Corporate Directors

- Have ultimate control over the corporation regarding most issues (except for “fundamental” issues relating to the company, which the shareholders control)

- Directors don’t have to be regular employees of the firm (in fact, if good to have many “outside” directors on the board); but outside directors can get compensation for their services

- Consist of a Chairman and other Board members. The directors can also form sub-committees from their own ranks to handle various other tasks

Operation of the Board of Directors

- Tasks of the Board include:
  - Holding annual meetings (required in many jurisdictions)
  - Declaration of dividends
  - Calling special meetings
  - Creating board committee
  - Hiring and firing executive officers
  - Making recommendations to shareholders

- Board action is accomplished by majority vote; a subcommittee cannot act on behalf of the entire Board

Corporate Officers

- **In charge of the day to day management of the corporation**

Examples of Officers:

- **Chief Executive Officer (CEO)**
- **Chief Financial Officer (CFO)**
- **In house counsel**
- **President, Vice President etc.**

Officers (cont.)

- Things that distinguish officers from other employees:
  - Officers have contracting authority for the firm; which means the power to bind the corporation with deals or promises that the officer makes.
  - Officers have "speaking" authority; their statements can be used by other parties as guarantees or policy statements of the firm.
  - Officers have an "Obligations to Report" to the Board and/or shareholders as to the status of the firm; the nature of the reporting duty is often governed by the SEC Rules for bigger corporations

QUIZ TIME!

Fiduciary Duties:
The Duty of Loyalty

- **This duty requires that the officers and directors put the interest of the corporation over their own financial interests!**

Examples of breach of the duty of loyalty

- Taking a <u>corporate opportunity</u> for oneself rather than offering it to the corporation. A corporate director who hears of an opportunity relating to the corporation's business in his capacity as director must offer it to the corporation first, unless:
  - The corporation has stated that it doesn't want the opportunity; or
  - The corporation absolutely cannot afford the opportunity

- Starting a "competing venture" – another company that competes with the corporation

- Engaging in an interested director transaction (a transaction with the corporation in which the director stands to benefit financially or otherwise)
  - In the event of an interested (director or officer) transaction, a court will set aside the transaction unless the interested director or officer can show "entire fairness" in the transaction.

Remedies for Breach of the Duty of Loyalty

- **Set aside the transaction**

- **Establish a "constructive trust" in which the profits from the transaction are held for the benefit of the corporation**

- **The director or officer can be liable in <u>tort</u> if the wrongful act hurt the corporation financially**