

Nonprofit Law Jargon Buster – Voting Members vs. Self-Perpetuating Board

When [forming a nonprofit corporation](#), it is important to decide whether the corporation will be board driven or member driven. If the corporation is board driven, there are typically no members or the members have very limited rights. If the organization is member driven, the members are typically voting members who have the power to elect and remove members of the board of directors.

Voting memberships are useful when an organization wishes to be democratically controlled by its constituents. Voting memberships structures are commonly used by member driven organizations such as social clubs, churches, chambers of commerce and trade associations. In such cases, the organization exists to serve its members and it makes sense for control to be vested in the members.

When considering whether to include voting members in a nonprofit corporation, it is important to understand that voting members of a nonprofit corporation are generally analogous to shareholders of a business corporation. Voting members have statutory rights under state law; therefore, it is important to clarify the right of members to avoid inadvertently creating a voting membership class and vesting ultimate control in the members when that is not your intention. Once a membership has been established, it may be difficult to eliminate, and it may be impossible without the consent of the members.

Voting memberships can also complicate the governance of a nonprofit corporation. For example, voting membership corporations must keep up with noticing and documenting meetings of the members in addition to board of director meetings. The membership roster must be kept up to date to know who is eligible to vote.

Voting membership corporations can also [be fickle](#). If the requirements for membership are set too low, it is possible for factions within the membership to sign their supporters up as members and shift the direction of the nonprofit corporation. One such case includes the well publicized [struggles at the Sierra Club](#). In the Sierra Club dispute, a faction developed that supported an anti-immigration agenda offensive to many of the Sierra Club's longtime supporters and allies. The anti-immigrant faction encouraged its supporters to send in their \$25 dues payment so that they could gain the right to vote at the annual meeting. In the end, the incumbents were successful in fending off the takeover attack. The Sierra Club case was unusually high profile; however, similar scenarios regularly play out in nonprofit boardrooms across the country.

In contrast to corporations with boards elected by voting members, most charities are governed by self-perpetuating boards. Self-perpetuating boards simply vote for their own replacements. In a nonprofit with a self-perpetuating board, the Board of Directors is typically the ultimate seat of authority within the organization.

It is also possible to combine a self-perpetuating board with nonvoting members. Nonvoting members may be required to pay dues and receive certain program benefits. For example, many

museums sell memberships that permit a member to gain free admission or annual admission to exhibits and to receive certain other benefits such as gift shop discounts, exhibit previews and invitations to special events. However, such memberships do not typically include voting rights or any special privileges related to [governance of the organization](#). Non-voting memberships are useful in some organizations but founders must take extra care to define and limit the rights of non-voting members; as where governing documents are ambiguous or unclear, state law will fill in the blanks and may grant unintended rights to members.