



# Organizational and Legal Overview Training

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# Outline

- TAA as a unique legal entity
- Fiduciary duties of Directors
- Arizona Open Meeting & Public Records Law



# Unique Legal Entity

- **Non-profit corporation under Arizona Law**
- **Authorized to exercise governmental powers**
- **Treated as a 'political subdivision' under Arizona law**



Corporate Structure & Governance	TAA	Other “normal” non-profits/for profit corporations
<u>Governing Documents:</u> → ARS non-profit statutes → Specific governing authority statutes → Articles of Incorporation & Bylaws → Leases (COT) → <b>Federal obligations for taking federal money</b> → <b>Airline Use Agreements</b>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<u>Board and Council Meetings:</u> → Required public meetings	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Corporate Records:</u> → Records open to the public	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Finances:</u> → Public access to internal financials → Audits by external regulators	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<u>Regulating Entities:</u> → Federal agency both a regulator and source of significant grant funding → Safety and security requirements → Office of the Arizona Attorney General re: OML and Records	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Fiduciary Duties of Care, Loyalty, Obedience</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

# Fiduciary Duties of Directors

- **Directors must act:**
  - **With the care of an ordinarily prudent person in a like position, under similar circumstances (Duty of Care), and**
  - **In a manner the Director reasonably believes is in the best interest of the corporation (Duty of Loyalty), and**
  - **Ensure that the corporation is run in accordance with its mission and applicable law (Duty of Obedience)**

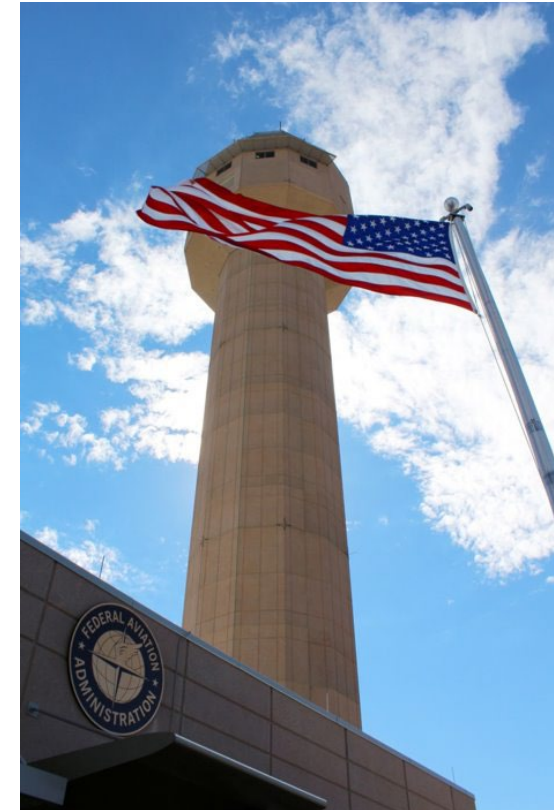


# Board and President/CEO – Different Roles

- **Board of Directors establishes “objectives and policies” for TAA. (see Section 4.3 of Bylaws)**
- **Board of Directors hires the President/CEO. (Id.)**
- **President/CEO “shall have the responsibility for the overall operation and management of TAA in accordance with its Mission and within the framework of Board adopted objectives and policies.” (Id.)**
- **President/CEO “shall have full responsibility for the management and administration of all TAA activities and operations and shall report to the Board on a regular basis.” (Id.)**
- **Resolution on Delegated Authority**

# FAA Grant Assurances

- Federal requirements we must follow when accepting federal grant money.
- Covenants to keep airports in operation and open for public use
- **Restrictions on use of airport revenue**
  - **Airport revenue cannot be used to subsidize individual tenants, users or for general economic development or community benefit**
- Self-sustaining rate structure
- Limitations on proceeds from land transactions





# Airline Agreements

- Airlines and the passengers they bring to and from the airport provide for approximately 65% of all airport revenue
- TAA must maintain and keep all airport facilities in good repair
- “Residual” Agreements – Airlines carry the risk for financially balancing the airport system.
- Benefit of the Bargain – with more airline risk comes giving them more say on the use of airport money re: large capital projects and expenses





# Open Meetings

- **TAA is subject to Arizona Open Meeting Laws**
- **Applies to all Regular and Special Board and Advisory Council Meetings**



# Open Meetings

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe this article in favor of open and public meetings.”

- ARS Section 38-431.09(A)

# Open Meetings

**State AG's agency handbook advises that  
"any uncertainty under the Open Meeting Law  
should be resolved in favor of openness in  
government."**

# Open Meetings

- A “meeting” is any gathering – in person or through technological devices – of a quorum to discuss, propose or take action on TAA business
- Phone calls, emails, texts, etc. among a quorum can be a meeting
- Watch out for “splintering the quorum” or serial communications, e.g., communication from one member to the next sharing information and intent to vote



# Open Meetings

**What does it mean for meetings to be “Open to the Public”?**

- **Public allowed to attend and observe**
- **Properly noticed and agenzized**
- **Discussion limited to those items on the agenda**



# Open Meetings

## Public Meetings- Exceptions:

- **Executive Sessions – Private/Confidential, not Secret**
  - 7 statutory authorizations for executive sessions
  - Discussions and minutes confidential and may not be disclosed by participants
  - Public is excluded and attendance limited to those who reasonably need to be there for the purpose identified on the agenda
  - No voting in ES (including no straw polls or preliminary vote; no calls for consensus)
  - All actions must occur in the public meeting



# Open Meetings

## Enforcement and Sanctions

- All action taken at a meeting held in violation is null and void
- Possible \$500 penalty per violation – assessed personally against Directors
- Costs and attorney fees
- Removal from office (rare)



# Public Records

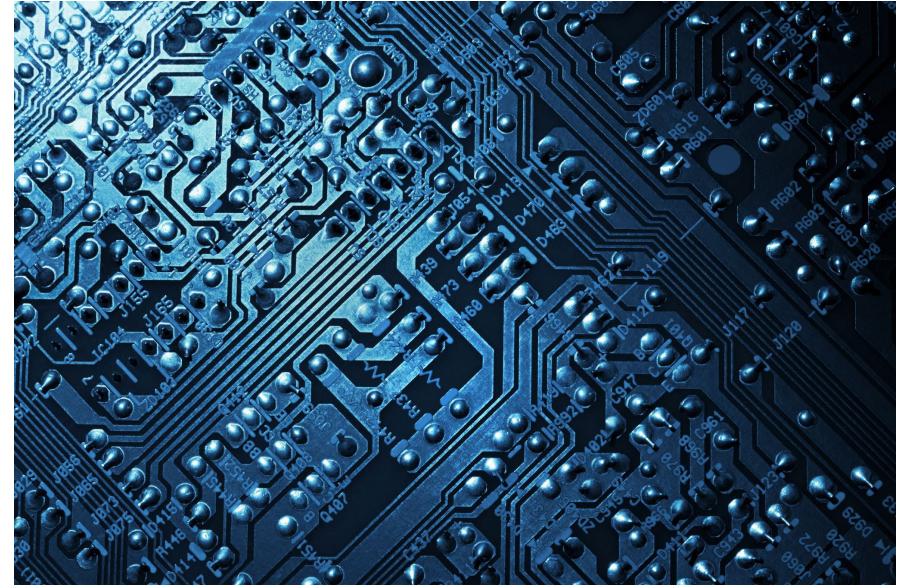
## As summarized by the AG:

- Anything created or received by a government agency or employee that relates to public business, including records created or received in the course of business (even if on personal computers or devices) is presumed to be a public record



# Public Records

- **As a Director, everything you communicate in your official capacity as a Director about or related to TAA business, REGARDLESS OF DEVICE, is LIKELY subject to public records law.**
- **Penalties – all costs associated with failure to comply**





Questions?