

Must A Nonprofit Abnegate Private Gain?

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The California Corporations Code includes provisions governing a wide variety of nonprofit organizations. However, the "Big 3" categories of nonprofit corporations are the public benefit, mutual benefit and religious corporations. While the drafters of these laws had intended that each be a self-contained law, their provisions are in many cases identical. However, one key distinction can be found in the statement of purpose required under each of these laws. Notably, only the Public Benefit Corporation Law requires that the articles abjure private gain:

“This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for (public or charitable [insert one or both]) purposes.”

Cal. Corp. Code § 5130(b)(1) (a different statement is required if the corporation is a public bank). In contrast, the Mutual Benefit Corporation Law simply requires (other than in the case of a credit union or public bank) the statement that "This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law." Cal. Corp. Code § 7130(b)(1). The Religious Corporation Law requires that the articles state "'This corporation is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Religious Corporation Law (primarily or exclusively [insert one or both]) for religious purposes.'" Cal. Corp. Code § 9130(b).

Note that the foregoing discussion is concerned solely with the Corporations Code and not with the requirements for tax-exempt status under the federal and state tax laws.

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