</b> in which you are a director, officer, key employee, general partner, LLC manager or an <b>owner</b> of more than 35% of the equity interests in the <b>entity</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are you aware of any <b>transactions</b> between XYZ and an <b>entity</b> in which a <b>family member</b> is a director, officer, key employee, general partner, LLC manager or an <b>owner</b> of more than 35% of the equity interests in the <b>entity</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
7. Do you have any outstanding loans to or from XYZ?	<input type="checkbox"/>	<input type="checkbox"/>
8. Are you aware of any outstanding loan to or from XYZ and a <b>family member</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you aware of any outstanding loans to or from XYZ and any <b>entity</b> in which you are a director, officer, key employee, general partner, LLC manager or <b>owner</b> of more than 35% of the equity interests in the <b>entity</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
10. Are you aware of any outstanding loans to or from XYZ and any <b>entity</b> in which a <b>family member</b> is a director, officer, key employee, general partner, LLC manager or <b>owner</b> of more than 35% of the equity interests in the <b>entity</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
11. Did XYZ provide any <b>grant, scholarship, stipend or other assistance</b> to you?	<input type="checkbox"/>	<input type="checkbox"/>
12. Are you aware of any <b>grant, scholarship, stipend or other assistance</b> provided by XYZ to any of your <b>family members</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
13. Are you aware of any <b>grant, scholarship, stipend or other assistance</b> provided by XYZ to any <b>entity</b> in which you are director, officer, key employee, general partner, LLC manager or an <b>owner</b> of more than 35% of the equity interests?	<input type="checkbox"/>	<input type="checkbox"/>
14. Are you aware of any <b>grant, scholarship, stipend or other assistance</b> provided by XYZ and any <b>entity</b> in which a <b>family member</b> is a director, officer, key employee, general partner, LLC manager or <b>owner</b> of more than 35% of the equity interests in the <b>entity</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
15. Are you a <b>family member</b> of, or do you have any <b>business relationship</b> with, any current or former directors, officers, or key employees of XYZ?	<input type="checkbox"/>	<input type="checkbox"/>
16. Do you have a material financial interest in any <b>entity</b> doing business with XYZ not otherwise disclosed in response to the prior questions?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Please answer Question 17 below only if you are a director of XYZ.</b>		
17. Are you aware of any relationship or transaction not otherwise disclosed that constitutes or could constitute an actual or apparent conflict of interest between you and XYZ or that could impair or appear to impair your <b>independence</b> ?	<input type="checkbox"/>	<input type="checkbox"/>
If you answered yes to any of these questions, please explain in the space provided on the next page. In addition, whether or not you answered yes to any questions, please identify on the next page where indicated all corporations or other entities, for-profit or nonprofit, of which you are a director or officer.		

3

conflicts questionnaire  
4 pages (with IRS-encouraged detail)

## Annual Board Calendar

O&amp;T DRAFT 7/25/13

January-February	March-April	May-June
<b>Risk Assessment</b> <ul style="list-style-type: none"> <li>review XYZ's risk exposure (including funding and program as well as liability risks)</li> <li>review insurance coverages to ensure type and level are adequate for XYZ's activities and properly</li> <li>review status of key operating contracts including leases, lines of credit and key collaborations</li> </ul> <b>External Communications</b> <ul style="list-style-type: none"> <li>review XYZ's branding and external communications, including communication about mission, programs, financial condition, governance arrangements, board and staff</li> </ul>	<b>Board Self-Assessment</b> (every 2 – 3 years) <ul style="list-style-type: none"> <li>evaluate board functioning, including board composition, information flows, content and conduct of board meetings, committee performance and interactions with staff</li> </ul> <b>Governance Review</b> (every 2 – 3 years) <ul style="list-style-type: none"> <li>review bylaws, committee structure, committee charters and other governance arrangements</li> <li>review policies, including whistleblower, records retention, and compensation review policies</li> <li>review board education and orientation materials</li> </ul>	<b>Financial Review</b> <ul style="list-style-type: none"> <li>review annual financial statements and other financial reports*</li> <li>review internal controls with [ED, Treasurer, and xx Committee]</li> </ul> <b>Tax Reports</b> <ul style="list-style-type: none"> <li>review draft of and process for preparing Form 990</li> </ul> <p><small>* Note state law requirement to provide board, within 120 days of fiscal year-end, with year-end financial report (balance sheet, income statement) and report re XYZ transactions with officer or director exceeding \$50,000 and any indemnification payments exceeding \$10,000</small></p>
July-August	September-October	November-December
<b>Annual Budget and Goals</b> <ul style="list-style-type: none"> <li>adopt annual budget and goals</li> </ul> <b>Executive Performance and Compensation Review</b> <ul style="list-style-type: none"> <li>review performance and compensation of management including ED and Treasurer</li> <li>evaluate whether executive compensation is fair and reasonable</li> <li>document process in accordance with compensation policy and IRS guidance</li> </ul> <b>Annual Board Retreat</b>	<b>Annual Board and Officer Elections</b> <ul style="list-style-type: none"> <li>elect directors in accordance with bylaws</li> <li>elect officers in accordance with bylaws</li> </ul> <b>Board Committees</b> <ul style="list-style-type: none"> <li>appoint directors to committees</li> </ul> <b>Annual Conflicts Review</b> <ul style="list-style-type: none"> <li>review conflict of interest policy conduct annual conflicts disclosure process</li> </ul> <b>Strategic Planning</b> <ul style="list-style-type: none"> <li>review mission, strategy, and core program and resource allocation choices</li> <li>review strategy for long-term financial sustainability</li> </ul>	<b>Fundraising</b> <ul style="list-style-type: none"> <li>review XYZ's fundraising goals, strategies, and solicitation materials and policies</li> <li>confirm with ED that contributions are used for appropriate purposes consistent with solicitation materials and donor intent</li> </ul> <b>Human Resources</b> <ul style="list-style-type: none"> <li>review staffing needs</li> <li>review staff performance and employee concerns</li> </ul> <b>Programs</b> <ul style="list-style-type: none"> <li>review XYZ's programs, program effectiveness and evaluation methodologies</li> </ul>

Note: This is a suggested calendar and is for discussion purposes only. The Board and Executive Director should decide what is best for XYZ in view of the nature and rhythm of its activities while keeping in mind "housekeeping" and compliance requirements. The tasks described above are recommended in addition to recurring agenda items, including, for example, approval of minutes from previous meetings and program and budget updates from the Executive Director.

annual board calendar  
1 page

## Governance Guidelines

### Introduction

This document provides an overview of XYZ's governance arrangements and expectations. It serves as a reference, as an efficient orientation and education tool, and as a vehicle for capturing governance policies and practices not otherwise reflected in separate documents. It covers board and individual director responsibilities; board composition; committees; meetings; access to information and staff; orientation; and evaluation; transaction approval; compliance; and financial reporting and disclosure.

### Board responsibilities

#### Core responsibilities

Under state law, XYZ's activities and affairs are conducted and all corporate powers are exercised by or under the direction of our Board. The Board's responsibilities include:

- determining XYZ's mission
- overseeing strategy development and execution
- monitoring program performance, outcomes, and impact
- reviewing budgets and budget performance
- providing financial reporting, controls, and risk management oversight
- selecting, advising, evaluating, and determining the compensation of the Executive Director
- selecting, orienting and integrating new members of the Board
- determining and reviewing XYZ's governance structure, policies and practices
- reviewing legal compliance
- setting a fundraising strategy, and engaging in development and outreach activities; and
- reviewing and approving branding and outreach strategies

#### Fiduciary duties

Board members have two basic state law duties to the organization: a duty of care and a duty of loyalty.

The duty of care requires that directors be informed about organizational activities, participate in decisions, and do so in good faith, in a manner that the director believes to be in the best interest of the organization, and with such care, including reasonable inquiry, of an ordinarily prudent person in similar circumstances.

The duty of loyalty requires that directors act in the interest of the organization and not in their own interest or in the interest of another entity.

Directors in carrying out their duties are generally entitled to rely upon information, including financial data, provided by officers and employees, counsel, independent accountants and other experts, and board committees so long as they in good faith believe such reliance to be warranted.

### Individual director expectations

We expect each individual director to fulfill the core board responsibilities outlined by state law and BPHC by:

- learn about XYZ's strategy and programs;
- build an understanding of XYZ's planning and budgeting processes, key performance measures, and financial statements;

governance guidelines

9 pages

What's next

These are baby steps

If we stepped out a little further

From here (1)

From here (2)

From here (3)

From here (4)

Documents as products

**These are baby steps**

These are excerpts from forms we currently use in the transactional clinic at Stanford Law School. The response is favorable. Clients, both large and small, appreciate the brevity, the organizational scheme and brightness of the documents, and especially the practical tools such as the annual board calendar. Moreover, these early-stage materials reflect only baby steps. For example, we have not engaged in sustained listening sessions with clients, or tried to draw on the psychological research about procedural learning in a sophisticated way, or engaged a graphic designer to help us out. In many respects, we've simply presented standard content in a different form. We still have plenty of statutory references in the materials. We follow a traditional bylaws organizational scheme and have yet to optimize how we describe regulation-driven procedures. Some pages are still too crowded, and we struggle with the cover-every-base instinct in keeping documents (especially the governance guidelines) to a workable length and consistent feel. The choice of Arial font probably wouldn't please the professionals. We worry that, in our effort to create smaller pieces, we've created too many pieces. We've also barely scratched the surface of typographical improvement. We played, in an amateurish way, with page design, captions, line length, and font, and didn't really vary from standard Word settings. We didn't consider picas, points, leading, kerning, line spacing, golden sections, and so on. And yet, the difference (and in our view, improvement) in usability is apparent.

### **If we stepped out a little further**

One can easily imagine much more creative (and probably shorter and more effective) ways to present this information. For example, would bylaws be easier to use if they were set up in a Q&A fashion? Would they benefit from side notes that answer predictable questions, or accompanying graphics that address the confusion often associated with concepts such as “staggered board,” “authorized directors,” and “quorum?” Might a conflict of interest policy be more effective if the policy blends visual elements and text and reflects the decision-making path inherent in those policies? Should we go wild, take inspiration from IKEA, and set all this up in the form of a real user’s guide?

If the notes are permitted to move around in the margins—as they were in Renaissance books—they can be present where needed and at the same time enrich the life of the page. . . . Sidenotes give more life and variety to the page and are the easiest of all to find and read.

ROBERT BRINGHURST (68)

In crafting documents that clients understand, we also have the option of taking it one or two steps further, by annotating or even illustrating contracts. . . . This could come in the form of explanations in sidebar comments, footnotes, or in bold brackets within the text. . .

JANELLE ORSI (112-113)

Visual techniques are an efficient method of conveying and organizing information to all types of people. Visual representation acts as an organizer for ideas, improves comprehension, and functions as an aid to memory.

ANGELA PASSALACQUA (205)

Reader studies show that the marriage of text and image is one of the most powerful ways to help a reader retain information.

KIM BAER (114)

I believe in flow charts. I wish every law class I learned was introduced with one simple overarching flowchart, that would show the essential tasks and questions that legal practitioners must proceed through when operating in this certain domain of law.

MARGARET HAGEN,

<http://www.margarethagan.com/drawings/illustrated-law-flow-charts/>

**From here (1)**

This early work suggests that there is considerable opportunity in institutional, as well as consumer settings, for attention to design and typography. Governance documents are one example where such attention can be helpful. Contracts are another and especially interesting area for study and experiment. Haapio and colleagues are onto something with their work on non-textual tools. Nonprofits provide an interesting test bed for exploration here. They contract with both the individuals they serve (for example, a resident in a transitional housing facility), and with organizations with whom they collaborate in programmatic activity. They often want a document that's meaningfully accessible to the other party, and a look and tone of collaboration and practicality, not legal heaviness. It's no surprise that "MOUs" are predominant in nonprofit collaborative activity. This factual setting provides opportunities both to expand use of tables and other familiar but underused devices, and, with the client's buy-in, to try out non-textual tools, novel formats, and other non-traditional approaches. (In our experience, clients generally welcome more user-aware, operations-oriented executions.) Midstream management tools such as summaries and calendars, and of course client communications and advice and training materials for clients of all kinds, are prime targets for design innovation—and sources of ideas for changes in the underlying contracts and other documents themselves. On the litigation side, as Butterick and others have shown, pleadings and briefs benefit materially from typographical improvement. There's no expectation that tomorrow we'll wake up to a world of spare and elegant bond indentures, but corporate lawyers with an awareness of design considerations could certainly take advantage.

Contract visualization—adding tables, charts, and images to supplement text—offers promising new ways to communicate contracts and improve their clarity and usability. Our recent research shows how simple changes can make major improvements and how flowcharts and other non-textual tools can add value and improve productivity and efficiency in the corporate contracting process. Proactive law, merged with user-centered information design and visualization, can increase the understandability and usability of contracts across cultures and disciplines.

<http://www.lexpert.com/en/visualisation/index.htm>

### **From here (2)**

The outlook for legal document design innovation is encouraging. Interesting things are happening out there. There's terrific work underway by Hagen (see sidenote), Hewens (from IDEO), and Haapio (contract visualization). Online legal service providers such as RocketLawyer, Legal Zoom, and Boarddocs.com presumably have both the incentive to invest in document design innovation (consistency with mission and business model, competitive differentiation) and the platform for widespread dissemination. Computational law innovators such as Kiiac might have an opportunity to blend automated, modular content with thoughtful design. Bar, trade association, continuing education, and other organizations who make templates publicly available, and who have great credibility and reach, might be engaged in making the R&D investments needed to create, in Hagen's term, replicable "patterns" for new executions of legal materials.

At this young stage of legal design, the best thing to offer lawyers who want to offer better, excellent products to their clients is a guidebook. What I envision is not a Blue Book but a White Book. It can supply templates, rules, formats, and other guidelines for how to compose a usable legal document. It is not about the content, it is about the document as a thing—its layout, its flow, its composition. It regards a legal document as a product in itself. It focuses on how the clients (and other stakeholders) will use it, interact with it, and live with it. This book of good design patterns is essential for lawyers right now, and their clients.

MARGARET HAGEN,  
<http://www.openlawlab.com/2013/06/07/book-of-legal-design-patterns/>

Our founding vision was for an easy-to-use, online service that helped people create their own legal documents. . . . [Our] mission was to set new standards for convenience and service in an industry not typically known for great customer care.

Legal Zoom, <http://www.legalzoom.com/about-us>

Whether you want a quick and simple legal document for free, or have a more complex legal situation requiring the advice of an attorney, Rocket Lawyer is here to help.

RocketLawyer, <http://www.rocketlawyer.com/what-we-do.rl>

[K]iiac creates and maintains document templates and clause libraries—model legal documents containing standard and alternative provisions. Our innovative solutions help law firms and corporate legal departments maintain and improve document quality while at the same time meeting client expectations of efficiency.

Kiiac. <http://www.kiiac.com/index.htm>

**From here (3)**

Law schools are another possible source of document design innovation; as Davis and others have noted, academic institutions are well positioned to provide platforms for innovation dissemination. Doctrinal, legal writing, and clinical classes all provide venues for exploring whether governance, contract, and other documents are in fact best seen, like here, as maps and guides for organizational behavior or, instead, are better viewed and written as defensive, CYA, in-the-drawer documents to be brought out if there's an (unlikely) audit or litigation. Faculty can collaborate with scholars who study contract innovation, with academics in other disciplines, and with external professionals and commercial actors.

Academic actors that are inclined to innovate are probably also inclined to invest in disseminating those innovations, subject to resource constraints. . .

Academic institutions and other mission-driven organizations are also well suited to establish and maintain platforms that disseminate user innovations. KEVIN DAVIS (122)



**From here (4)**

Transactional clinics provide relevant practice environments. We can experiment with new approaches (with openness about what we're doing and within limits while mindful that most of our students are headed to traditional firms), and we have the time for, and educational goal of, engaging deeply with clients. More broadly, in the clinic we isolate and study elements of professional performance, and we try to help students build good habits of mind and, fundamentally, the stance of a lawyer. There is something to be said about trying to inculcate in students the intense focus on user experience, and the deep attention to product functionality and thoughtful execution, that characterizes the designer. It's also interesting to think about the ethical principles of competence, diligence, and communication from this perspective, as well as the professional norm and commercial imperative of commitment to client service. And, finally, there may be a neat opportunity to blend old-fashioned craft virtues with contemporary practices and technologies. After all, we're in the business of making objects for people. Shouldn't we introduce students to all of the tools in the workshop?

Craft products [can be] evaluated both in terms of form and function. Form relates to the aesthetics of the production, attention to detail, the quality of the finish, the integrity of the object, and in general to the quality of the construction. Function relates to how well the object suits its intended use, whether the materials are of an appropriate type and quality, innovation, quality of replication of its model, and how well the object holds up over time.

BRETT SCHARFFS (2299)

### **Documents as products**

Documents can help people find their way, whether it's governing an organization, carrying out a contractual obligation, or navigating a regulatory process. Lawyers have some good tools for making these products; standard forms and precedents from prior engagements are prime examples. But, corporate lawyers don't seem to use other tools whose employment might contribute to the utility and value of the product for the client. Those tools, used by designers, include a stance toward the work focused on the reader and actual user experience, and an attention to typography, to facilitating communicative effectiveness through careful attention to the presentation of text and image. This paper reflects an early effort by corporate lawyers to learn from designers and the objects they produce for their clients. It also reflects an encouragement to lawyers, and to others who read, use, and study documents, to find their way to these tools and inspirations, to experiment, prototype, and test new executions of core legal products, and to take fuller responsibility for our outputs. We share a lot in common with designers in how we do our work, and we can learn a lot from them in how to do better work.

Narrow row houses flush with the street are found not only in urban slums but in the loveliest of the old Italian hill towns and Mediterranean villages. A page of full of letters presents the same possibilities. It can laps into a typographic slum, or grow into a model of architectural grace, skilled engineering, and simple economy.

ROBERT BRINGHURST (62)

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